No. 25-6

IN THE

Supreme Court of the United States

THOMAS KEATHLEY,

Petitioner,

v.

BUDDY AYERS CONSTRUCTION, INCORPORATED,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

AMICI CURIAE BRIEF OF THE HONORABLE MELANIE CYGANOWSKI (RET.), JOAN FEENEY (RET.), JUDITH FITZGERALD (RET.), BRUCE MARKELL (RET.), EUGENE WEDOFF (RET.), AND PROFESSOR ROBERT M. LAWLESS IN SUPPORT OF PETITIONER

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INTEREST OF THE AMICI CURIAE[1]

Amici curiae are former U.S. Bankruptcy judges Melanie Cyganowski, Joan Feeney, Judith Fitzgerald, Bruce Markell and Eugene Wedoff. Amici have decades of judicial service and have presided over hundreds of bankruptcy cases involving both individual debtors, corporate debtors, and matters arising in Chapter 7, 11 and 13 of the U.S. Bankruptcy Code. Judges Wedoff and Markell were among the fifteen experts who formed the Commission on Consumer Bankruptcy Law, and ultimately published the FINAL REPORT OF THE ABI COMMISSION ON CONSUMER BANKRUPTCY (2017-2019).[2]

Amici curiae include Professor Robert M. Lawless, the Max L. Rose Professor of Law at the University of Illinois College of Law, and a nationally recognized expert in bankruptcy law, consumer finance, and empirical studies. Professor Lawless served as the Reporter for the ABI Commission on Consumer Bankruptcy, and played a pivotal role in shaping its findings, including those on judicial estoppel. He has testified before Congress on consumer protection and bankruptcy reform. He is a co-author of the recently published DEBT'S GRIP.[3]

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1. Pursuant to Sup. Ct. Rule 37, no counsel for a party authored the brief in whole or in part, and no such counsel made a monetary contribution intended to fund the preparation or submission of this brief.

2. ABI Announces Commission on Consumer Bankruptcy, March 13, 2017. https://www.abi.org/newsroom/press-releases/abi-announces-commission-on-consumer-bankruptcy.

3. Pamela Foohey, Robert M. Lawless, and Deborah Thorne, DEBT'S GRIP: RISK AND CONSUMER BANKRUPTCY (2025).

Amici support the petition for certiorari. Their interest arises from the belief that the ruling by the Fifth Circuit below concerning the application of judicial estoppel is harmful to the bankruptcy system, unfair to both debtors and creditors, inconsistent with the federal standard of judicial estoppel, and contrary to the Code provisions and customs that govern Chapter 13 bankruptcy cases.

Amici urge this Court to consider the Final Report of the ABI Commission on Consumer Bankruptcy.[4] The ABI Commission Report was a multi-year study by the leading judges and scholars in the bankruptcy community, including Professor Lawless and former Judges Wedoff and Markell. The Commission Report rejected a mechanical approach to judicial estoppel and recommended a standard consistent with the "totality of the circumstances" as set forth in *Slater v. United States Steel Corp.*, 871 F.3d 1174 (11th Cir. 2017). The Commission Report stated that a "debtor's failure to disclose a cause of action is not alone grounds to apply judicial estoppel," and that a court should consider the "totality of the circumstances." ABI Comm. Rpt., 26. "The relevant inquiry should be about the debtor's intent toward other parties. . . ." *Id.* at 28.

The outcome of this case is important to a large number of people. "Over a million households filed bankruptcy every year through the early 2010s."[5] For the

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4. Final Report of the ABI Commission on Consumer Bankruptcy (2017-2019). The report is available at https://consumercommission.abi.org/.

5. Pamela Foohey, Robert M. Lawless, Deborah Thorne, Debt's Grip: Risk and Consumer Bankruptcy, Univ. of Cal. 2025 p.9.

last decade filings were around 750,000 per year.[6] Amici submit that unless reversed by this Court, the Fifth Circuit's decision will create an unjustified forfeiture of assets for Chapter 13 debtors, and an unjustified windfall for defendants who may evade liability for wrongful acts. No valid purpose is served by such an outcome.

INTRODUCTION

The question presented in this appeal is whether the doctrine of judicial estoppel can be invoked to bar a plaintiff who fails to disclose a civil claim in a bankruptcy proceeding from later pursuing that claim based only on a showing of a *potential* motive for the nondisclosure, regardless of whether there is evidence that the debtor in fact acted in bad faith. Pet. i.

The answer is no. Judicial estoppel cannot be predicated on a *potential* showing of a motive for the non-disclosure. The correct legal standard for judicial estoppel is set forth by this Court in *New Hampshire v. Maine*, 532 U.S. 742 (2011) which recognizes that inadvertence or an honest mistake precludes the application of judicial estoppel. "We do not question that it may be appropriate to resist the application of judicial estoppel 'when a party's prior position was based on inadvertence or mistake.'" *Id*. at 752. "[J]udicial estopped forbids use of *intentional* self-contradiction … as a means of obtaining an unfair advantage." *Id*. at 751 (emphasis added).

The Respondent argues that "[t]he Fifth Circuit 'faithfully adhered to *New Hampshire's* equitable approach to the doctrine of judicial estoppel.'" (Opp. Br.

6. *Id*.

18). It did not. The Fifth Circuit's decision is inconsistent with this Court's ruling in *New Hampshire*.

New Hampshire held that judicial estoppel was *not appropriate* where there was a showing of inadvertence or mistake. The Fifth Circuit held to the contrary, stating that inadvertence could be assumed based on only a *potential* benefit to the debtor from the initial nondisclosure. "[T]he Fifth Circuit has made it clear that judicial estoppel 'almost always' applies when a plaintiff fails to disclose a tort claim," further characterizing this as a "strong presumption in favor of intent" and that "it will generally be impossible for any factfinder" to find lack of intent. Pet. App. 28a-30a. As the district court noted, "The Fifth Circuit's use of the 'almost always' language … suggests that something approaching *an absolute presumption of intent* exists" when the debtor does not disclose a lawsuit. Pet. App. 30a (emphasis added). Thus, once a nondisclosure occurs, the debtor "will not simply be allowed to plead an honest mistake and file an amended disclosure." Pet. App. 41a.

This "strong presumption" is essentially a "*per se*" rule that nondisclosure will result in forfeiture of a claim, even if corrected later and in time for creditors to seek any needed recourse. This harsh rule thus reads the requirement to show intentional nondisclosure out of the core holding of *New Hampshire*. In so doing, the Fifth Circuit decision contradicts *New Hampshire*, is inconsistent with the majority rule from other circuits, and is detrimental to bankruptcy practice and its foundational concepts.

Judge Haynes, who concurred in the judgment only, disagreed with the panel majority, stating, "I doubt that the goals of the doctrine have been advanced," (Pet. App. 21a) that preventing Mr. Keathley's assertion of his claims would "undermine the judicial system the doctrine claims to protect," (Pet. App. 21a) and that the summary judgment applying judicial estoppel failed to cite to any evidence of an actual financial benefit to the Petitioner, arguing instead it was "self-evident." Pet. App. 21a.

Amici agree with the Petitioner and respectfully ask this Court to reverse the decision of the Fifth Circuit.

FACTUAL AND PROCEDURAL BACKGROUND

Mr. and Mrs. Keathley filed for relief under Chapter 13 of the U.S. Bankruptcy Code in December 2019. Pet. 6. The bankruptcy petition on official form 106E/F identified two priority unsecured creditors, the Arkansas Department of Finance and Administration ($15,500) and the Internal Revenue Service, ($8,554). ECF 1, pp. 20-21.[7] The Keathleys listed no other unsecured claims *Id.*[8]

The Chapter 13 trustee for the Eastern and Western District of Arkansas was Mark McCarty, appointed by the U.S. Trustee, who among other duties, advises and assists debtors in their performance under the plan. *See* 11 U.S.C. § 1302. Mr. McCarty appeared and made various

7. All references to "ECF" pertain to the Keathleys' bankruptcy case filed in the eastern district of Arkansas, Case no. 2:19-bk-16848, except when otherwise indicated.

8. Two smaller unsecured claims were later listed. *See* ECF 108, p. 2, showing Aaron's rental (no amount) and Southeastern Emergency Physicians for $104.

objections throughout the case. Mr. Keathley retained Mr. Bart Ziegenhorn, a lawyer in a two-person local Arkansas firm, who has a general practice including civil litigation, and bankruptcy.[9]

The Keathleys filed a Chapter 13 plan within 14 days of their filing. The plan provided for 100% payment to those creditors holding claims that arose pre-bankruptcy. Pet. 6, App 22a. The plan required the Keathleys to devote [all] of their disposable income to the payment of creditors over a five year period. The plan did not require payment of interest, in keeping with the general bankruptcy rule that claims for "unmatured interest" are not "allowed" claims. 11 U.S.C. § 502(b)(2). Priority creditors are entitled to the "full payment" of their claims, a phrase which does not include "interest." 11 U.S.C. § 1322(a)(2).

On August 23, 2021, Mr. Keathley suffered serious injuries when he was struck by a truck driven by David Fowler an employee of respondent, Buddy Ayers Construction, Inc. His injuries permanently reduced his earning capacity. Pet. 6. Mr. Keathley informed his bankruptcy counsel of the accident a few weeks later. Aff. of Thomas Keathley, ECF 154-2.

In December 2021 Mr. Keathley filed a personal injury claim in the United States District Court for the Northern District of Mississippi. Mr. Keathley's bankruptcy counsel did not initially inform the bankruptcy court of this claim, but stated later that even if the bankruptcy court had been aware of Mr. Keathley's personal injury claims at the time it confirmed the amended plan, the claim would have had no material effect on the Court's confirmation of the plan. Aff. of Bart Ziegenhorn, ECF 154-1.

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9. *See* https://www.szblaw.com/attorneys/bart-e-ziegenhorn/.

In March 2023, respondent moved for summary judgment in the district court, relying on judicial estoppel, and asked the court to bar Mr. Keathley from pursuing his claim, because it had not been listed on the bankruptcy schedules.

On April 4, 2023, the Keathleys filed amended schedules which listed the pending suit. Pet. App. 4a. ECF 66, p.6. Neither the Chapter 13 trustee, nor any creditor moved to modify the amount or nature of the plan's payment obligations. The bankruptcy court made no finding whatsoever to suggest that the amendment was improper or even untimely. ("[T]he sanction inquiry should belong to the bankruptcy court.") Pet. App. 23a (Haynes, J., concurring).

In August 2023, the district court granted respondent's summary judgment motion and dismissed the action, based on judicial estoppel. The district court cited with approval *Love v. Tyson Foods, Inc.*, 677 F.3d 258 (5th Cir. 2012), holding that "the motivation sub-element is almost always met if a debtor fails to disclose a claim or possible claim to the bankruptcy court. Motivation in this context is self-evident because of *potential* financial benefit resulting from the nondisclosure." Pet. App. 44a. (emphasis added).

Mr. Keathley then moved under Rule 59(e) to amend the judgment. Mr. Keathley supported the motion with an affidavit from Ms. Kellie M. Emerson, a staff attorney for the Office of the Chapter 13 trustee. Pet. App. 58a. The affidavit stated that "[i]n the Eastern District of Arkansas it is not unusual for post-petition injury claims to be disclosed shortly before the settlement or resolution of the personal injury action." The district court viewed the affidavit as evidencing that there is "apparently a longstanding [practice] in the Eastern District of Arkansas." Pet. App. 25a.

The district court denied the motion to amend the judgment. *Keathley v. Buddy Ayers Construction, Inc.*, 706 F. Supp. 3d 628 (N.D. Miss., 2023). Pet. App. 24a. "In so stating, this court notes that a crucial factor in deciding judicial estoppel issues in the Fifth Circuit is whether a debtor can be *inferred* to have acted *intentionally* in failing to list a tort claim as an asset of the bankruptcy case. . . . [T]he Fifth Circuit's *stringent* judicial estoppel jurisprudence means that a debtor who fails to disclose a tort claim is '*almost always*' inferred to have acted with intent." Pet. App. 25a. (emphasis in original except for "inferred"). The phrase "almost always" was repeated (Pet. App. 29a) and characterized by the district court as a "strong presumption" of intent. Pet. App. 30a.

The Fifth Circuit affirmed the decision of the district court. 2025 WL 673434 (2025). Pet. App. 1a. "Thus, we agree with the district court that Keathley stood to potentially benefit by concealing his personal injury case from the bankruptcy court. "[T]he motivation sub-element is almost always met if a debtor fails to disclose a claim or possible claim to the bankruptcy court." (citing *Love*, 677 F.3d at 262.) Pet. App. 14a.

Judge Haynes concurred in the result, but criticized the application of the doctrine in this context. Pet. App. 20a. "Here there was evidence that Keathley's failure to disclose the personal injury was an *honest mistake*." *Id.* (emphasis added). "Without citing to any evidence of an actual financial benefit that Keathley experienced, the defendant argued that his motive for concealment was 'self-evident' under Fifth Circuit precedent.'" *Id.* "This *hypothetical motive* was enough; the district court granted the motion, citing this circuit's 'stringent application of the judicial estoppel rules.'" Pet. App. 21a.

This Court granted certiorari on October 20, 2025.

SUMMARY OF ARGUMENT

First, the Fifth Circuit's ruling is inconsistent with this Court's ruling in *New Hampshire v. Maine* and is contradicted by other authorities. Contrary to *New Hampshire*, the Fifth Circuit held that judicial estoppel may be applied to bar a claim not disclosed in a prior bankruptcy case based solely on the debtor's knowledge of the claim and the *potential* possibility of a benefit from the omission. The rationale of this decision has been squarely rejected in other circuits. *See*, *e.g.*, *Slater v. United States Steel Corp.*, 871 F.3d 1174 (11th Cir). The decision amounts to a "mechanical" application, an inference of lack of inadvertence, and is contrary to the recommendations of the ABI Commission Report on the correct standard for judicial estoppel—consideration of the "totality of the circumstances" and the debtor's intent: "the relevant inquiry should be about the debtor's intent toward other parties." ABI Comm. Rpt. 28.

Second, the Fifth Circuit decision is in contravention of the nature and practices of a Chapter 13 bankruptcy case, as well as the relevant factors that should be considered as set forth in the ABI Commission Report. These include whether the debtor informed counsel, whether the omission was corrected, and whether the bankruptcy court took any action after the omission was discovered. Tellingly, the standing Chapter 13 trustee and his staff attorney, who worked closely with the Keathleys perceived no wrongful intent and sought no change in the Keathleys' plan after the omission was corrected.

Third, because the Fifth Circuit decision results in forfeiture by Chapter 13 debtors of civil claims, it diminishes the value of the "fresh start" goal of bankruptcy, by depriving debtors of the ability to recover for torts, contract claims and other wrongs, based on an inadvertent failure to schedule such claims initially. The defendants in the civil action were not parties to the bankruptcy and now seek to benefit, having suffered no prejudice from a filing that had only contestable relevance to the bankruptcy estate. The decision harms the bankruptcy estate, diminishes returns to creditors, encourages gamesmanship and gives an inequitable windfall to a wrongdoer.

LEGAL ARGUMENT

I. The Fifth Circuit's decision is inconsistent with the federal standard for invoking judicial estoppel that this Court set out in *New Hampshire v. Maine*, and it fails to follow both the majority of circuit court decisions and the recommendation of a significant report on consumer bankruptcy law.

A. The Fifth Circuit's decision contravenes this Court's holding in *New Hampshire v. Maine.*

The standard for judicial estoppel was set forth by this Court in *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001), quoting *Davis v. Wakelee*, 156 U.S. 680, 689 (1895): "Where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter … assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him."

The purpose of the doctrine is to "protect the integrity of the judicial process," and "to prevent the perversions of the judicial process." *New Hampshire,* 532 U.S. at 743. At the core of the rule is the notion that the nondisclosure must be done "deliberately." *Id.* at 750, quoting *United States v. McCaskey*, 9 F.3d 368, 378 (5th Cir. 1993). There must be "intentional self-contradiction … as a means of obtaining unfair advantage." *Id.* at 751. The Court acknowledged that judicial estoppel should not be applied "when a party's prior position was based on inadvertence or mistake." *Id.* at 753.

The decision of the Fifth Circuit is at odds with *New Hampshire* and the ABI Commission Report. The Fifth Circuit, instead, relied upon an inference of lack of inadvertence based only upon a showing of "potential" financial gain, even if such gain is "hypothetical" or utterly speculative. "[I]n considering judicial estoppel *for bankruptcy cases*, the debtor's failure to satisfy its statutory disclosure duty is *inadvertent only* when, in general, the debtor either lacks knowledge of the undisclosed claims or has no motive for their concealment." Pet. App. 13a (emphasis added) (citing *In re Coastal Plains, Inc.*, 179 F.3d 197, 210 (5th Cir. 1999)).

Further, the Fifth Circuit gives short shrift to the "motive" element, declaring "the *controlling inquiry*, with respect to inadvertence, is the knowing of facts giving rise to inconsistent positions." Pet. App. 13a (citing *In re Flugence*, 738 F.3d 126. 130-31, (5th Cir. 2013) (emphasis added). "[T]he motivation sub-element is *almost always* met if a debtor fails to disclose a claim or possible claim to the bankruptcy court." Pet. App. 14a.

In applying this strict test, the Fifth Circuit held that Mr. Keathley "stood to *potentially benefit* by concealing his personal injury case from the bankruptcy court." Pet. App. 14a. The Fifth Circuit concluded "Keathley *cannot* show that his failure to disclose his personal injury lawsuit was inadvertent." *Id*.

The Fifth Circuit has characterized this test as an "inference" and acknowledged that the result is that it "almost always" results in a finding of lack of inadvertence, based on a "potential" or speculative benefit. The district court referred to this rule as "establishing such a strong presumption in favor of intent," Pet. App. 30a, and in so doing effectively eliminates "mistake or inadvertence" as reasons not to apply judicial estoppel and is contrary to the basic principle that the burden of showing the elements of judicial estoppel is on the proponent. *See, e.g.*, *Gibson Found, Inc., v. Norris*, No. 24-1763, 2025 WL 3240367, at * 4 (1st Cir. Nov. 20, 2025).

B. The Fifth Circuit's decision conflicts with the majority rule followed in other circuits, including the Eleventh Circuit's decision in *Slater v. United States Steel.*

Slater v. United States Steel, 871 F.3d 1174 (11th Cir. 2017)—a decision on rehearing by the full circuit court—illustrates the correct analysis applying judicial estoppel in the context of a Chapter 13 case nearly identical to the Keathley's.

As in the present case, the question presented in *Slater* was how a court should apply the doctrine of judicial estoppel when a debtor has failed to include a civil law suit in the debtor's bankruptcy schedules. The Eleventh Circuit held that there must be a showing that "the party took an inconsistent position under oath in a separate proceeding and (2) these inconsistent positions were intended to make a mockery of the judicial system." "Judicial estoppel should not be applied when the inconsistent positions were of "inadvertence[] or mistake." *Id*. at 1181, quoting *New Hampshire,* 532 U.S. at 753.

Prior to the rehearing decision, the standard in the Eleventh Circuit mostly mirrored the rule by the Fifth Circuit—namely, that "the mere fact of the plaintiff's nondisclosure is sufficient, even if the plaintiff corrected his bankruptcy disclosures after the omission was called to his attention and the bankruptcy court allowed the correction without penalty." 871 F.3d at 1176.

On rehearing, the Eleventh Circuit, *en banc,* rejected the approach used by the Fifth Circuit. The court held that even if the plaintiff acted voluntarily, in the sense that he knew of his civil claim when completing the disclosure forms, "voluntariness alone does not establish a calculated attempt to undermine the judicial process." *Id*. at 1177.

Instead of a *per se* rule, much like the Fifth Circuit used, it held that a district court could not *infer intent* to misuse the courts "without considering the individual plaintiff and the circumstances surrounding the nondisclosure." *Id*. at 1177 (emphasis added).

> We hold that to determine whether a plaintiff's inconsistent statements were calculated to make a mockery of the judicial system, a court should look to all the facts and circumstances

> of the particular case. When the plaintiff's inconsistent statement comes in the form of an omission in bankruptcy disclosures, the court may consider such factors as the plaintiff's level of sophistication, whether and under what circumstance the plaintiff corrected the disclosures, whether the plaintiff told his bankruptcy attorney about the civil claims before filing the bankruptcy disclosures, whether the trustees or creditors were aware of the civil lawsuit or claims before the plaintiff amended the disclosure . . . *and any action by the bankruptcy court* after the omissions was discovered.

Id. at 1185 (emphasis added).

Slater focused on the inequitable result of a windfall from applying the doctrine. Focusing on the facts and circumstances, "reduces the likelihood that an otherwise liable civil defendant will receive an unjustified windfall or that innocent creditors will be harmed." 871 F.3d at 1187. Otherwise, when a district court applies the doctrine, "the civil defendant avoids liability on an otherwise potentially meritorious civil claim while providing no benefit to the court system. As an equitable doctrine, judicial estoppel should apply only when the plaintiff's conduct is egregious enough that the situation 'demands equitable intervention.'" *Id.* at 1187. "If a court applies judicial estoppel to bar the plaintiff's claim absent such intent, it awards the civil defendant an unjustified windfall." *Id.* at 1187. "[E]quity cannot condone a defendant's avoidance of liability through a doctrine premised upon intentional misconduct without establishing such misconduct." *Id.* at 1188.

In addition to the windfall concern is the harm to other creditors. "The application of judicial estoppel poses a potential risk of harm to innocent creditors. When a civil claim is dismissed on the basis of judicial estoppel, the asset becomes worthless—losing any potential to increase the value of the bankruptcy estate, which in turn harms creditors." *Id*. at 1188.

"Because the application of judicial estoppel may harm innocent creditors, equitable principles dictate that courts proceed with care and consider all the relevant circumstances." *Id*. at 1188. "[The inference that] a plaintiff who omitted a civil claim as an asset in bankruptcy filings necessarily intended to make a mockery of the judicial system . . . 'guarantees the very mockery of justice the doctrine of judicial estoppel was designed to avoid.'" *Id.* at 1178–79 (citation omitted).

C. The Fifth Circuit decision fails to consider the recommendations of the Final Report of the ABI Commission on Consumer Bankruptcy.

In 2019, the American Bankruptcy Institute published the results of a multi-year study on consumer bankruptcy law. Final Report of the abi commission on Consumer Bankruptcy (2017-2019). Professors Lawless, Wedoff and Markell, your amici, among others, served on the Commission. The Fifth Circuit's decision is inconsistent with the recommendations of the Commission.

To launch the project, the ABI convened an exploratory committee composed of bankruptcy professionals representing all major constituencies affected by bankruptcy, who would work toward consensus rather than seeing their roles primarily as advocates for an interest group. *See generally*, ABI Comm. Rpt. vii-viii. The Commission was composed of all constituencies in the bankruptcy community, debtor's lawyers, creditor's lawyers, trustees, retired judges. Ultimately, the goal of the Commission was to recommend improvements to the bankruptcy law. The judicial estoppel recommendation came out of that conversation.

The ABI Commission expressed concern that some circuits have adopted rules of judicial estoppel which are inconsistent with *New Hampshire*. ABI Comm. Rpt. 28. ("The Commission is concerned that the doctrine has been applied mechanically in a way that is not faithful to the Supreme Court's directive in *Maine v. New Hampshire,* as well as the doctrine's roots.") The Commission Report cited the Fifth Circuit's decision in *In re Coastal Plains, Inc.,* 179 F.3d 197, 210 (5th Cir. 1999) as evidencing the mechanical and disfavored "bright line" approach—a case which was followed by *Love v. Tyson Foods, Inc.* 677 F.3d 258 (5th Cir. 2012), which in turn was a principal case for the decisions below.

The Commission Report contained a section focused specifically on judicial estoppel. *Id.* at 26. The Commission concluded that in "deciding whether to apply judicial estoppel, courts should consider the totality of the circumstances. In this respect, the Commission's recommendation is consistent with the Eleventh Circuit's approach in *Slater*." *Id*. at 28-29.

It recommended that the courts should use a "restrained" use of the doctrine which examines the "totality of the circumstances." While *Slater* focused on whether the debtor's action made a "mockery of justice," the Commission's "preferred formulation" is that "judicial estoppel should apply when the debtor would gain an unfair advantage." *Id.* at 28. "The relevant inquiry should be about the debtor's intent toward other parties, not the judicial system." *Id.*

The Commission stated that a "debtor's failure to disclose a cause of action is not alone grounds to apply judicial estoppel" and that a court should consider whether the debtor's failure led to an unfair advantage using a totality of the circumstances approach, that includes consideration of eleven factors.

The Fifth Circuit doctrine embraces neither "intent" nor "unfair advantage" nor "impugning judicial integrity." It is a mechanical, if not rigid rule, that employs a "strong presumption" of intent disregarding the "totality of the circumstances" and is out of step with the goals and purpose of judicial estoppel.

II. The Fifth Circuit's application of judicial estoppel is inconsistent with governing provisions for a Chapter 13 bankruptcy case, as well as the standards and responsibilities assigned by Congress to the Chapter 13 trustee.

A. The Keathleys neither obtained an unfair advantage nor impugned the integrity of the judicial system.

The ABI Commission Report noted that "some of the problems with judicial estoppel have arisen through mechanical applications of the doctrine that do not appreciate the *context* of a consumer bankruptcy filing." ABI Comm. Rpt. 29 (emphasis added). Likewise, *New Hampshire* recognized that specific factual contexts may inform the applicability of the doctrine. 532 U.S. at 751. A determination that judicial estoppel is appropriate, or not, must be attentive to the legal and factual context of a Chapter 13 case. "We apply judicial estoppel against the backdrop of the bankruptcy system and the ends it seeks to achieve." Pet. App. 20a (Haynes, J., concurring) (citations omitted).

These judicial statements direct the courts to consider the specific context of a Chapter 13 case, as part of the "totality of the circumstances" test set forth in the ABI Commission Report (*see supra* at 26). Relevant factors include the complexity of the schedules, the significant role of the standing Chapter 13 trustee, the nature of the bankruptcy estate, the lack of any statutory duty to amend schedules, whether the debtor's lawyer was informed of the lawsuit, whether the omission was corrected, and whether the bankruptcy court took any action after the omission was discovered. The failure of the Fifth Circuit to apply or even consider these factors was reversible error.

A Chapter 13 bankruptcy is a "wage earner" case, that is designed to enable individuals with regular, often modest incomes, to pay all or part of their debts and in return, retain most of their property. *See Hamilton v. Lanning*, 560 U.S. 505 (2010) describing the general legal framework for a Chapter 13 case, noting that a Chapter 13 case "provides bankruptcy protection to individuals with regular income, whose debts fall within statutory limits . . . ." *See also Bullard v. Blue Hills Bank*, 575 U.S. 496, 498 (2015) ("Chapter 13 of the Bankruptcy Code affords individuals with regular income an opportunity to obtain some relief from their debts while retaining their property.").

A Chapter 13 case is commenced by the filing of a voluntary petition for individuals (Official Form 101), which includes Official Form 106E/F ("creditors who have unsecured claims"). These standardized forms consist of 46 highly detailed pages, including calculation of income and expense and the calculation of the "commitment period" during which the debtors are required to make payments to creditors. *See* Official Form 122C-1, ECF 1, p. 36. The Keathleys timely and properly filed their petition and the required Official forms on December 27, 2019. ECF 1.

These forms and schedules are complex and even with counsel, are frequently misunderstood. The ABI Commission Report "reflects the reality that a consumer faces before a bankruptcy filing. . . . Even with the aid of an attorney, a consumer has a huge task to assemble the information to complete these forms. Moreover, a consumer might not appreciate that a potential lawsuit is an asset in the same way as a house or bank account." *Id*. at 29.

Congress has enacted a statutory scheme providing for Chapter 13 trustees to deal with the complexity of the Chapter 13 process, and to assist the debtor. In *Siegel v. Fitzgerald*, 596 U.S. 464, 468 (2022) this Court described the historical development of the trustee program, and noted that Congress has relocated many of the former judicial responsibilities to the newly created trustees:

> Bankruptcy cases involve both traditional judicial responsibilities and extensive

> administrative ones. . . . Concerned that these dual roles were overloading bankruptcy judges and creating an appearance of bias, particularly because judges were responsible for supervising trustees that they themselves had appointed, Congress in 1978 piloted the United States Trustee Program (Trustee Program) in 18 of the 94 federal judicial districts. *See id.*, at 17–18; Bankruptcy Reform Act of 1978, 92 Stat. 2549. To "rende[r] the separation of administrative and judicial functions complete," the pilot program transferred the administrative functions previously handled by the bankruptcy courts to newly created U.S. Trustees, housed within the Department of Justice rather than the Administrative Office of the U.S. Courts. H. R. Rep. No. 95–595, p. 115 (1977).

Siegel v. Fitzgerald, 596 U.S. 464, 468 (2022).

The Second Circuit recently described the broad duties of the Chapter 13 trustee in *Soussis v. Macco (In re Soussis)*, 136 F. 4th 415, 420 (2d Cir. 2025). In short, Chapter 13 trustees have taken over many of the tasks formerly performed by bankruptcy judges: "Until 1978, bankruptcy judges handled both the judicial and administrative tasks … arising from a given case. . . . Under the current system, which was piloted in 1978 … a trustee is appointed to administer a Chapter 13 case."[10]

10. "U.S. Trustees are appointed by the U.S. Attorney General to five-year terms. 28 U.S.C. § 581(b). Each U.S. Trustee is charged with administering the federal bankruptcy system in

> Chapter 13 trustees (whether standing, ad hoc, or a U.S. Trustee) perform many duties in Chapter 13 cases, including accounting for all property received from the debtor under the plan; investigating the debtor's financial affairs; examining proofs of claims filed by creditors; and objecting to those proofs on behalf of the debtor, if necessary. 11 U.S.C. § 704(a)(2), (a)(4)–(a)(5); *id.* § 1302(b)(1). The trustee must also oppose the debtor's discharge, if he deems opposition advisable, and must appear and be heard at any hearing that concerns confirmation or modification of a plan. *Id.* §§ 704(a)(6), 1302(b)(2). He assists the debtor with performing the plan; coordinates and disposes of the funds received or to be received in the case; and files a final report and accounting of the administration of the bankruptcy estate when it is ready to be closed. *Id.* §§ 704(a)(9), 1302(b)(3)–(4).

Soussis, 136 F.4th at 422. In sum, a bankruptcy trustee "is the principal administrator in a chapter 13 case." Senate Report No. 95-989, 95th Cong. 2d Sess. 139 (1978).

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one of twenty-one defined regions in the United States and its territories. *Id.* § 581(a). When the number of Chapter 13 cases in a region so warrants, the cognizant U.S. Trustee may appoint and will supervise one or more "standing trustees" to handle those cases. 28 U.S.C. § 586(b); *see* 1 Collier ¶ 6.01[2][c]. If the volume of cases does not warrant appointing a standing trustee, the U.S. Trustee may instead appoint a qualified individual to serve as trustee in each particular Chapter 13 matter (an "ad hoc" Chapter 13 trustee). 11 U.S.C. § 1302(a)." *Soussis*, 136 F.4th at 422.

In this case, the standing trustee for the Eastern and Western District of Arkansas, Mark McCarty, entered his appearance and was actively involved throughout the case. *See generally,* official docket for bankruptcy case 2:19-bk-16848. In addition, Mr. McCarty's office assigned a staff attorney from his office, Kellie Emerson to work with the Keathleys: "[Emerson] and Keathley have been in contact both directly and indirectly throughout the duration of the [Keathleys'] bankruptcy." Pet. App. 16a. The standing trustee was thus in a good position to evaluate, assist and monitor the Keathleys' compliance with their statutory duties. Their lack of any objection to the Keathleys' filing of their amended schedules is a reliable indicator that they perceived no improper intent or conduct.

The creditors.

The Keathleys' schedules listed two key creditors. The Arkansas Department of Finance filed a proof of claim stating its claim of $15,500 was a secured claim by virtue of having docketed its claim in state court. *See* ECF Claim 1-1, p. 2 and 8 dated January 7, 2020.[11]

The IRS filed a proof of claim on February 21, 2020, stating it had an unsecured priority claim of $1,823.82 for income taxes in 2014, and a general unsecured claim for income taxes for 2012 and 2013 in the amount of $6,732.99. *See* ECF Claim 3-1, p. 4.

After these two proofs of claim were filed, the Keathleys filed an amended plan on March 11, 2020. ECF

11. A holder of an allowed secured claim is only entitled to postpetition interest to the extent of the value of its collateral. The filing of the tort suit had no impact on collateral value.

27. On June 27, 2022 they filed an amended plan, ECF 61 as well as a "modified plan." ECF 62. The modified plan provided that allowed nonpriority unsecured claims "shall be paid in full (100%) and that they shall be paid "at least as much as they would receive if the debtor filed a chapter 7 case." ECF 62, p. 6. The modified plan was confirmed on July 20, 2022. ECF 64.

The Keathleys' plan properly provided for payment of unsecured claims without interest. In Chapter 13 cases, the general rule is that unsecured pre-petition creditors do not accrue interest during the course of the case. Section 502(b)(2)—dealing with the allowance of claims, states that "a claim or interest, proof which is filed … is deemed allowed . . . . except to the extent that such claim is for unmatured interest." 11 U.S.C. § 502(b)(2). "An allowed unsecured claim does not include unmatured post-petition interest, and the chapter 13 plan may not provide for payments outside of the allowed claim." *In re Monahan*, 497 B.R. 642, 648 (B.A.P. 1st Cir. 2013) (citations omitted).

The treatment of priority claims is set forth in § 1322(a)(2) which requires "full payment, in deferred cash payments." The term "full payment" is not defined in the Code with specific reference to § 1322. The notion of "full payment" does not by itself include "interest." When Congress requires "deferred cash payments" it generally signifies when interest is due by adding a "value" or "present value" component to the payment obligation in a plan. *See, e.g.*, 11 U.S.C. § 1129(a)(9)(B)(i) requiring "deferred cash payments of a value as of the effective date."[12] *See In re Herr*, 80 B.R. 135 (Bankr.

12. This has been recognized as requiring interest in order to satisfy the "value" or "present value" test. "The present value

S.D. Iowa 1987) stating the absence of the "traditional 'present value' language" signified that "Congress did not intend deferred cash payments made under section 1222(a)(2) to include interest in every case." *Id.* at 137.

The filing of the civil lawsuit.

Mr. Keathley was injured by respondent in August 2021, and filed suit to recover damages in December 2021. His bankruptcy lawyer was advised of the accident. Pet. App. 42a, Pet.7. Mr. Keathley believed that this was everything he needed to do. *Keathley v. Buddy Ayers*, *supra*., ECF 154-2 ¶ 7.

A Chapter 13 debtor is permitted to commence and prosecute civil actions "on the estate's behalf" with or *without court approval*, signifying that notice of such filing is not required:

> Bankruptcy Rule 6009, which applies to Chapters 7, 11 and 13, directs that "[w]ith or without court approval, the *trustee or debtor in possession* may prosecute or may enter an appearance and defend any pending action or proceeding by or against the debtor, or commence and prosecute any action or proceeding by or against the debtor … in behalf of the estate before any tribunal." Fed. R. Bankr. P. 6009 (emphasis added).

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requirement means that the amount of the claim, the principal, must be paid with interest to make up for the delay in payment. 11 U.S.C.A. § 1129(a)(9)(C) (West Supp.1991)." *In re Sanders Coal & Trucking, Inc.*, 129 B.R. 516, 519 (Bankr. E.D. Tenn. 1991).

Cable v. Ivy Tech State Coll., 200 F.3d 467, 472 (7th Cir. 1999), overruled on other grounds, by *Hill v. Tangherlini*, 724 F.3d 965 (7th Cir. 2013).

Just as there is no requirement to seek prior court approval before filing, the bankruptcy rules do not require immediate notice to creditors. Bankruptcy Rule 1007(h) specifies that after the petition is filed, if a debtor becomes entitled to acquire an interest "in property described in § 541(a)(5)" it must amend its schedules. But § 541(a)(5) is limited to property acquired by devise, inheritance or settlement agreement with a spouse, or under life insurance.

In re Boyd, 618 B.R. 133, 147-57 (Bankr. D. S. C. 2020) stated that "neither Rule 1007(h), [n]or any other bankruptcy rule indicates that a chapter 13 debtor must file a supplemental or amended schedule for other types of property acquired post-petition that becomes part of the estate as a result of § 1306(a)." Noting the sheer impracticality of a different rule, and the five year period of plan performance, "it would be problematic to specify what level of assets would require reporting and when. Would every new refrigerator, every traded car, every dollar change in income, every new expense be required? Such an approach would virtually inundate the court with filings. . . ." *Id.* at 150–151. *See also* 9 *Collier on Bankruptcy* ¶ 1007.08 (16th ed. 2025) (noting that Bankruptcy Rule 1007(h) does not require scheduling all postpetition property and opining that such a requirement "would be completely impracticable."

Amendment to debtors' schedules-April 2023.

The Keathleys amended their schedules to list the tort claim on April 4, 2023. ECF 66, p. 6, § 33. Respondent repeatedly argued that the Keathley's failed to amend their plan to reflect the lawsuit. Their argument confuses what is included in schedules and what goes in the form plan for Chapter 13. The required form for a Chapter 13 plan does not require a listing of assets, including lawsuits.

At the time of the amendment identifying the pending lawsuit, the plan commitment period still had almost 18 months left. The Keathleys were not granted a discharge until September 16, 2024 (ECF 106), and the standing trustee's Final Report was not submitted until October 25, 2024. ECF 108. Accordingly, any party had ample time to seek plan modification or demand interest. *See Germeraad v. Powers*, 826 F.3d 962 (7th Cir. 2016) approving modification of a Chapter 13 plan to reflect a postpetition increase in debtor's income. Neither the IRS, the court, the trustee, nor any other party either objected, or sought to modify the plan or otherwise change the Keathleys' payment obligations. The Chapter 13 trustee had ample time to investigate fully the underlying claim. The fairest inference to be drawn is that the Chapter 13 trustee, Mark McCarty, did not object or seek plan modification because he felt there was no legal basis to do so.[13]

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13. The trustee had ample grounds for not seeking any plan modification based on the newly disclosed tort claim. One example is that the district court's finding that the Keathleys might be obligated to contribute any recovery to pay creditors more than 100% of their claims was based on a legally erroneous view that the potential recovery for creditors "would be higher" under the

The Fifth Circuit itself acknowledged that the inclusion of assets is "often a contested issued," and that the resolution is best left to the "orderly bankruptcy process," (Pet. App. 12a); that is, to the creditors, trustee and the court. That orderly process worked as intended, with all parties being given ample time to seek any modification. None did so reflecting that none perceived any "unfair advantage" from the scheduling of the tort claim nor an intent to mislead. This should have laid to rest the question of whether there was some hypothetical or potential value to which creditors were entitled. The imposition of a draconian sanction against the Keathleys is unwarranted when there was a straightforward time and place to address any issues without resorting to hypotheticals and potentials.

B. The standard for judicial estoppel followed by the Fifth Circuit impugns the role of the bankruptcy court and the duties assigned by Congress to the Chapter 13 trustee.

Among the factors that the ABI Commission Report lists for assessing the appropriateness of judicial estoppel

"projected disposable income" requirement for plan confirmation found in § 1325(b)(1)(A). Pet. App. 50a-51a, citing *In re Watts,* 2012 WL 3400820 (Bankr. S.D. Tex. Aug 9, 2012). This statement by the district court was wrong. Because the plan obligated the Keathleys to pay unsecured creditors 100% of their allowed claims, it satisfied the full payment provisions of § 1325(b)(1)(A) and thus the debtors were not obligated to satisfy the projected disposable income test found in § 1325(b)(1)(B). *See* 2014 Collier Bankruptcy Case Update 11 U.S.C. § 1325(b)(1) (2025). Nor is postpetition interest an allowed claim under § 502(a)(2). The Fifth Circuit's affirmance of the district court carried forward this incorrect understanding of Chapter 13, also citing *Watts.* Pet. App. 14a.

is this one: "Did the bankruptcy court take any action after the omission was discovered." ABI Comm. Rpt. 26. Similarly, Judge Haynes in her concurrence noted, "I believe it best to defer to the bankruptcy court's evaluation regarding whether the plaintiff should be allowed to proceed." Pet. App. 20a (citing *Flugence v. Axis Surplus, Ins. (In re Flugence)*, 738 F.3d 126, 132 (5th Cir. 2013) for the view that the bankruptcy court, *which is closest to the facts*, should be given discretion to craft the "appropriate remedy.")

Both the standing trustee, and his staff attorney were well situated to discharge their duties and assess the Keathleys' actual intent. Ms. Emerson, from the office of the standing trustee, was in direct contact with the Keathleys "throughout the duration" of their case. Pet. App. 16a. Ms. Emerson provided her full assessment to the district court, which she did after contacting her "supervisors" [including Mr. McCarty] and seeking their approval. Pet. App. 16a.

Thus, the affidavit of Ms. Emerson was a reliable source of the operation of Chapter 13, and given the role assigned by Congress to the Chapter 13 trustee, should have been credited. Her views reflect what the "orderly bankruptcy process" actually involved. Among other things, her affidavit stated as follows:

> [T]here is nothing unusual or misleading about Mr. and Mrs. Keathley not disclosing the personal injury action while the personal injury action is ongoing.

> In the Eastern District of Arkansas, it is not uncommon for debtors to amend their bankruptcy filings to disclose postpetition claims for personal injury actions prior to the settlement or resolution of the personal injury action.
>
> Even if Mr. and Mrs. Keathley had notified the bankruptcy court of the personal injury claim immediately after the wreck of August 23, 2021, it would not have had any effect on the administration of the bankruptcy as the bankruptcy case will pay 100% to creditors.
>
> Even if Mr. and Mrs. Keathley had notified the bankruptcy court of the personal injury claim immediately after the wreck of August 23, 2021, it would not have had any impact on the amount the Keathleys would have had to pay or the time they would have to pay it.

Pet. App. 58a-60a.

The Fifth Circuit gave little consideration to the sworn affidavit from the office of the Chapter 13 trustee. Yet, it is the trustee, who as the "primary administrator," has the duty and responsibility to identify if and when a debtor engages in improper or misleading conduct. Likewise, the bankruptcy judge had ample opportunity to assess any improper intent. These two reliable and unbiased sources are the proper measure of how the test for judicial estoppel—the "totality of the circumstances"—should have been applied below, and the absence of any wrongful intent.

III. The Fifth Circuit's Decision impairs the foundational concept of the bankruptcy "fresh start."

The decision of the Fifth Circuit will result in a windfall to those who have allegedly caused harm to the debtor, and a forfeiture of a debtor's potentially valuable claims. Such an outcome is inconsistent with this Court's repeated statement of the overarching goals of bankruptcy—to give "honest but unfortunate debtor[s]" the opportunity to "reorder their affairs, make peace with their creditors, and enjoy a new opportunity in life with a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt." *Grogan v. Garner*, 498 U.S. 279, 288 (1991).

This Court stated in *Local Loan Co v Hunt,* 292 U.S. 234, 244 (1934) that one of the primary purposes of the bankruptcy law is to give the "honest but unfortunate debtor … a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt." In *Stellwagen v. Clum,* 245 U.S. 605 (1918) the Court noted that the fresh start provided by the discharge was one of the two overriding policies of the bankruptcy system and of "great public interest." *See also*, John C. McCoid II, *Discharge: The Most Important Development in Bankruptcy History,* in Charles Tabb, BANKRUPTCY ANTHOLOGY, (Anderson, 2022), 524. Professor McCoid noted that the discharge "ranks ahead in importance of all other [provisions] in Anglo-American bankruptcy history." *Id*. at 525.

The discharge has been held to be the "greatest power" granted to Congress concerning bankruptcy, and discharge issues properly reside at the very core of bankruptcy jurisdiction. "One of the most enduring definitions of Congress's power under the Bankruptcy Clause is that the power extends to all cases where the law causes to be distributed the property of the debtor among his creditors; this is its least limit. Its greatest [power] is a discharge of the debtor from his contracts." *In re Deitz,* 760 F.3d 1038, 1053 (2014) at n. 1 (Markell, J., concurring) (quoting *In re Klein*, 42 U.S. (1 How.) 277, 281 (1843)) (Catron, J., sitting as circuit justice).

Judicial estoppel is an equitable concept. *New Hampshire*, 532 U.S. 742, 750. The burden is on the proponent to establish the elements. *Gibson Found., Inc. v. Norris*, No. 24-1763, 2025 WL 3240367, at *4 (1st Cir. Nov. 20, 2025). The Fifth Circuit's "harsh" rule is more punitive than equitable, and the "strong presumption" and "absolute presumption of intent" (Pet. App. 30a) disregards the proper burden allocation as well. This harsh burden-shifting concept impairs the fresh start and bears little resemblance to the doctrine as announced by this Court or elsewhere.

CONCLUSION

Accordingly, amici respectfully submit that the Fifth Circuit's ruling be reversed.

Respectfully submitted,

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No. 25-6

IN THE

Supreme Court of the United States

THOMAS KEATHLEY,

Petitioner,

v.

BUDDY AYERS CONSTRUCTION, INCORPORATED,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

AMICI CURIAE BRIEF OF THE HONORABLE MELANIE CYGANOWSKI (RET.), JOAN FEENEY (RET.), JUDITH FITZGERALD (RET.), BRUCE MARKELL (RET.), EUGENE WEDOFF (RET.), AND PROFESSOR ROBERT M. LAWLESS IN SUPPORT OF PETITIONER

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INTEREST OF THE AMICI CURIAE[1]

Amici curiae are former U.S. Bankruptcy judges Melanie Cyganowski, Joan Feeney, Judith Fitzgerald, Bruce Markell and Eugene Wedoff. Amici have decades of judicial service and have presided over hundreds of bankruptcy cases involving both individual debtors, corporate debtors, and matters arising in Chapter 7, 11 and 13 of the U.S. Bankruptcy Code. Judges Wedoff and Markell were among the fifteen experts who formed the Commission on Consumer Bankruptcy Law, and ultimately published the Final Report of the abi commission on Consumer Bankruptcy (2017-2019).[2]

Amici curiae include Professor Robert M. Lawless, the Max L. Rose Professor of Law at the University of Illinois College of Law, and a nationally recognized expert in bankruptcy law, consumer finance, and empirical studies. Professor Lawless served as the Reporter for the ABI Commission on Consumer Bankruptcy, and played a pivotal role in shaping its findings, including those on judicial estoppel. He has testified before Congress on consumer protection and bankruptcy reform. He is a co-author of the recently published Debt's Grip.[3]

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1. Pursuant to Sup. Ct. Rule 37, no counsel for a party authored the brief in whole or in part, and no such counsel made a monetary contribution intended to fund the preparation or submission of this brief.

2. ABI Announces Commission on Consumer Bankruptcy, March 13, 2017. https://www.abi.org/newsroom/press-releases/abi-announces-commission-on-consumer-bankruptcy.

3. Pamela Foohey, Robert M. Lawless, and Deborah Thorne, Debt's Grip: Risk and Consumer Bankruptcy (2025).

Amici support the petition for certiorari. Their interest arises from the belief that the ruling by the Fifth Circuit below concerning the application of judicial estoppel is harmful to the bankruptcy system, unfair to both debtors and creditors, inconsistent with the federal standard of judicial estoppel, and contrary to the Code provisions and customs that govern Chapter 13 bankruptcy cases.

Amici urge this Court to consider the Final Report of the ABI Commission on Consumer Bankruptcy.[4] The ABI Commission Report was a multi-year study by the leading judges and scholars in the bankruptcy community, including Professor Lawless and former Judges Wedoff and Markell. The Commission Report rejected a mechanical approach to judicial estoppel and recommended a standard consistent with the "totality of the circumstances" as set forth in *Slater v. United States Steel Corp.*, 871 F.3d 1174 (11th Cir. 2017). The Commission Report stated that a "debtor's failure to disclose a cause of action is not alone grounds to apply judicial estoppel," and that a court should consider the "totality of the circumstances." ABI Comm. Rpt., 26. "The relevant inquiry should be about the debtor's intent toward other parties. . . ." *Id.* at 28.

The outcome of this case is important to a large number of people. "Over a million households filed bankruptcy every year through the early 2010s."[5] For the

4. Final Report of the abi commission on Consumer Bankruptcy (2017-2019). The report is available at https://consumercommission.abi.org/.

5. Pamela Foohey, Robert M. Lawless, Deborah Thorne, Debt's Grip: Risk and Consumer Bankruptcy, Univ. of Cal. 2025 p.9.

last decade filings were around 750,000 per year.[6] Amici submit that unless reversed by this Court, the Fifth Circuit's decision will create an unjustified forfeiture of assets for Chapter 13 debtors, and an unjustified windfall for defendants who may evade liability for wrongful acts. No valid purpose is served by such an outcome.

INTRODUCTION

The question presented in this appeal is whether the doctrine of judicial estoppel can be invoked to bar a plaintiff who fails to disclose a civil claim in a bankruptcy proceeding from later pursuing that claim based only on a showing of a *potential* motive for the nondisclosure, regardless of whether there is evidence that the debtor in fact acted in bad faith. Pet. i.

The answer is no. Judicial estoppel cannot be predicated on a *potential* showing of a motive for the non-disclosure. The correct legal standard for judicial estoppel is set forth by this Court in *New Hampshire v. Maine*, 532 U.S. 742 (2011) which recognizes that inadvertence or an honest mistake precludes the application of judicial estoppel. "We do not question that it may be appropriate to resist the application of judicial estoppel 'when a party's prior position was based on inadvertence or mistake.'" *Id*. at 752. "[J]udicial estopped forbids use of *intentional* self-contradiction … as a means of obtaining an unfair advantage." *Id*. at 751 (emphasis added).

The Respondent argues that "[t]he Fifth Circuit 'faithfully adhered to *New Hampshire's* equitable approach to the doctrine of judicial estoppel.'" (Opp. Br.

6. *Id*.

18). It did not. The Fifth Circuit's decision is inconsistent with this Court's ruling in *New Hampshire*.

New Hampshire held that judicial estoppel was *not appropriate* where there was a showing of inadvertence or mistake. The Fifth Circuit held to the contrary, stating that inadvertence could be assumed based on only a *potential* benefit to the debtor from the initial nondisclosure. "[T]he Fifth Circuit has made it clear that judicial estoppel 'almost always' applies when a plaintiff fails to disclose a tort claim," further characterizing this as a "strong presumption in favor of intent" and that "it will generally be impossible for any factfinder" to find lack of intent. Pet. App. 28a-30a. As the district court noted, "The Fifth Circuit's use of the 'almost always' language … suggests that something approaching *an absolute presumption of intent* exists" when the debtor does not disclose a lawsuit. Pet. App. 30a (emphasis added). Thus, once a nondisclosure occurs, the debtor "will not simply be allowed to plead an honest mistake and file an amended disclosure." Pet. App. 41a.

This "strong presumption" is essentially a "*per se*" rule that nondisclosure will result in forfeiture of a claim, even if corrected later and in time for creditors to seek any needed recourse. This harsh rule thus reads the requirement to show intentional nondisclosure out of the core holding of *New Hampshire*. In so doing, the Fifth Circuit decision contradicts *New Hampshire,* is inconsistent with the majority rule from other circuits, and is detrimental to bankruptcy practice and its foundational concepts.

Judge Haynes, who concurred in the judgment only, disagreed with the panel majority, stating, "I doubt that the goals of the doctrine have been advanced," (Pet. App. 21a) that preventing Mr. Keathley's assertion of his claims would "undermine the judicial system the doctrine claims to protect," (Pet. App. 21a) and that the summary judgment applying judicial estoppel failed to cite to any evidence of an actual financial benefit to the Petitioner, arguing instead it was "self-evident." Pet. App. 21a.

Amici agree with the Petitioner and respectfully ask this Court to reverse the decision of the Fifth Circuit.

FACTUAL AND PROCEDURAL BACKGROUND

Mr. and Mrs. Keathley filed for relief under Chapter 13 of the U.S. Bankruptcy Code in December 2019. Pet. 6. The bankruptcy petition on official form 106E/F identified two priority unsecured creditors, the Arkansas Department of Finance and Administration ($15,500) and the Internal Revenue Service, ($8,554). ECF 1, pp. 20-21.[7] The Keathleys listed no other unsecured claims *Id.*[8]

The Chapter 13 trustee for the Eastern and Western District of Arkansas was Mark McCarty, appointed by the U.S. Trustee, who among other duties, advises and assists debtors in their performance under the plan. *See* 11 U.S.C. § 1302. Mr. McCarty appeared and made various

7. All references to "ECF" pertain to the Keathleys' bankruptcy case filed in the eastern district of Arkansas, Case no. 2:19-bk-16848, except when otherwise indicated.

8. Two smaller unsecured claims were later listed. *See* ECF 108, p. 2, showing Aaron's rental (no amount) and Southeastern Emergency Physicians for $104.

objections throughout the case. Mr. Keathley retained Mr. Bart Ziegenhorn, a lawyer in a two-person local Arkansas firm, who has a general practice including civil litigation, and bankruptcy.[9]

The Keathleys filed a Chapter 13 plan within 14 days of their filing. The plan provided for 100% payment to those creditors holding claims that arose pre-bankruptcy. Pet. 6, App 22a. The plan required the Keathleys to devote [all] of their disposable income to the payment of creditors over a five year period. The plan did not require payment of interest, in keeping with the general bankruptcy rule that claims for "unmatured interest" are not "allowed" claims. 11 U.S.C. § 502(b)(2). Priority creditors are entitled to the "full payment" of their claims, a phrase which does not include "interest." 11 U.S.C. § 1322(a)(2).

On August 23, 2021, Mr. Keathley suffered serious injuries when he was struck by a truck driven by David Fowler an employee of respondent, Buddy Ayers Construction, Inc. His injuries permanently reduced his earning capacity. Pet. 6. Mr. Keathley informed his bankruptcy counsel of the accident a few weeks later. Aff. of Thomas Keathley, ECF 154-2.

In December 2021 Mr. Keathley filed a personal injury claim in the United States District Court for the Northern District of Mississippi. Mr. Keathley's bankruptcy counsel did not initially inform the bankruptcy court of this claim, but stated later that even if the bankruptcy court had been aware of Mr. Keathley's personal injury claims at the time it confirmed the amended plan, the claim would have had no material effect on the Court's confirmation of the plan. Aff. of Bart Ziegenhorn, ECF 154-1.

9. *See* https://www.szblaw.com/attorneys/bart-e-ziegenhorn/.

In March 2023, respondent moved for summary judgment in the district court, relying on judicial estoppel, and asked the court to bar Mr. Keathley from pursuing his claim, because it had not been listed on the bankruptcy schedules.

On April 4, 2023, the Keathleys filed amended schedules which listed the pending suit. Pet. App. 4a. ECF 66, p.6. Neither the Chapter 13 trustee, nor any creditor moved to modify the amount or nature of the plan's payment obligations. The bankruptcy court made no finding whatsoever to suggest that the amendment was improper or even untimely. ("[T]he sanction inquiry should belong to the bankruptcy court.") Pet. App. 23a (Haynes, J., concurring).

In August 2023, the district court granted respondent's summary judgment motion and dismissed the action, based on judicial estoppel. The district court cited with approval *Love v. Tyson Foods, Inc.*, 677 F.3d 258 (5th Cir. 2012), holding that "the motivation sub-element is almost always met if a debtor fails to disclose a claim or possible claim to the bankruptcy court. Motivation in this context is self-evident because of *potential* financial benefit resulting from the nondisclosure." Pet. App. 44a. (emphasis added).

Mr. Keathley then moved under Rule 59(e) to amend the judgment. Mr. Keathley supported the motion with an affidavit from Ms. Kellie M. Emerson, a staff attorney for the Office of the Chapter 13 trustee. Pet. App. 58a. The affidavit stated that "[i]n the Eastern District of Arkansas it is not unusual for post-petition injury claims to be disclosed shortly before the settlement or resolution of the personal injury action." The district court viewed the affidavit as evidencing that there is "apparently a longstanding [practice] in the Eastern District of Arkansas." Pet. App. 25a.

The district court denied the motion to amend the judgment. *Keathley v. Buddy Ayers Construction, Inc.*, 706 F. Supp. 3d 628 (N.D. Miss., 2023). Pet. App. 24a. "In so stating, this court notes that a crucial factor in deciding judicial estoppel issues in the Fifth Circuit is whether a debtor can be *inferred* to have acted *intentionally* in failing to list a tort claim as an asset of the bankruptcy case. . . . [T]he Fifth Circuit's *stringent* judicial estoppel jurisprudence means that a debtor who fails to disclose a tort claim is '*almost always*' inferred to have acted with intent." Pet. App. 25a. (emphasis in original except for "inferred"). The phrase "almost always" was repeated (Pet. App. 29a) and characterized by the district court as a "strong presumption" of intent. Pet. App. 30a.

The Fifth Circuit affirmed the decision of the district court. 2025 WL 673434 (2025). Pet. App. 1a. "Thus, we agree with the district court that Keathley stood to potentially benefit by concealing his personal injury case from the bankruptcy court. "[T]he motivation sub-element is almost always met if a debtor fails to disclose a claim or possible claim to the bankruptcy court." (citing *Love*, 677 F.3d at 262.) Pet. App. 14a.

Judge Haynes concurred in the result, but criticized the application of the doctrine in this context. Pet. App. 20a. "Here there was evidence that Keathley's failure to disclose the personal injury was an *honest mistake*." *Id.* (emphasis added). "Without citing to any evidence of an actual financial benefit that Keathley experienced, the defendant argued that his motive for concealment was 'self-evident' under Fifth Circuit precedent.'" *Id.* "This *hypothetical motive* was enough; the district court granted the motion, citing this circuit's 'stringent application of the judicial estoppel rules.'" Pet. App. 21a.

This Court granted certiorari on October 20, 2025.

SUMMARY OF ARGUMENT

First, the Fifth Circuit's ruling is inconsistent with this Court's ruling in *New Hampshire v. Maine* and is contradicted by other authorities. Contrary to *New Hampshire*, the Fifth Circuit held that judicial estoppel may be applied to bar a claim not disclosed in a prior bankruptcy case based solely on the debtor's knowledge of the claim and the *potential* possibility of a benefit from the omission. The rationale of this decision has been squarely rejected in other circuits. *See*, *e.g.*, *Slater v. United States Steel Corp.*, 871 F.3d 1174 (11th Cir). The decision amounts to a "mechanical" application, an inference of lack of inadvertence, and is contrary to the recommendations of the ABI Commission Report on the correct standard for judicial estoppel—consideration of the "totality of the circumstances" and the debtor's intent: "the relevant inquiry should be about the debtor's intent toward other parties." ABI Comm. Rpt. 28.

Second, the Fifth Circuit decision is in contravention of the nature and practices of a Chapter 13 bankruptcy case, as well as the relevant factors that should be considered as set forth in the ABI Commission Report. These include whether the debtor informed counsel, whether the omission was corrected, and whether the bankruptcy court took any action after the omission was discovered. Tellingly, the standing Chapter 13 trustee and his staff attorney, who worked closely with the Keathleys perceived no wrongful intent and sought no change in the Keathleys' plan after the omission was corrected.

Third, because the Fifth Circuit decision results in forfeiture by Chapter 13 debtors of civil claims, it diminishes the value of the "fresh start" goal of bankruptcy, by depriving debtors of the ability to recover for torts, contract claims and other wrongs, based on an inadvertent failure to schedule such claims initially. The defendants in the civil action were not parties to the bankruptcy and now seek to benefit, having suffered no prejudice from a filing that had only contestable relevance to the bankruptcy estate. The decision harms the bankruptcy estate, diminishes returns to creditors, encourages gamesmanship and gives an inequitable windfall to a wrongdoer.

LEGAL ARGUMENT

I. The Fifth Circuit's decision is inconsistent with the federal standard for invoking judicial estoppel that this Court set out in *New Hampshire v. Maine*, and it fails to follow both the majority of circuit court decisions and the recommendation of a significant report on consumer bankruptcy law.

A. The Fifth Circuit's decision contravenes this Court's holding in *New Hampshire v. Maine.*

The standard for judicial estoppel was set forth by this Court in *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001), quoting *Davis v. Wakelee*, 156 U.S. 680, 689 (1895): "Where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter … assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him."

The purpose of the doctrine is to "protect the integrity of the judicial process," and "to prevent the perversions of the judicial process." *New Hampshire,* 532 U.S. at 743. At the core of the rule is the notion that the nondisclosure must be done "deliberately." *Id.* at 750, quoting *United States v. McCaskey*, 9 F.3d 368, 378 (5th Cir. 1993). There must be "intentional self-contradiction … as a means of obtaining unfair advantage." *Id.* at 751. The Court acknowledged that judicial estoppel should not be applied "when a party's prior position was based on inadvertence or mistake." *Id.* at 753.

The decision of the Fifth Circuit is at odds with *New Hampshire* and the ABI Commission Report. The Fifth Circuit, instead, relied upon an inference of lack of inadvertence based only upon a showing of "potential" financial gain, even if such gain is "hypothetical" or utterly speculative. "[I]n considering judicial estoppel *for bankruptcy cases*, the debtor's failure to satisfy its statutory disclosure duty is *inadvertent only* when, in general, the debtor either lacks knowledge of the undisclosed claims or has no motive for their concealment." Pet. App. 13a (emphasis added) (citing *In re Coastal Plains, Inc.*, 179 F.3d 197, 210 (5th Cir. 1999)).

Further, the Fifth Circuit gives short shrift to the "motive" element, declaring "the *controlling inquiry*, with respect to inadvertence, is the knowing of facts giving rise to inconsistent positions." Pet. App. 13a (citing *In re Flugence*, 738 F.3d 126. 130-31, (5th Cir. 2013) (emphasis added). "[T]he motivation sub-element is *almost always* met if a debtor fails to disclose a claim or possible claim to the bankruptcy court." Pet. App. 14a.

In applying this strict test, the Fifth Circuit held that Mr. Keathley "stood to *potentially benefit* by concealing his personal injury case from the bankruptcy court." Pet. App. 14a. The Fifth Circuit concluded "Keathley *cannot* show that his failure to disclose his personal injury lawsuit was inadvertent." *Id.*

The Fifth Circuit has characterized this test as an "inference" and acknowledged that the result is that it "almost always" results in a finding of lack of inadvertence, based on a "potential" or speculative benefit. The district court referred to this rule as "establishing such a strong presumption in favor of intent," Pet. App. 30a, and in so doing effectively eliminates "mistake or inadvertence" as reasons not to apply judicial estoppel and is contrary to the basic principle that the burden of showing the elements of judicial estoppel is on the proponent. *See, e.g.*, *Gibson Found, Inc., v. Norris*, No. 24-1763, 2025 WL 3240367, at * 4 (1st Cir. Nov. 20, 2025).

B. The Fifth Circuit's decision conflicts with the majority rule followed in other circuits, including the Eleventh Circuit's decision in *Slater v. United States Steel.*

Slater v. United States Steel, 871 F.3d 1174 (11th Cir. 2017)—a decision on rehearing by the full circuit court—illustrates the correct analysis applying judicial estoppel in the context of a Chapter 13 case nearly identical to the Keathley's.

As in the present case, the question presented in *Slater* was how a court should apply the doctrine of judicial estoppel when a debtor has failed to include a civil law suit in the debtor's bankruptcy schedules. The Eleventh Circuit held that there must be a showing that "the party took an inconsistent position under oath in a separate proceeding and (2) these inconsistent positions were intended to make a mockery of the judicial system." "Judicial estoppel should not be applied when the inconsistent positions were of "inadvertence[] or mistake." *Id*. at 1181, quoting *New Hampshire,* 532 U.S. at 753.

Prior to the rehearing decision, the standard in the Eleventh Circuit mostly mirrored the rule by the Fifth Circuit—namely, that "the mere fact of the plaintiff's nondisclosure is sufficient, even if the plaintiff corrected his bankruptcy disclosures after the omission was called to his attention and the bankruptcy court allowed the correction without penalty." 871 F.3d at 1176.

On rehearing, the Eleventh Circuit, *en banc,* rejected the approach used by the Fifth Circuit. The court held that even if the plaintiff acted voluntarily, in the sense that he knew of his civil claim when completing the disclosure forms, "voluntariness alone does not establish a calculated attempt to undermine the judicial process." *Id*. at 1177.

Instead of a *per se* rule, much like the Fifth Circuit used, it held that a district court could not *infer intent* to misuse the courts "without considering the individual plaintiff and the circumstances surrounding the nondisclosure." *Id*. at 1177 (emphasis added).

> We hold that to determine whether a plaintiff's inconsistent statements were calculated to make a mockery of the judicial system, a court should look to all the facts and circumstances

> of the particular case. When the plaintiff's inconsistent statement comes in the form of an omission in bankruptcy disclosures, the court may consider such factors as the plaintiff's level of sophistication, whether and under what circumstance the plaintiff corrected the disclosures, whether the plaintiff told his bankruptcy attorney about the civil claims before filing the bankruptcy disclosures, whether the trustees or creditors were aware of the civil lawsuit or claims before the plaintiff amended the disclosure . . . *and any action by the bankruptcy court* after the omissions was discovered.

Id. at 1185 (emphasis added).

Slater focused on the inequitable result of a windfall from applying the doctrine. Focusing on the facts and circumstances, "reduces the likelihood that an otherwise liable civil defendant will receive an unjustified windfall or that innocent creditors will be harmed." 871 F.3d at 1187. Otherwise, when a district court applies the doctrine, "the civil defendant avoids liability on an otherwise potentially meritorious civil claim while providing no benefit to the court system. As an equitable doctrine, judicial estoppel should apply only when the plaintiff's conduct is egregious enough that the situation 'demands equitable intervention.'" *Id.* at 1187. "If a court applies judicial estoppel to bar the plaintiff's claim absent such intent, it awards the civil defendant an unjustified windfall." *Id.* at 1187. "[E]quity cannot condone a defendant's avoidance of liability through a doctrine premised upon intentional misconduct without establishing such misconduct." *Id.* at 1188.

In addition to the windfall concern is the harm to other creditors. "The application of judicial estoppel poses a potential risk of harm to innocent creditors. When a civil claim is dismissed on the basis of judicial estoppel, the asset becomes worthless—losing any potential to increase the value of the bankruptcy estate, which in turn harms creditors." *Id*. at 1188.

"Because the application of judicial estoppel may harm innocent creditors, equitable principles dictate that courts proceed with care and consider all the relevant circumstances." *Id*. at 1188. "[The inference that] a plaintiff who omitted a civil claim as an asset in bankruptcy filings necessarily intended to make a mockery of the judicial system . . . 'guarantees the very mockery of justice the doctrine of judicial estoppel was designed to avoid.'" *Id.* at 1178–79 (citation omitted).

C. The Fifth Circuit decision fails to consider the recommendations of the Final Report of the ABI Commission on Consumer Bankruptcy.

In 2019, the American Bankruptcy Institute published the results of a multi-year study on consumer bankruptcy law. Final Report of the abi commission on Consumer Bankruptcy (2017-2019). Professors Lawless, Wedoff and Markell, your amici, among others, served on the Commission. The Fifth Circuit's decision is inconsistent with the recommendations of the Commission.

To launch the project, the ABI convened an exploratory committee composed of bankruptcy professionals representing all major constituencies affected by bankruptcy, who would work toward consensus rather than seeing their roles primarily as advocates for an interest group. *See generally*, ABI Comm. Rpt. vii-viii. The Commission was composed of all constituencies in the bankruptcy community, debtor's lawyers, creditor's lawyers, trustees, retired judges. Ultimately, the goal of the Commission was to recommend improvements to the bankruptcy law. The judicial estoppel recommendation came out of that conversation.

The ABI Commission expressed concern that some circuits have adopted rules of judicial estoppel which are inconsistent with *New Hampshire*. ABI Comm. Rpt. 28. ("The Commission is concerned that the doctrine has been applied mechanically in a way that is not faithful to the Supreme Court's directive in *Maine v. New Hampshire,* as well as the doctrine's roots.") The Commission Report cited the Fifth Circuit's decision in *In re Coastal Plains, Inc.,* 179 F.3d 197, 210 (5th Cir. 1999) as evidencing the mechanical and disfavored "bright line" approach—a case which was followed by *Love v. Tyson Foods, Inc.* 677 F.3d 258 (5th Cir. 2012), which in turn was a principal case for the decisions below.

The Commission Report contained a section focused specifically on judicial estoppel. *Id.* at 26. The Commission concluded that in "deciding whether to apply judicial estoppel, courts should consider the totality of the circumstances. In this respect, the Commission's recommendation is consistent with the Eleventh Circuit's approach in *Slater*." *Id.* at 28-29.

It recommended that the courts should use a "restrained" use of the doctrine which examines the "totality of the circumstances." While *Slater* focused on whether the debtor's action made a "mockery of justice," the Commission's "preferred formulation" is that "judicial estoppel should apply when the debtor would gain an unfair advantage." *Id.* at 28. "The relevant inquiry should be about the debtor's intent toward other parties, not the judicial system." *Id.*

The Commission stated that a "debtor's failure to disclose a cause of action is not alone grounds to apply judicial estoppel" and that a court should consider whether the debtor's failure led to an unfair advantage using a totality of the circumstances approach, that includes consideration of eleven factors.

The Fifth Circuit doctrine embraces neither "intent" nor "unfair advantage" nor "impugning judicial integrity." It is a mechanical, if not rigid rule, that employs a "strong presumption" of intent disregarding the "totality of the circumstances" and is out of step with the goals and purpose of judicial estoppel.

II. The Fifth Circuit's application of judicial estoppel is inconsistent with governing provisions for a Chapter 13 bankruptcy case, as well as the standards and responsibilities assigned by Congress to the Chapter 13 trustee.

A. The Keathleys neither obtained an unfair advantage nor impugned the integrity of the judicial system.

The ABI Commission Report noted that "some of the problems with judicial estoppel have arisen through mechanical applications of the doctrine that do not appreciate the *context* of a consumer bankruptcy filing." ABI Comm. Rpt. 29 (emphasis added). Likewise, *New Hampshire* recognized that specific factual contexts may inform the applicability of the doctrine. 532 U.S. at 751. A determination that judicial estoppel is appropriate, or not, must be attentive to the legal and factual context of a Chapter 13 case. "We apply judicial estoppel against the backdrop of the bankruptcy system and the ends it seeks to achieve." Pet. App. 20a (Haynes, J., concurring) (citations omitted).

These judicial statements direct the courts to consider the specific context of a Chapter 13 case, as part of the "totality of the circumstances" test set forth in the ABI Commission Report (*see supra* at 26). Relevant factors include the complexity of the schedules, the significant role of the standing Chapter 13 trustee, the nature of the bankruptcy estate, the lack of any statutory duty to amend schedules, whether the debtor's lawyer was informed of the lawsuit, whether the omission was corrected, and whether the bankruptcy court took any action after the omission was discovered. The failure of the Fifth Circuit to apply or even consider these factors was reversible error.

A Chapter 13 bankruptcy is a "wage earner" case, that is designed to enable individuals with regular, often modest incomes, to pay all or part of their debts and in return, retain most of their property. *See Hamilton v. Lanning*, 560 U.S. 505 (2010) describing the general legal framework for a Chapter 13 case, noting that a Chapter 13 case "provides bankruptcy protection to individuals with regular income, whose debts fall within statutory limits . . . ." *See also Bullard v. Blue Hills Bank*, 575 U.S. 496, 498 (2015) ("Chapter 13 of the Bankruptcy Code affords individuals with regular income an opportunity to obtain some relief from their debts while retaining their property.").

A Chapter 13 case is commenced by the filing of a voluntary petition for individuals (Official Form 101), which includes Official Form 106E/F ("creditors who have unsecured claims"). These standardized forms consist of 46 highly detailed pages, including calculation of income and expense and the calculation of the "commitment period" during which the debtors are required to make payments to creditors. *See* Official Form 122C-1, ECF 1, p. 36. The Keathleys timely and properly filed their petition and the required Official forms on December 27, 2019. ECF 1.

These forms and schedules are complex and even with counsel, are frequently misunderstood. The ABI Commission Report "reflects the reality that a consumer faces before a bankruptcy filing. . . . Even with the aid of an attorney, a consumer has a huge task to assemble the information to complete these forms. Moreover, a consumer might not appreciate that a potential lawsuit is an asset in the same way as a house or bank account." *Id*. at 29.

Congress has enacted a statutory scheme providing for Chapter 13 trustees to deal with the complexity of the Chapter 13 process, and to assist the debtor. In *Siegel v. Fitzgerald*, 596 U.S. 464, 468 (2022) this Court described the historical development of the trustee program, and noted that Congress has relocated many of the former judicial responsibilities to the newly created trustees:

> Bankruptcy cases involve both traditional judicial responsibilities and extensive

> administrative ones. . . . Concerned that these dual roles were overloading bankruptcy judges and creating an appearance of bias, particularly because judges were responsible for supervising trustees that they themselves had appointed, Congress in 1978 piloted the United States Trustee Program (Trustee Program) in 18 of the 94 federal judicial districts. *See id.*, at 17–18; Bankruptcy Reform Act of 1978, 92 Stat. 2549. To "rende[r] the separation of administrative and judicial functions complete," the pilot program transferred the administrative functions previously handled by the bankruptcy courts to newly created U.S. Trustees, housed within the Department of Justice rather than the Administrative Office of the U.S. Courts. H. R. Rep. No. 95–595, p. 115 (1977).

Siegel v. Fitzgerald, 596 U.S. 464, 468 (2022).

The Second Circuit recently described the broad duties of the Chapter 13 trustee in *Soussis v. Macco (In re Soussis)*, 136 F. 4th 415, 420 (2d Cir. 2025). In short, Chapter 13 trustees have taken over many of the tasks formerly performed by bankruptcy judges: "Until 1978, bankruptcy judges handled both the judicial and administrative tasks … arising from a given case. . . . Under the current system, which was piloted in 1978 … a trustee is appointed to administer a Chapter 13 case."[10]

10. "U.S. Trustees are appointed by the U.S. Attorney General to five-year terms. 28 U.S.C. § 581(b). Each U.S. Trustee is charged with administering the federal bankruptcy system in

> Chapter 13 trustees (whether standing, ad hoc, or a U.S. Trustee) perform many duties in Chapter 13 cases, including accounting for all property received from the debtor under the plan; investigating the debtor's financial affairs; examining proofs of claims filed by creditors; and objecting to those proofs on behalf of the debtor, if necessary. 11 U.S.C. § 704(a)(2), (a)(4)–(a)(5); *id.* § 1302(b)(1). The trustee must also oppose the debtor's discharge, if he deems opposition advisable, and must appear and be heard at any hearing that concerns confirmation or modification of a plan. *Id.* §§ 704(a)(6), 1302(b)(2). He assists the debtor with performing the plan; coordinates and disposes of the funds received or to be received in the case; and files a final report and accounting of the administration of the bankruptcy estate when it is ready to be closed. *Id.* §§ 704(a)(9), 1302(b)(3)–(4).

Soussis, 136 F.4th at 422. In sum, a bankruptcy trustee "is the principal administrator in a chapter 13 case." Senate Report No. 95-989, 95th Cong. 2d Sess. 139 (1978).

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one of twenty-one defined regions in the United States and its territories. *Id.* § 581(a). When the number of Chapter 13 cases in a region so warrants, the cognizant U.S. Trustee may appoint and will supervise one or more "standing trustees" to handle those cases. 28 U.S.C. § 586(b); *see* 1 Collier ¶ 6.01[2][c]. If the volume of cases does not warrant appointing a standing trustee, the U.S. Trustee may instead appoint a qualified individual to serve as trustee in each particular Chapter 13 matter (an "ad hoc" Chapter 13 trustee). 11 U.S.C. § 1302(a)." *Soussis*, 136 F.4th at 422.

In this case, the standing trustee for the Eastern and Western District of Arkansas, Mark McCarty, entered his appearance and was actively involved throughout the case. *See generally,* official docket for bankruptcy case 2:19-bk-16848. In addition, Mr. McCarty's office assigned a staff attorney from his office, Kellie Emerson to work with the Keathleys: "[Emerson] and Keathley have been in contact both directly and indirectly throughout the duration of the [Keathleys'] bankruptcy." Pet. App. 16a. The standing trustee was thus in a good position to evaluate, assist and monitor the Keathleys' compliance with their statutory duties. Their lack of any objection to the Keathleys' filing of their amended schedules is a reliable indicator that they perceived no improper intent or conduct.

The creditors.

The Keathleys' schedules listed two key creditors. The Arkansas Department of Finance filed a proof of claim stating its claim of $15,500 was a secured claim by virtue of having docketed its claim in state court. *See* ECF Claim 1-1, p. 2 and 8 dated January 7, 2020.[11]

The IRS filed a proof of claim on February 21, 2020, stating it had an unsecured priority claim of $1,823.82 for income taxes in 2014, and a general unsecured claim for income taxes for 2012 and 2013 in the amount of $6,732.99. *See* ECF Claim 3-1, p. 4.

After these two proofs of claim were filed, the Keathleys filed an amended plan on March 11, 2020. ECF

11. A holder of an allowed secured claim is only entitled to postpetition interest to the extent of the value of its collateral. The filing of the tort suit had no impact on collateral value.

27. On June 27, 2022 they filed an amended plan, ECF 61 as well as a "modified plan." ECF 62. The modified plan provided that allowed nonpriority unsecured claims "shall be paid in full (100%) and that they shall be paid "at least as much as they would receive if the debtor filed a chapter 7 case." ECF 62, p. 6. The modified plan was confirmed on July 20, 2022. ECF 64.

The Keathleys' plan properly provided for payment of unsecured claims without interest. In Chapter 13 cases, the general rule is that unsecured pre-petition creditors do not accrue interest during the course of the case. Section 502(b)(2)—dealing with the allowance of claims, states that "a claim or interest, proof which is filed … is deemed allowed . . . . except to the extent that such claim is for unmatured interest." 11 U.S.C. § 502(b)(2). "An allowed unsecured claim does not include unmatured post-petition interest, and the chapter 13 plan may not provide for payments outside of the allowed claim." *In re Monahan*, 497 B.R. 642, 648 (B.A.P. 1st Cir. 2013) (citations omitted).

The treatment of priority claims is set forth in § 1322(a)(2) which requires "full payment, in deferred cash payments." The term "full payment" is not defined in the Code with specific reference to § 1322. The notion of "full payment" does not by itself include "interest." When Congress requires "deferred cash payments" it generally signifies when interest is due by adding a "value" or "present value" component to the payment obligation in a plan. *See, e.g.*, 11 U.S.C. § 1129(a)(9)(B)(i) requiring "deferred cash payments of a value as of the effective date."[12] *See In re Herr*, 80 B.R. 135 (Bankr.

12. This has been recognized as requiring interest in order to satisfy the "value" or "present value" test. "The present value

S.D. Iowa 1987) stating the absence of the "traditional 'present value' language" signified that "Congress did not intend deferred cash payments made under section 1222(a)(2) to include interest in every case." *Id*. at 137.

The filing of the civil lawsuit.

Mr. Keathley was injured by respondent in August 2021, and filed suit to recover damages in December 2021. His bankruptcy lawyer was advised of the accident. Pet. App. 42a, Pet.7. Mr. Keathley believed that this was everything he needed to do. *Keathley v. Buddy Ayers*, *supra*., ECF 154-2 ¶ 7.

A Chapter 13 debtor is permitted to commence and prosecute civil actions "on the estate's behalf" with or *without court approval*, signifying that notice of such filing is not required:

> Bankruptcy Rule 6009, which applies to Chapters 7, 11 and 13, directs that "[w]ith or without court approval, the *trustee or debtor in possession* may prosecute or may enter an appearance and defend any pending action or proceeding by or against the debtor, or commence and prosecute any action or proceeding by or against the debtor … in behalf of the estate before any tribunal." Fed. R. Bankr. P. 6009 (emphasis added).

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requirement means that the amount of the claim, the principal, must be paid with interest to make up for the delay in payment. 11 U.S.C.A. § 1129(a)(9)(C) (West Supp.1991)." *In re Sanders Coal & Trucking, Inc*., 129 B.R. 516, 519 (Bankr. E.D. Tenn. 1991).

Cable v. Ivy Tech State Coll., 200 F.3d 467, 472 (7th Cir. 1999), overruled on other grounds, by *Hill v. Tangherlini*, 724 F.3d 965 (7th Cir. 2013).

Just as there is no requirement to seek prior court approval before filing, the bankruptcy rules do not require immediate notice to creditors. Bankruptcy Rule 1007(h) specifies that after the petition is filed, if a debtor becomes entitled to acquire an interest "in property described in § 541(a)(5)" it must amend its schedules. But § 541(a)(5) is limited to property acquired by devise, inheritance or settlement agreement with a spouse, or under life insurance.

In re Boyd, 618 B.R. 133, 147-57 (Bankr. D. S. C. 2020) stated that "neither Rule 1007(h), [n]or any other bankruptcy rule indicates that a chapter 13 debtor must file a supplemental or amended schedule for other types of property acquired post-petition that becomes part of the estate as a result of § 1306(a)." Noting the sheer impracticality of a different rule, and the five year period of plan performance, "it would be problematic to specify what level of assets would require reporting and when. Would every new refrigerator, every traded car, every dollar change in income, every new expense be required? Such an approach would virtually inundate the court with filings. . . ." *Id*. at 150–151. *See also* 9 *Collier on Bankruptcy* ¶ 1007.08 (16th ed. 2025) (noting that Bankruptcy Rule 1007(h) does not require scheduling all postpetition property and opining that such a requirement "would be completely impracticable."

Amendment to debtors' schedules-April 2023.

The Keathleys amended their schedules to list the tort claim on April 4, 2023. ECF 66, p. 6, § 33. Respondent repeatedly argued that the Keathley's failed to amend their plan to reflect the lawsuit. Their argument confuses what is included in schedules and what goes in the form plan for Chapter 13. The required form for a Chapter 13 plan does not require a listing of assets, including lawsuits.

At the time of the amendment identifying the pending lawsuit, the plan commitment period still had almost 18 months left. The Keathleys were not granted a discharge until September 16, 2024 (ECF 106), and the standing trustee's Final Report was not submitted until October 25, 2024. ECF 108. Accordingly, any party had ample time to seek plan modification or demand interest. *See Germeraad v. Powers*, 826 F.3d 962 (7th Cir. 2016) approving modification of a Chapter 13 plan to reflect a postpetition increase in debtor's income. Neither the IRS, the court, the trustee, nor any other party either objected, or sought to modify the plan or otherwise change the Keathleys' payment obligations. The Chapter 13 trustee had ample time to investigate fully the underlying claim. The fairest inference to be drawn is that the Chapter 13 trustee, Mark McCarty, did not object or seek plan modification because he felt there was no legal basis to do so.[13]

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13. The trustee had ample grounds for not seeking any plan modification based on the newly disclosed tort claim. One example is that the district court's finding that the Keathleys might be obligated to contribute any recovery to pay creditors more than 100% of their claims was based on a legally erroneous view that the potential recovery for creditors "would be higher" under the

The Fifth Circuit itself acknowledged that the inclusion of assets is "often a contested issued," and that the resolution is best left to the "orderly bankruptcy process," (Pet. App. 12a); that is, to the creditors, trustee and the court. That orderly process worked as intended, with all parties being given ample time to seek any modification. None did so reflecting that none perceived any "unfair advantage" from the scheduling of the tort claim nor an intent to mislead. This should have laid to rest the question of whether there was some hypothetical or potential value to which creditors were entitled. The imposition of a draconian sanction against the Keathleys is unwarranted when there was a straightforward time and place to address any issues without resorting to hypotheticals and potentials.

B. The standard for judicial estoppel followed by the Fifth Circuit impugns the role of the bankruptcy court and the duties assigned by Congress to the Chapter 13 trustee.

Among the factors that the ABI Commission Report lists for assessing the appropriateness of judicial estoppel

"projected disposable income" requirement for plan confirmation found in § 1325(b)(1)(A). Pet. App. 50a-51a, citing *In re Watts,* 2012 WL 3400820 (Bankr. S.D. Tex. Aug 9, 2012). This statement by the district court was wrong. Because the plan obligated the Keathleys to pay unsecured creditors 100% of their allowed claims, it satisfied the full payment provisions of § 1325(b)(1)(A) and thus the debtors were not obligated to satisfy the projected disposable income test found in § 1325(b)(1)(B). *See* 2014 Collier Bankruptcy Case Update 11 U.S.C. § 1325(b)(1) (2025). Nor is postpetition interest an allowed claim under § 502(a)(2). The Fifth Circuit's affirmance of the district court carried forward this incorrect understanding of Chapter 13, also citing *Watts.* Pet. App. 14a.

is this one: "Did the bankruptcy court take any action after the omission was discovered." ABI Comm. Rpt. 26. Similarly, Judge Haynes in her concurrence noted, "I believe it best to defer to the bankruptcy court's evaluation regarding whether the plaintiff should be allowed to proceed." Pet. App. 20a (citing *Flugence v. Axis Surplus, Ins. (In re Flugence)*, 738 F.3d 126, 132 (5th Cir. 2013) for the view that the bankruptcy court, *which is closest to the facts*, should be given discretion to craft the "appropriate remedy.")

Both the standing trustee, and his staff attorney were well situated to discharge their duties and assess the Keathleys' actual intent. Ms. Emerson, from the office of the standing trustee, was in direct contact with the Keathleys "throughout the duration" of their case. Pet. App. 16a. Ms. Emerson provided her full assessment to the district court, which she did after contacting her "supervisors" [including Mr. McCarty] and seeking their approval. Pet. App. 16a.

Thus, the affidavit of Ms. Emerson was a reliable source of the operation of Chapter 13, and given the role assigned by Congress to the Chapter 13 trustee, should have been credited. Her views reflect what the "orderly bankruptcy process" actually involved. Among other things, her affidavit stated as follows:

> [T]here is nothing unusual or misleading about Mr. and Mrs. Keathley not disclosing the personal injury action while the personal injury action is ongoing.

> In the Eastern District of Arkansas, it is not uncommon for debtors to amend their bankruptcy filings to disclose postpetition claims for personal injury actions prior to the settlement or resolution of the personal injury action.
>
> Even if Mr. and Mrs. Keathley had notified the bankruptcy court of the personal injury claim immediately after the wreck of August 23, 2021, it would not have had any effect on the administration of the bankruptcy as the bankruptcy case will pay 100% to creditors.
>
> Even if Mr. and Mrs. Keathley had notified the bankruptcy court of the personal injury claim immediately after the wreck of August 23, 2021, it would not have had any impact on the amount the Keathleys would have had to pay or the time they would have to pay it.

Pet. App. 58a-60a.

The Fifth Circuit gave little consideration to the sworn affidavit from the office of the Chapter 13 trustee. Yet, it is the trustee, who as the "primary administrator," has the duty and responsibility to identify if and when a debtor engages in improper or misleading conduct. Likewise, the bankruptcy judge had ample opportunity to assess any improper intent. These two reliable and unbiased sources are the proper measure of how the test for judicial estoppel—the "totality of the circumstances"—should have been applied below, and the absence of any wrongful intent.

III. The Fifth Circuit's Decision impairs the foundational concept of the bankruptcy "fresh start."

The decision of the Fifth Circuit will result in a windfall to those who have allegedly caused harm to the debtor, and a forfeiture of a debtor's potentially valuable claims. Such an outcome is inconsistent with this Court's repeated statement of the overarching goals of bankruptcy—to give "honest but unfortunate debtor[s]" the opportunity to "reorder their affairs, make peace with their creditors, and enjoy a new opportunity in life with a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt." *Grogan v. Garner*, 498 U.S. 279, 288 (1991).

This Court stated in *Local Loan Co v Hunt,* 292 U.S. 234, 244 (1934) that one of the primary purposes of the bankruptcy law is to give the "honest but unfortunate debtor … a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt." In *Stellwagen v. Clum,* 245 U.S. 605 (1918) the Court noted that the fresh start provided by the discharge was one of the two overriding policies of the bankruptcy system and of "great public interest." *See also*, John C. McCoid II, *Discharge: The Most Important Development in Bankruptcy History,* in Charles Tabb, Bankruptcy Anthology, (Anderson, 2022), 524. Professor McCoid noted that the discharge "ranks ahead in importance of all other [provisions] in Anglo-American bankruptcy history." *Id*. at 525.

The discharge has been held to be the "greatest power" granted to Congress concerning bankruptcy, and discharge issues properly reside at the very core of bankruptcy jurisdiction. "One of the most enduring definitions of Congress's power under the Bankruptcy Clause is that the power extends to all cases where the law causes to be distributed the property of the debtor among his creditors; this is its least limit. Its greatest [power] is a discharge of the debtor from his contracts." *In re Deitz,* 760 F.3d 1038, 1053 (2014) at n. 1 (Markell, J., concurring) (quoting *In re Klein*, 42 U.S. (1 How.) 277, 281 (1843)) (Catron, J., sitting as circuit justice).

Judicial estoppel is an equitable concept. *New Hampshire*, 532 U.S. 742, 750. The burden is on the proponent to establish the elements. *Gibson Found., Inc. v. Norris*, No. 24-1763, 2025 WL 3240367, at *4 (1st Cir. Nov. 20, 2025). The Fifth Circuit's "harsh" rule is more punitive than equitable, and the "strong presumption" and "absolute presumption of intent" (Pet. App. 30a) disregards the proper burden allocation as well. This harsh burden-shifting concept impairs the fresh start and bears little resemblance to the doctrine as announced by this Court or elsewhere.

CONCLUSION

Accordingly, amici respectfully submit that the Fifth Circuit's ruling be reversed.

Respectfully submitted,

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No. 25-6

IN THE

Supreme Court of the United States

THOMAS KEATHLEY,

Petitioner,

v.

BUDDY AYERS CONSTRUCTION, INC.,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF THE NATIONAL ASSOCIATION OF BANKRUPTCY TRUSTEES AND THE AMERICAN COLLEGE OF BANKRUPTCY AS AMICI CURIAE IN SUPPORT OF NEITHER PARTY

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The National Association of Bankruptcy Trustees (the "NABT") is an organization consisting of chapters 7, 11, and subchapter V trustees, their staff, employees of the Office of the United States Trustee, and associated professionals and businesses. The NABT is dedicated to assisting trustees in the performance of their statutory duties. Consistent with its mission, the NABT files *amicus curiae* briefs throughout the country on matters of national importance to bankruptcy trustees and the efficient administration of bankruptcy cases.

The American College of Bankruptcy (the "College") is an organization of lawyers, judges, academics, and other insolvency professionals, primarily from the United States, who are selected as fellows based on years of achievement in their chosen professions and service to the bar, the community, and their profession. As set forth in its Mission Statement, the College is "dedicated to the enhancement of professionalism, scholarship, and service in bankruptcy and insolvency law and practice." Recognizing and respecting the diversity of viewpoints and interests among its fellows, the College will only intervene in legal controversies to advocate for the effective functioning of the bankruptcy system, expressing views that reflect a general

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[1] No counsel for any party authored this brief in whole or in part, and no person or entity other than amici curiae and their counsel made any monetary contribution intended to fund the preparation or submission of this brief.

consensus among bankruptcy professionals. The views expressed in this brief are those of the College and do not necessarily reflect the personal views of any fellow of the College or of any firm or organization with which any fellow is affiliated.

A fundamental duty of bankruptcy trustees is to collect the assets of the bankruptcy estates they administer for distribution to creditors. *See* 11 U.S.C. § 704(a)(1). Since 2003, chapter 7 trustees have distributed well over one billion dollars to creditors each year.[2] One common source of recovery for creditors is the non-exempt value in an individual debtor's pre-bankruptcy civil litigation claims, which causes of action become property of the bankruptcy estate pursuant to 11 U.S.C. § 541(a)(1) upon the filing of a bankruptcy petition. Often, for a variety of reasons, including ineffective counsel, unsophisticated debtors, or the fact that the debtor has not filed suit at the time of the bankruptcy filing, individual debtors do not disclose the existence of their litigation assets in their initial bankruptcy schedules. Once discovered, these civil litigation claims can provide a valuable source of recovery for creditors. The NABT and the College therefore urge this Court to craft an opinion that—no matter the disposition of the controversy before it—preserves the ability of the trustee—the true party in interest in any such litigation—to continue to prosecute such claims

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[2] U.S. Trustee Program, U.S. Dep't of Just., *Chapter 7 Trustee Final Reports*, http:/www.justice.gov./ust/bankruptcy-data-statistics/chapter-7-trustee-final-reports (last updated Oct. 28, 2024).

and return value to creditors even in those circumstances where a debtor may be barred from a recovery based upon the doctrine of judicial estoppel.

SUMMARY OF ARGUMENT

Judicial estoppel "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 v. Maine*, 532 U.S. 742, 749 (2001) (quotation marks omitted). It "is an equitable doctrine invoked by a court at its discretion" but its core purpose is "to protect the integrity of the judicial process." *Id.* at 749-50 (quotation marks omitted).

In the bankruptcy context, judicial estoppel is often raised as a defense when a debtor fails to schedule an existing or potential civil lawsuit as an asset of his estate, obtains a discharge, and then seeks to prosecute the cause of action post-discharge for his own benefit. When the defendant in the civil case discovers the bankruptcy, it will invoke judicial estoppel as a defense, arguing that the failure to schedule the cause of action should result in dismissal of the claim. When a court grants dismissal on this basis, a defendant receives a windfall but that windfall is justified on the grounds that the integrity of the court is protected by avoiding the appearance that the court has been misled. *See New Hampshire v. Maine*, 532 U.S. at 749-50.

But in those circumstances, the real party in interest in the lawsuit is not the individual debtor, it is the trustee. That is because the filing of a bankruptcy petition creates an estate consisting of all of a debtor's "legal or equitable interests" "in property." 11 U.S.C. § 541(a)(1). A debtor's pre-bankruptcy claims are part of this estate, making the trustee who administers the estate, the real party in interest. 11 U.S.C. § 323(a). And an undisclosed cause of action remains estate property even after a bankruptcy case is closed, 11 U.S.C. § 554(d), and the Bankruptcy Code authorizes reopening the bankruptcy case to administer newly-found assets, 11 U.S.C. § 350(b).

When a trustee elects to prosecute a previously undisclosed cause of action for the benefit of creditors, judicial estoppel should not bar the trustee from doing so. The trustee in that circumstance will not have failed to disclose the cause of action and also will not have obtained any relief on behalf of the bankruptcy estate as a result of the nondisclosure. Applying the doctrine of judicial estoppel against an innocent trustee does nothing to protect the integrity of the judicial process and instead only results in a windfall for the defendant and compounds the harm to creditors caused by the initial nondisclosure. *Biesek v. Soo Line R.R. Co.*, 440 F.3d 410, 413 (7th Cir. 2006). The NABT and the College, therefore, urge this Court to recognize that there is a distinction between a debtor pursing an undisclosed claim for his own benefit, and that of a trustee pursuing the same claim for the benefit of creditors and not to create a rule that will have the effect of "vaporizing assets that could be used for the creditors' benefit." *Id.*

In addition, the NABT and the College also urge the Court not to impose any artificial cap on damages when a trustee elects to pursue an undisclosed cause of action. Reducing the potential recovery may make prosecution of the suit by a trustee economically unfeasible. Instead, consistent with the exclusive jurisdiction granted to district courts, and by reference bankruptcy courts hearing the bankruptcy case, the Court should allow a trustee to pursue and recover the full value of the claim. *See* 28 U.S.C. § 1334(e). If there is an excess in recovery beyond the amount necessary to pay creditors' claims, the bankruptcy court is best positioned to decide if the debtor acted fraudulently in its court—under whatever standard this Court establishes here—and to direct the proceeds to either pay interest to creditors, or to pay the excess recovery to the debtor if judicial estoppel does not apply, or to return those funds to the defendant.

ARGUMENT

I. Judicial Estoppel Should Not Bar A Trustee From Prosecuting Undisclosed Causes Of Action.

In ruling on the present case, the Court should take care not to draw into question the ability of the bankruptcy estate to recover on account of a debtor's undisclosed civil litigation claims. Distinguishing between the ability of a debtor to pursue an undisclosed claim for his own benefit and the estate's ability to do so is justified based upon the Bankruptcy Code provisions that transfer all pre-petition assets to the estate and place the trustee in control of those assets. Recognizing this distinction between a debtor and a trustee also is fully consistent with the equitable principles that underlie the judicial estoppel doctrine.

When a bankruptcy petition is filed, an estate is created consisting of all of a debtor's "legal or equitable interests" "in property." 11 U.S.C. § 541(a); *City of Chicago v. Fulton*, 592 U.S. 154, 156 (2021). A cause of action based upon a harm that a debtor suffered pre-bankruptcy falls within the definition of estate property. *Celotex Corp. v. Edwards*, 514 U.S. 300, 307 n.5 (1995).

Section 323(a) makes the trustee the "representative" of the estate. 11 U.S.C. § 323(a). Thus, the trustee is the "real party in interest" in any cause of action that is estate property and is "vested with the authority and duty [pursuant to § 704(a)(1)] to pursue the judgment … as an asset of the bankruptcy estate." *Reed v. City of Arlington*, 650 F.3d 571, 575 (5th Cir. 2011) (en banc); *accord Metrou v. M.A. Mortenson Co.*, 781 F.3d 357, 360 (7th Cir. 2015); *Stephenson v. Malloy*, 700 F.3d 265, 272 (6th Cir. 2012); *Parker v. Wendy's Int'l, Inc.*, 365 F.3d 1268, 1272 (11th Cir. 2004). The duty to prosecute and reduce to cash an estate cause of action also is not extinguished by the closing of the bankruptcy case because "[e]ven after the case is closed, the estate continues to retain its interest in unscheduled property." 5 Collier on Bankruptcy ¶554.03 (Richard Levin & Henry J. Sommer eds., 16th ed. 2025). When unscheduled property is found, a trustee may reopen the case to administer the asset. 11 U.S.C. § 350(b). Taken together, these Code provisions reflect "Congress's clear preference for the preservation of the bankruptcy estate and for its equitable distribution to creditors through the bankruptcy process." *Reed*, 650 F.3d at 575. Applying judicial estoppel to block a trustee from collecting an estate asset and distributing its proceeds to creditors would be contrary to these Code provisions.[3]

Moreover, the general rule that a trustee does not have any more rights than a debtor does in estate property and thus, assumes the debtor's causes of action subject to all defenses that might be asserted against the debtor but for the filing of the bankruptcy petition, does not apply to the defense of judicial estoppel. *See Bank of Marin v. England*, 385 U.S. 99, 101 (1966). Unlike a defense that exists pre-petition and continues post-petition unaffected by the bankruptcy filing, the defense of judicial estoppel only comes into existence *after* the bankruptcy case is filed. Before the defense is available to a defendant, the debtor must first file for bankruptcy and thereafter fail to disclose his cause of action against the defendant in his bankruptcy schedules, representing to the bankruptcy court by omission

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[3]Chapter 7 and chapter 13, of course, differ in many details. None of these details are relevant to the issue presented. There is one important similarity for purposes of this case. In both chapters, a trustee is appointed to act as the representative of the bankruptcy estate. 11 U.S.C. § 323(a). As the estate representative, the trustee has a duty to creditors. The acts of the debtor should not judicially estop the trustee as the fiduciary for parties who are innocent of any wrongdoing.

that he does not own any litigation claims. The bankruptcy court must next accept that representation and discharge the debtor. Even then, the defense does not arise until the debtor thereafter seeks to pursue the cause of action post-petition for his own benefit, thereby taking an inconsistent position that he actually does own the cause of action, after succeeding on the contrary position. All of these events necessarily occur post-petition. By that time, however, the estate is the real party in interest and the trustee, not the debtor, controls the cause of action. The fact that the debtor may have failed to disclose the cause of action and may be subject to a defense that arose post-petition should not deprive the true party in interest—the trustee—from pursuing the claim, as both the Fifth and the Eleventh Circuits have held. *See, e.g., Reed*, 650 F.3d at 575-76; *Parker*, 365 F.3d at 1272 & n.3.

This result also is fully consistent with the fact that, as this Court has held, "judicial estoppel 'is an equitable doctrine.'" *New Hampshire v. Maine*, 532 U.S. at 750 (citation omitted). A debtor's nondisclosure of a cause of action harms his creditors. To use that nondisclosure to altogether eliminate the cause of action when the trustee and the creditors have not contradicted themselves in court or prevailed on an inconsistent position is not an equitable application of what is an equitable defense. *See Biesek*, 440 F.3d at 413 ("using [judicial estoppel] to land another blow on the victims of bankruptcy fraud is not an equitable application").

A defendant who cannot raise the defense against a trustee also is not harmed because "[c]ourts do not apply judicial estoppel for the benefit of the defendant"; the defense exists "to protect courts and creditors from deception and manipulation." *Spaine v. Cmty. Contacts, Inc.*, 756 F.3d 542, 547 (7th Cir. 2014) (rejecting the defendant's argument that it was harmed when the court rejected the defense); *accord Reed*, 650 F.3d at 577 (rejecting the defendant's argument that it will be harmed if judicial estoppel is not applied to bar the trustee from pursuing an estate cause of action); *see also Browning Mfg. v. Mims (In re Coastal Plains, Inc.)*, 179 F.3d 197, 213 (5th Cir. 1999) ("the purpose of judicial estoppel is to protect the integrity of courts, not to punish adversaries or to protect litigants").

Recognizing that a trustee is in a far different position from a debtor when prosecuting a cause of action that the debtor did not disclose, the federal appellate courts have generally held that judicial estoppel will not bar a trustee from pursuing a cause of action that a debtor failed to disclose. *See Metrou*, 781 F.3d at 360 ("[w]hether or not [the debtor] should have disclosed the claim in bankruptcy does not matter to a suit maintained by the Trustee, who is not even arguably culpable for any misconduct"); *Stephenson*, 700 F.3d at 272 ("[t]he trustee's pursuit of this action is therefore not contrary to a position he previously asserted under oath"); *Reed*, 650 F.3d at 574-76 (refusing to apply judicial estoppel against a trustee "[f]ollows from Bankruptcy Law" and "from [e]quity" (emphasis omitted)); *Eastman v. Union Pac. R.R. Co.*, 493 F.3d 1151, 1155 n.3 (10th Cir. 2007) (the "district court's application of judicial estoppel" was "[q]uite likely … inappropriate, at least to the extent [the debtor]'s personal injury claims were necessary to satisfy his debts" because "the trustee as the real-party-in-interest had not engaged in contradictory litigation tactics"); *Parker*, 365 F.3d at 1272 (judicial estoppel not applied to a trustee because he "never took an inconsistent position under oath with regard to th[e] claim").

State supreme courts generally conclude the same. *Saddlebrook Invs., LLC v. Krohne Fund, L.P.*, 546 P.3d 195, 206 (Mont. 2024) ("[T]here is a difference between a debtor attempting to pursue an action for his own benefit, and a trustee pursuing an action for the benefit of creditors" (quotation marks omitted) (bracket in original)); *Alward v. Johnston*, 199 A.3d 1190, 1203 (N.H. 2018) (refusing to apply judicial estoppel to bar a trustee's lawsuit because "doing so would undermine, rather than protect, the integrity of the judicial process"); *Hamm v. Norfolk S. Ry. Co.*, 52 So. 3d 484, 497 (Ala. 2010) ("[i]mposing the doctrine of judicial estoppel on an innocent bankruptcy trustee, which, in turn, punishes innocent creditors for the mistakes of a debtor, does not further the purpose of protecting the integrity of the judicial process"); *Arkison v. Ethan Allen, Inc.*, 160 P.3d 13, 16 (Wash. 2007) (en banc) ("a trial court may not generally apply the doctrine of judicial estoppel to bar a bankruptcy trustee standing as the real party from pursuing a debtor's legal claim not listed as an asset during bankruptcy proceedings"); *Dupwe v. Wallace*, 140 S.W.3d 464, 474 (Ark. 2004) ("[j]ustice would neither be preserved nor protected by estopping trustee Dupwe from pursuing this action").

For these reasons, the NABT and the College encourage this Court—however it rules in this case—to make clear in its decision that its ruling does not extend to trustees who discover undisclosed causes of action and elect to pursue those causes of action for the benefit of creditors.

II. The Court Should Not Impose A Damages Cap And Instead Should Allow The Bankruptcy Court To Decide What Disposition To Make Of The Litigation Proceeds After Creditors Are Paid, Including Whether The Debtor Should Receive Any Recovery.

The NABT and the College also urge the Court to follow the approach that the Seventh Circuit adopted in *Metrou*, which is to allow a trustee to pursue an undisclosed claim without imposing any cap on the potential recovery, leaving the bankruptcy court to decide how to distribute the proceeds of a successful suit, including whether a debtor's nondisclosure prevents a distribution to that debtor. *Metrou*, 781 F.3d at 360. This approach is consistent with the jurisdiction of the bankruptcy court over estate property and recognizes the practical consideration that imposing a damages cap equal to creditor claims may hamper the ability of a trustee to successfully pursue estate causes of action.

Section 1334(e) grants the district court in which the bankruptcy case "is commenced," and by reference the bankruptcy court, "exclusive jurisdiction" over the "property of the estate." 28 U.S.C. § 1334(e). When an estate cause of action is reduced to money, those funds are estate property within the jurisdiction of the bankruptcy court to distribute as required by the Bankruptcy Code and applicable law. 11 U.S.C. § 541(a)(6). Because the money recovered on account of the prosecution of a cause of action is part of the estate's *res*, the "bankruptcy court's *in rem* jurisdiction permits it to 'determin[e] all claims that anyone, whether named in the action or not, has to the property or thing in question. The proceeding is 'one against the world.'" *Tenn. Student Assistance Corp. v. Hood*, 541 U.S. 440, 448 (2004) (citation omitted); *see also Williams v. Sears, Roebuck & Co. (In re Williams)*, 244 B.R. 858, 866 (S.D. Ga. 2000) ("[t]he function of § 1334(e) is clear—to insure that only one court administers the bankruptcy estate of a debtor"), *aff'd*, 34 F. App'x 967 (11th Cir. 2002).

Leaving it to the bankruptcy court to address whether a debtor should be estopped under the standard this Court decides here allows the court where the alleged nondisclosure occurred to determine whether in fact the debtor acted in violation of that standard. It also acknowledges the bankruptcy court's exclusive jurisdiction over the litigation proceeds and affords the bankruptcy court the ability to decide who should receive those monies.

The Seventh Circuit recognized that allowing a trustee to pursue a claim without a damages cap also has the practical effect of furthering the successful prosecution of such claims. Often, the undisclosed asset is discovered in a case where there are no other non-exempt assets available to pay litigation costs including attorney's fees. When that is the case, a trustee will be required to hire counsel willing to take the case on a contingent fee basis. And even where there are some assets, it may be prudent to hire contingent fee counsel to conserve those other assets for distribution to creditors.

But if any potential recovery from the suit is capped at the amount owed to creditors, that cap may even make a cause of action with a high likelihood of success unattractive to skilled counsel. As the Seventh Circuit stated, "[r]educing the stakes in the tort suit could [therefore] injure the creditors along with the debtor." *Metrou*, 781 F.3d at 360.

Allowing the bankruptcy court to decide whether judicial estoppel applies also has the added benefit of encouraging debtors whose omissions were not made with fraudulent intent to assist the trustee as needed in prosecuting the cause of action, thereby increasing the likelihood of recovery on the claim.

Given these practical considerations, the Seventh Circuit imposes no cap on the value of the undisclosed claim. Instead under *Metrou*, if the suit is successful, the bankruptcy court decides who will receive the funds, including whether a debtor should be barred from any recovery, and whether creditors should receive interest on their claims or on any excess funds returned to the defendant. *Id*. "Either way, the creditors will escape injury at [the debtor]'s hands because it will remain economically feasible to prosecute the tort suit." *Id.*

The NABT and the College request that the Court adopt that procedure here.

CONCLUSION

The National Association of Bankruptcy Trustees and the American College of Bankruptcy respectfully recommend that in ruling on this case, the Court take care not to categorically bar the pursuit of causes of action a debtor fails to disclose and that it recognize that a trustee should be able to pursue such claims for the benefit of the debtor's creditors. And to avoid a diminution in value of the cause of action, the NABT and the College ask the Court not to place a cap on any recovery and to recognize the jurisdiction of the bankruptcy court to decide who will receive the litigation proceeds, including whether a debtor should be judicially estopped from sharing in any recovery that exceeds the amount of the creditors' claims.

Respectfully submitted,

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Syllabus

SUPREME COURT OF THE UNITED STATES

Syllabus

KEATHLEY *v.* BUDDY AYERS CONSTRUCTION, INC.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 25–6. Argued March 24, 2026—Decided June 11, 2026

Thomas Keathley and his wife filed a Chapter 13 bankruptcy petition in U. S. Bankruptcy Court in December 2019. The Bankruptcy Code requires debtors to file bankruptcy schedules listing their property, including "[c]laims against third parties, whether or not [the debtor] ha[s] filed a lawsuit or made a demand for payment." Official Form 106A/B, Schedule A/B: Property, Pt. 4, Question 33. Debtors must swear "[u]nder penalty of perjury" that the information provided is "true and correct." Official Form 106Dec, Declaration About an Individual Debtor's Schedules. In April 2020, based on the Keathley's disclosures, the Bankruptcy Court confirmed an amended repayment plan providing for interest-free repayment of 100% of creditors' claims over five years. In August 2021, while the bankruptcy case remained open, Keathley was involved in a car accident in Mississippi with a driver employed by Buddy Ayers Construction, Inc. Keathley retained a personal-injury attorney and informed his bankruptcy counsel that he intended to sue Buddy Ayers Construction. Neither Keathley nor his bankruptcy counsel disclosed the potential personal-injury claim to the Bankruptcy Court. Keathley then filed a personal-injury action in U. S. District Court in December 2021, asserting negligence claims against the company, again without notifying the Bankruptcy Court.

In March 2023, Buddy Ayers Construction moved for summary judgment on grounds of judicial estoppel based on Keathley's failure to disclose his personal-injury claims in the pending bankruptcy proceeding. Keathley immediately filed an amended schedule notifying the Bankruptcy Court of his pending claims. He then submitted affidavits in response to the motion for summary judgment, explaining that his omission had been inadvertent. The District Court, relying on Fifth Circuit precedent, found that Keathley knew of the facts underlying his claims and hypothetically had a motive to conceal, and therefore held the omission was not inadvertent or a mistake, entering summary judgment for Buddy Ayers Construction. The Fifth Circuit affirmed, with one judge concurring but expressing doubt that judicial estoppel's goals were advanced by its application given evidence the omission was an "honest mistake."

Held: To determine whether an omission of a claim in the bankruptcy context was inadvertent or mistaken for purposes of judicial estoppel, courts should look to the totality of the circumstances surrounding the omission; the Fifth Circuit erred by artificially narrowing its inquiry to whether the debtor had knowledge of the underlying facts or a potential motive to conceal the claim. Pp. 6–9.

(a) Judicial estoppel is an "equitable doctrine" intended "to protect the integrity of the judicial process" by "prohibiting parties from deliberately changing positions according to the exigencies of the moment" and preventing the "risk of inconsistent court determinations." *New Hampshire* v. *Maine*, 532 U. S. 742, 749–751 (internal quotation marks omitted). Some lower courts apply judicial estoppel to bar lawsuits by debtors who fail to disclose claims in bankruptcy proceedings, viewing the failure to disclose as an "implicit representation" that the claim does not exist. 18B C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure §4477.9. Pp. 6–7.

(b) Assuming without deciding that judicial estoppel can apply in the bankruptcy context and that "inadvertence or mistake" can function as an exception to that application, the Fifth Circuit's rule is both too rigid and too broad. The rigidity comes from the Fifth Circuit's failure to fully recognize that "judicial estoppel is an equitable doctrine." *New Hampshire*, 532 U. S., at 750 (internal quotation marks omitted). Equity "eschews mechanical rules; it depends on flexibility," *Holmberg* v. *Armbrecht*, 327 U. S. 392, 396, and when a court conducts an equitable inquiry, it must act "on a case-by-case basis," considering all relevant facts and circumstances, *Holland* v. *Florida*, 560 U. S. 631, 649–650 (internal quotation marks omitted). The Fifth Circuit's rule allows courts to consider only two circumstances—whether the debtor knew of the underlying facts and whether there was a potential motive to conceal—and does not permit courts to look at any other evidence tending to show the omission was inadvertent. That rigidity is out of step with equity. The Fifth Circuit's rule is also overly broad because it holds that an omission falls outside the exception any time a debtor knows certain facts or could potentially benefit from nondisclosure, circumstances that will almost always be true, as the Fifth Circuit recognized. A near-dispositive criterion is a poor fit for a fair inquiry into whether an omission is *actually* the result of inadvertence or mistake. Pp. 7–9.

Vacated and remanded.

JACKSON, J., delivered the opinion for a unanimous Court. THOMAS, J., filed a concurring opinion, in which GORSUCH, J., joined. SOTOMAYOR, J., filed a concurring opinion.

SUPREME COURT OF THE UNITED STATES

No. 25–6

THOMAS KEATHLEY, PETITIONER *v.* BUDDY AYERS CONSTRUCTION, INCORPORATED

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[June 11, 2026]

JUSTICE JACKSON delivered the opinion of the Court.

After commencing a bankruptcy case, the debtor must disclose his assets to the bankruptcy court to facilitate the creation of an accurate bankruptcy estate. These assets include any claims the debtor has against third parties, regardless of whether those claims have already been filed as part of an active lawsuit. The debtor also avers that he has no relevant assets other than those disclosed.

Occasionally, a debtor who has failed to disclose a claim to the bankruptcy court will later attempt to press that claim in court. When that happens, some lower courts have considered whether the lawsuit should be dismissed under the doctrine of judicial estoppel, which generally prevents a party from assuming inconsistent positions in successive litigation.

This Court has never applied judicial estoppel in the bankruptcy context. But we have suggested in other situations that judicial estoppel may be inapposite where the inconsistent position was the result of "inadvertence or mistake." *New Hampshire* v. *Maine*, 532 U. S. 742, 753 (2001). In this case, the Fifth Circuit applied a follow-on rule that the omission of a claim in the bankruptcy context will be considered inadvertent or a mistake in only two circumstances: (1) when the debtor was unaware of the underlying facts of his claim, or (2) where there was no hypothetical motive to conceal the claim.

We reject that approach. To determine whether an omission was inadvertent or mistaken for purposes of judicial estoppel, courts should look to the totality of the circumstances surrounding the omission. Thus, we hold that the Fifth Circuit's less holistic formulation was erroneous.

I

A

When a debtor files for bankruptcy, a bankruptcy estate is created comprising the debtor's property. 11 U. S. C. §541(a). That property encompasses "all legal or equitable interests of the debtor in property as of the commencement" of the bankruptcy case, including pending and unliquidated claims against third parties. §541(a)(1); see 5 Collier on Bankruptcy ¶541.07 (R. Levin & H. Sommer eds., 16th ed. 2026) (Collier). As relevant here, for bankruptcy cases proceeding under Chapter 13, the estate also includes property—and therefore claims—that the debtor acquires after the bankruptcy case commences but before it is closed, dismissed, or converted to a case under another chapter. §1306(a)(1); see also *Harris* v. *Viegelahn*, 575 U. S. 510, 514 (2015).

An accurate bankruptcy estate is necessary for orderly bankruptcy proceedings. Chapter 13 allows a debtor to retain his property if he proposes, and a bankruptcy court confirms, a plan for debt repayment over a 3- to 5-year period. §§1306(b), 1322(d), 1327(b). Creditors and the trustee (who helps administer the bankruptcy proceedings) must understand the full scope of the debtor's assets to determine whether to support or object to the proposed repayment plan. See §§1302(b)(2)(B), 1324(a), 1325(b); 8 Collier ¶1302.03, at 1302–8 to 1302–9. The estate also provides valuable information to the bankruptcy court because the court may confirm the debtor's repayment plan only if the proposed repayments are "not less than the amount that would be paid" to creditors if the estate were liquidated under Chapter 7. §1325(a)(4). In addition, the value of the estate helps the court evaluate whether to require the debtor to pay creditors back on a more accelerated timeline or with interest. See §1322(b).

To facilitate the creation of an accurate bankruptcy estate, the Bankruptcy Code imposes disclosure obligations on debtors. For instance, debtors must file bankruptcy schedules listing their property. See §521(a)(1)(B); Fed. Rule Bkrtcy. Proc. 1007(b)(1). One such schedule requires debtors to disclose all "[c]laims against third parties, whether or not [the debtor] ha[s] filed a lawsuit or made a demand for payment." Official Form 106A/B, Schedule A/B: Property, Pt. 4, Question 33. The schedule lists "[a]ccidents" and "rights to sue" as "[e]xamples" of possible claims. *Ibid*. (emphasis deleted). Debtors must swear, "[u]nder penalty of perjury," that the information provided is "true and correct." Official Form 106Dec, Declaration About an Individual Debtor's Schedules.[1]

B

Thomas Keathley and his wife filed a Chapter 13 bankruptcy petition in the U. S. Bankruptcy Court for the Eastern District of Arkansas in December 2019. In April 2020, that court confirmed an amended repayment plan, providing for interest-free repayment of 100% of the creditors' claims over the course of five years.

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[1] The parties here have proceeded on the understanding that the debtor has a continuing duty to disclose assets that arise after the initial filing of the bankruptcy petition (and therefore are part of the Chapter 13 estate). See Brief for Petitioner 5–6. We presume the same and do not opine on whether such a duty exists. See Brief for National Consumer Bankruptcy Rights Center et al. as *Amici Curiae* 6–12 (noting split on continuing duty to disclose).

In August 2021, Keathley was involved in a car accident in Mississippi with a driver employed by respondent Buddy Ayers Construction, Inc. Keathley retained a personal-injury attorney and informed his bankruptcy counsel that he intended to sue Buddy Ayers Construction. Even though Keathley's bankruptcy case remained open, neither Keathley nor his bankruptcy counsel disclosed the potential personal-injury claims to the Bankruptcy Court. Keathley then filed the instant personal-injury action in the U. S. District Court for the Northern District of Mississippi in December 2021, asserting claims for negligence against the company. Keathley did not notify the Bankruptcy Court of the existence of his claims at this point, either.

In March 2023, Buddy Ayers Construction moved for summary judgment on grounds of judicial estoppel based on Keathley's failure to disclose his personal-injury claims in the open bankruptcy proceeding. Keathley immediately filed an amended schedule notifying the Bankruptcy Court of his personal-injury claims. Then, in response to the pending motion for summary judgment in the personal-injury suit, Keathley explained that the omission had been inadvertent. In support, he submitted an affidavit attesting that, after he told his bankruptcy counsel about his personal-injury claims, he "believed [he] had done everything [he] needed to do." App. 184. He also filed an affidavit from his bankruptcy counsel noting that Keathley "received no benefit monetarily, or otherwise, from the nondisclosure." *Id*., at 182. Based on this evidence, he argued that judicial estoppel was inappropriate.

The District Court disagreed. Relying on Fifth Circuit precedent, the court explained that the omission of a claim on the bankruptcy schedules will be considered the result of inadvertence or mistake only if (1) the debtor did not know the facts underlying the claim, or (2) there was no potential motive to conceal the claim. 686 F. Supp. 3d 495, 497, 500–501 (ND Miss. 2023) (citing *United States ex rel.*

Long v. *GSDMIdea City, LLC*, 798 F. 3d 265, 273 (CA5 2015); *Love* v. *Tyson Foods, Inc*., 677 F. 3d 258, 262 (CA5 2012)). Applying that rule, the District Court found that Keathley concededly knew of the facts underlying his personal-injury claims and had a hypothetical motive to conceal: Keathley might have had to pay interest on his debts had the Bankruptcy Court and creditors known of the personal-injury lawsuit. The District Court therefore held that Keathley's omission was not inadvertent or a mistake and entered summary judgment for Buddy Ayers Construction based on judicial estoppel. 686 F. Supp. 3d, at 501, 503.[2]

The Fifth Circuit affirmed, relying on the same precedent as the District Court. 2025 WL 673434 (Mar. 3, 2025) (*per curiam*). Judge Haynes concurred based on her agreement that Fifth Circuit precedent dictated this outcome. But she expressed "doubt that the goals" of judicial estoppel were advanced by its application to Keathley's claims, given her view that there was evidence his omission was, in fact, an "honest mistake." *Id*., at *8. Judge Haynes further noted that "[o]ther circuits take a more holistic approach than" the Fifth Circuit does when assessing the application of judicial estoppel in the bankruptcy context. *Ibid.* (collecting cases).

Much like the Fifth Circuit, the Tenth Circuit also considers an omission to be inadvertent only if the debtor lacked knowledge of the underlying claim or had no potential motive to conceal the claim.[3] But five other Courts of

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[2] Keathley moved for reconsideration based on an affidavit he submitted from the staff attorney for the Chapter 13 Trustee in his bankruptcy case. The affidavit explained that it is common practice in the Eastern District of Arkansas for debtors to amend their filings to disclose postpetition personal-injury claims shortly before settlement or other disposition of the claims. The District Court denied the motion. 706 F. Supp. 3d 628, 630 (ND Miss. 2023).

[3] *Eastman* v. *Union Pacific R. Co*., 493 F. 3d 1151, 1157 (CA10 2007).

Appeals conduct a more fact-specific inquiry and do not so stringently limit the analysis.[4] We granted certiorari to resolve this conflict. 607 U. S. 992 (2025).

II

A

Judicial estoppel is an "equitable doctrine" intended "to protect the integrity of the judicial process," both by "prohibiting parties from deliberately changing positions according to the exigencies of the moment," and by preventing the "risk of inconsistent court determinations." *New Hampshire*, 532 U. S., at 749–751 (internal quotation marks omitted).

Sometimes, as happened here, a debtor seeks to litigate a claim against a third party that he failed to disclose in his bankruptcy proceedings. Some lower courts apply judicial estoppel to bar such lawsuits, reasoning that application of the doctrine "raises the cost of lying" and "induces debtors to be truthful in their bankruptcy filings." *Cannon-Stokes* v. *Potter*, 453 F. 3d 446, 448 (CA7 2006) (internal quotation marks omitted).

The courts that apply judicial estoppel to claims in the bankruptcy context view the debtor's failure to disclose a particular claim as an "implicit representation" that the claim does not exist. 18B C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure §4477.9 (3d ed. 2019 and Supp. 2026) (collecting cases). On this view, when the debtor files a lawsuit based on that claim, he has taken inconsistent positions in the two judicial proceedings "by asserting in the civil lawsuit that he has a claim against the defendant while denying under oath in the bankruptcy

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[4] *Martineau* v. *Wier*, 934 F. 3d 385, 393–396 (CA4 2019); *Stanley* v. *FCA US, LLC*, 51 F. 4th 215, 221 (CA6 2022); *Spaine* v. *Community Contacts, Inc.*, 756 F. 3d 542, 548 (CA7 2014); *Ah Quin* v. *County of Kauai Dept. of Transp.*, 733 F. 3d 267, 276–277 (CA9 2013); *Slater* v. *United States Steel Corp.*, 871 F. 3d 1174, 1189, and n. 17 (CA11 2017) (en banc).

proceeding that the claim exists." *Slater* v. *United States Steel Corp.*, 871 F. 3d 1174, 1176 (CA11 2017) (en banc).

Based on that understanding, those lower courts have developed a general rule for the application of judicial estoppel in the bankruptcy context: "If a plaintiff-debtor omits a pending (or soon-to-be-filed) lawsuit from the bankruptcy schedules and obtains a discharge (or plan confirmation), judicial estoppel bars the action." *Ah Quin* v. *County of Kauai Dept. of Transp.*, 733 F. 3d 267, 271 (CA9 2013).

B

While this Court has never applied judicial estoppel in the bankruptcy context, in a different context we left open whether it "may be appropriate to resist application of judicial estoppel" when the party's prior inconsistent position was due to "inadvertence or mistake." *New Hampshire*, 532 U. S., at 753. For purposes of this opinion, we assume without deciding that judicial estoppel can apply in the bankruptcy context and that "inadvertence or mistake" can function as an exception to that application. Operating under those assumptions, the Fifth Circuit's understanding of "inadvertence or mistake" is simultaneously too rigid and too broad.

The rigidity comes from the Fifth Circuit's failure to fully recognize that "judicial estoppel is an equitable doctrine." *Id.*, at 750 (internal quotation marks omitted). As such, its "examination must be made in the light of the recognized principles of equity." *United States Nat. Bank* v. *Chase Nat. Bank*, 331 U. S. 28, 36 (1947). Equity, we have said, "eschews mechanical rules; it depends on flexibility." *Holmberg* v. *Armbrecht*, 327 U. S. 392, 396 (1946). Thus, when a court conducts an equitable inquiry, it must act "on a case-by-case basis," considering all relevant facts and circumstances. *Holland* v. *Florida*, 560 U. S. 631, 649–650 (2010) (internal quotation marks omitted). In other words, equitable doctrines require room to consider all of the particulars.

By contrast, the Fifth Circuit's rule allows courts to consider only two circumstances when assessing inadvertence or mistake: whether the debtor knew of the underlying facts of the claim, and whether there was a potential motive to conceal the claim. See *In re Coastal Plains, Inc.*, 179 F. 3d 197, 210 (CA5 1999); *Love*, 677 F. 3d, at 262. And under this rule, a court may not look at any other evidence tending to show that the omission was inadvertent. That rigidity is out of step with equity. To determine whether the omission was inadvertent or a mistake, the Fifth Circuit instead should have examined the totality of the circumstances surrounding Keathley's failure to report his personal-injury claims earlier. See, *e.g.*, *Ah Quin*, 733 F. 3d, at 276 ("[R]ather than applying a presumption of deceit, judicial estoppel requires an inquiry into whether the plaintiff's bankruptcy filing was, *in fact*, inadvertent or mistaken, as those terms are commonly understood" (emphasis added and deleted)).

The Fifth Circuit's rule is not only overly rigid; it is also overly broad. In particular, the Fifth Circuit holds that an omission falls outside of the exception any time a debtor knows certain facts or could potentially benefit from nondisclosure of a claim. But it is rare for a debtor to be unaware of the underlying facts of his claim, and a debtor will almost always hypothetically benefit from not revealing such a claim to his creditors. In essence, then, the Fifth Circuit's approach is a one-size-fits-all test that requires courts to view as purposeful nearly every bankruptcy omission. Indeed, the decision below acknowledged as much, noting that, under Fifth Circuit precedent, the potential-motive element "'is almost always met if a debtor fails to disclose a claim or possible claim to the bankruptcy court.'" 2025 WL 673434, *5 (quoting *Love*, 677 F. 3d, at 262).

The overbreadth of the Fifth Circuit's rule (the fact that it almost always is satisfied) makes it patently incompatible with an inadvertence-or-mistake standard, which suggests that circumstances—and outcomes—may vary. A near-dispositive criterion is a poor fit for a fair inquiry into whether an omission is *actually* the result of inadvertence or mistake.[5]

* * *

Today's decision is straightforward. The Fifth Circuit artificially narrowed its inquiry into whether Keathley's bankruptcy-schedule omission was the result of inadvertence or mistake by assessing *only* whether he had knowledge of the underlying facts or a potential motive to conceal his personal-injury suit. That was error. Accordingly, we vacate the judgment of the Court of Appeals for the Fifth Circuit and remand the case for further proceedings consistent with this opinion.

It is so ordered.

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[5] The parties also dispute at some length whether bad faith is required for judicial estoppel to apply. See, *e.g.*, Brief for Petitioner 11–24; Brief for Respondent 20–35. In light of our narrow holding—responding only to the analysis used by the Fifth Circuit—we need not resolve any further questions about the application of judicial estoppel in the bankruptcy context.

SUPREME COURT OF THE UNITED STATES

No. 25–6

THOMAS KEATHLEY, PETITIONER *v.* BUDDY AYERS CONSTRUCTION, INCORPORATED

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[June 11, 2026]

JUSTICE THOMAS, with whom JUSTICE GORSUCH joins, concurring.

The Court's opinion correctly concludes that the Fifth Circuit's approach to judicial estoppel is not defensible on its own terms. I join it in full. I write separately to express doubt about the foundation of the doctrine of judicial estoppel. Judicial estoppel generally prevents a party from asserting a position in one lawsuit that contradicts its position in a previous proceeding. Lower federal courts have applied this doctrine broadly without clear authority to do so, and with only limited support from this Court's precedents. In a future case, we should reexamine it.

I

The doctrine of judicial estoppel entered the mainstream in the federal courts only in the past few decades. See Brief for American Association for Justice as *Amicus Curiae* 7–9. By all accounts, it was first recognized in an 1857 decision of the Tennessee Supreme Court. See *Hamilton* v. *Zimmerman*, 37 Tenn. 39; see D. Henkin, Judicial Estoppel—Beating Shields Into Swords and Back Again, 139 U. Pa. L. Rev. 1711, 1719 (1991). A century later, judicial estoppel was still "the minority viewpoint which has encountered inhospitable reception outside the State of Tennessee." *Parkinson* v. *California Co.*, 233 F. 2d 432, 437–438 (CA10 1956).

As late as 1980, the D. C. Circuit declined to apply judicial estoppel because it "ha[d] not been followed by anything approaching a majority of jurisdictions, nor [was] there a discernible modern trend in that direction." *Konstantinidis* v. *Chen*, 626 F. 2d 933, 938.

Despite its slow and late start, judicial estoppel has now become commonplace in the Courts of Appeals.[1] As generally understood, the doctrine can bar a party's suit based on its representations in an entirely unrelated suit against another party. In the Fifth Circuit, for example, judicial estoppel can bar a claim whenever it is inconsistent with a prior position that the party took; a court accepted the prior position; and the party's inconsistency was not inadvertent. *In re Flugence*, 738 F. 3d 126, 129 (2013) (*per curiam*). In this way, judicial estoppel reaches much further than the older doctrine of "equitable estoppel," which requires the party invoking the doctrine to prove that it was itself the object of a previous representation, that it relied on the previous representation, and that it was prejudiced by the change in positions. See *Konstantinidis*, 626 F. 2d, at 937.

Cases such as this one show the doctrine's breadth: The Fifth Circuit applied judicial estoppel to foreclose a lawsuit against a defendant because the plaintiff failed to mention

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[1] Every Court of Appeals has recognized it in one form or another. See, *e.g.*, *Perry* v. *Blum*, 629 F. 3d 1, 8 (CA1 2010); *Clark* v. *AII Acquisition, LLC*, 886 F. 3d 261, 266 (CA2 2018); *Ryan Operations G. P.* v. *Santiam-Midwest Lumber Co.*, 81 F. 3d 355, 358–359 (CA3 1996); *Lowery* v. *Stovall*, 92 F. 3d 219, 223 (CA4 1996); *In re Coastal Plains, Inc.*, 179 F. 3d 197, 204 (CA5 1999); *Reynolds* v. *Commissioner*, 861 F. 2d 469, 472, 474 (CA6 1988); *Cannon-Stokes* v. *Potter*, 453 F. 3d 446, 447–448 (CA7 2006); *Stallings* v. *Hussmann Corp.*, 447 F. 3d 1041, 1047 (CA8 2006); *Milton H. Greene Archives, Inc.* v. *Marilyn Monroe LLC*, 692 F. 3d 983, 986 (CA9 2012); *Eastman* v. *Union Pacific R. Co.*, 493 F. 3d 1151, 1156 (CA10 2007); *Slater* v. *United States Steel Corp.*, 871 F. 3d 1174, 1180 (CA11 2017) (en banc); *Marshall* v. *Honeywell Tech. Systems, Inc.*, 828 F. 3d 923, 931 (CADC 2016); *Data Gen. Corp.* v. *Johnson*, 78 F. 3d 1556, 1565 (CA Fed. 1996).

the cause of action on a form in prior bankruptcy proceedings involving an entirely unrelated set of parties. As a result, the defendant was relieved of all liability for injuring the plaintiff, regardless of whether his conduct was tortious and regardless of whether he was in any manner affected by the plaintiff's other proceedings. Other jurisdictions apply judicial estoppel in similar circumstances. See, *e.g.*, *Slater* v. *United States Steel Corp.*, 871 F. 3d 1174, 1176 (CA11 2017) (en banc); *Spaine* v. *Community Contacts, Inc.*, 756 F. 3d 542, 547 (CA7 2014); *Ah Quin* v. *County of Kauai Dept. of Transp.*, 733 F. 3d 267, 271 (CA9 2013); *Payless Wholesale Distributors, Inc.* v. *Alberto Culver* (*P. R.*) *Inc.*, 989 F. 2d 570, 571–572 (CA1 1993).

II

Despite the widespread modern adoption of judicial estoppel, its foundation remains questionable.

It is unclear what gives federal courts the authority to bar suits based on judicial estoppel. Often, as in the case below, federal courts treat judicial estoppel as a matter of federal law and feel free to craft their own standards and extend the doctrine to new contexts.[2] But, the doctrine appears to have no basis in any statute, any Federal Rule of Civil Procedure, or any traditional inherent power of federal courts. Although the doctrine purports to punish litigants to "protect the integrity of the judicial process," *Edwards* v. *Aetna Life Ins. Co.*, 690 F. 2d 595, 598 (CA6 1982), the courts of appeals have not justified it as an exercise of the traditional sanctioning power that courts have been held to have in other contexts, see, *e.g.*, *Link* v. *Wabash R. Co.*, 370 U. S. 626, 629–630 (1962). And, although

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[2] 2025 WL 673434, *4–5 (CA5, Mar. 3, 2025) (*per curiam*) (case below); see also *Ryan Operations G. P.*, 81 F. 3d, at 358; *John S. Clark Co.* v. *Faggert & Frieden, P. C.*, 65 F. 3d 26, 28–29 (CA4 1995); *Patriot Cinemas, Inc.* v. *General Cinema Corp.*, 834 F. 2d 208, 215 (CA1 1987); *Warda* v. *Commissioner*, 15 F. 3d 533, 538, n. 4 (CA6 1994).

federal courts often assume that the doctrine can arise from their general equitable authority, see *Slater*, 871 F. 3d, at 1187–1188; *Ryan Operations G. P.* v. *Santiam-Midwest Lumber Co.*, 81 F. 3d 355, 365 (CA3 1996); *In re Flugence*, 738 F. 3d, at 131–132, that "equitable authority is not free-wheeling," and requires for its use "a founding-era antecedent," *Trump* v. *CASA, Inc.*, 606 U. S. 831, 841, 846–847 (2025); see also *Trump* v. *Hawaii*, 585 U. S. 667, 716 (2018) (THOMAS, J., concurring). Judicial estoppel appears to lack such an antecedent.[3]

This Court's precedents do not justify the current state of judicial-estoppel doctrine, either. The Court has apparently enforced judicial estoppel only a single time, in an original-jurisdiction case that did not resemble many of the cases in which lower courts now apply it. See *New Hampshire* v. *Maine*, 532 U. S. 742 (2001).[4] Because *New*

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[3] The Courts of Appeals sometimes instead treat judicial estoppel as a matter of substantive state law in diversity cases, an approach that raises its own set of questions, such as in what sense the doctrine is substantive and whose law governs. *E.g., Kirk* v. *Schaeffler Group USA, Inc.*, 887 F. 3d 376, 383 (CA8 2018). The choice of law for judicial estoppel is a source of deep confusion. See N. Frazer, Reassessing the Doctrine of Judicial Estoppel: The Implications of the Judicial Integrity Rationale, 101 Va. L. Rev. 1501, 1503 (2015); 18B C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure §4477.8, p. 591 (3d ed. 2019) ("The question . . . cannot be fully answered"). But, this approach would at least cohere with the treatment of the related, but distinct doctrine of *equitable* estoppel, which is generally treated as a substantive question governed by the applicable state law under *Erie R. Co.* v. *Tompkins*, 304 U. S. 64 (1938). Cf. *Arthur Andersen LLP* v. *Carlisle*, 556 U. S. 624, 631 (2009); see *Petro Harvester Operating Co.* v. *Keith*, 954 F. 3d 686, 698 (CA5 2020).

[4] *New Hampshire* cited the Court's 1895 decision in *Davis* v. *Wakelee*, 156 U. S. 680, for the proposition that "'[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.'" 532 U. S., at 749 (quoting *Davis*, 156 U. S., at 689). But, *Davis* does not appear to

Hampshire was an original-jurisdiction case, the Court understood itself to have greater flexibility in adjudicating the dispute than lower courts have in ordinary diversity actions. Cf. *Massachusetts* v. *Missouri*, 308 U. S. 1, 15 (1939) (explaining, even after *Erie*, that controversies between States are decided based on "the accepted principles of the common law or equity systems of jurisprudence"). Moreover, the Court applied the doctrine based on prior litigation between the same two parties. It estopped New Hampshire from adopting a new position after it had taken the opposite position in a previous suit against the same party before the same Court: New Hampshire "convinced this Court to accept one interpretation" of a decree in a case against Maine, "benefited from that interpretation," and then "urge[d] an inconsistent interpretation to gain an additional advantage at Maine's expense." 532 U. S., at 755. Given these facts, the Court's decision may well have been justifiable as a matter of equitable estoppel.

New Hampshire certainly does not ordain that judicial estoppel should apply in cases like Keathley's, in which his inconsistency was between, on the one hand, representations to creditors in a bankruptcy court, and, on the other hand, representations in a separate tort suit against a stranger to those bankruptcy proceedings. At a minimum, it is difficult to see how application of this doctrine in cases such as this one serves any equitable purpose, or how an interest in "the integrity of the judicial process" could justify it. *Id.*, at 749 (internal quotation marks omitted).

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be a judicial-estoppel case. The Court did not invoke the doctrine, and the facts appear to have satisfied the distinctive elements of equitable estoppel: mutuality of parties and reliance by the nonestopped party. 156 U. S., at 690. *Davis* also rejected the argument that an honest mistake could prevent estoppel, *ibid.,* which is consistent with equitable estoppel but, as the Court explains, not judicial estoppel, *ante,* at 7.

III

Judicial estoppel has secured widespread acceptance in the Courts of Appeals without any clear authority in statutes, rules of procedure, or this Court's precedents. In a future case, this doctrine merits a closer look.

SUPREME COURT OF THE UNITED STATES

No. 25–6

THOMAS KEATHLEY, PETITIONER *v.* BUDDY AYERS CONSTRUCTION, INCORPORATED

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[June 11, 2026]

JUSTICE SOTOMAYOR, concurring.

Today, the Court correctly holds that, assuming judicial estoppel applies in the bankruptcy context, the Fifth Circuit's exceedingly narrow test for determining whether an inconsistent position was based on inadvertence or mistake is erroneous. I write to address why it may not ever make sense to apply judicial estoppel when bankruptcy proceedings are pending, and why, in any context, judicial estoppel should always turn on the totality of the circumstances.

I

One of the principal justifications for judicial estoppel is that it prevents a party from using the "'judicial process'" to "derive an unfair advantage" by taking a position in one proceeding and an inconsistent position in a separate proceeding. *New Hampshire* v. *Maine*, 532 U. S. 742, 749, 751 (2001). In bankruptcy, the "unfair advantage" a dishonest debtor gains by failing to disclose assets comes at the creditors' expense and deprives them of potential recovery. From here, the argument goes, judicial estoppel is needed in other proceedings to deter that bankruptcy misconduct and to protect both the "integrity of the bankruptcy system" and "the rights of creditors to an equitable distribution of the assets of the debtor's estate." *Reed* v. *Arlington*, 650 F. 3d 571, 574 (CA5 2011) (en banc).

There are many reasons to doubt the logic of this argument, which may account for why "this Court has never applied judicial estoppel in the bankruptcy context." *Ante*, at 7. To start, applying judicial estoppel to debtors still involved in open bankruptcies is more likely to hurt creditors than it is to help them. Instead, the party most likely to benefit is the potential tortfeasor in the separate proceeding: someone who is not prejudiced by the debtor's earlier, inconsistent position, but whom judicial estoppel permits to escape liability.

Take the facts of this case as an example. At the time the District Court applied judicial estoppel to dismiss petitioner Keathley's tort claim against respondent, Keathley and his wife were operating under an amended repayment plan in which they still needed to make interest-free payments to creditors for about four more years. If the District Court had not applied judicial estoppel, and if Keathley had prevailed on the merits of that tort claim, any judgment he received could have been used in turn to pay creditors interest or shorten the repayment period or both. See, *e.g.*, 11 U. S. C. §§1329(a)(1)–(2). By applying judicial estoppel, the courts below prevented Keathley from recovering any money at all and thus "vaporiz[ed] assets that could [have been] used for the creditors' benefit." *Biesek* v. *Soo Line R. Co.*, 440 F. 3d 410, 413 (CA7 2006). They also gave respondent, the employer of the alleged tortfeasor, a windfall even though it was not involved in the bankruptcy and thus was neither misled nor impacted by the delayed disclosure. "Judicial estoppel is an equitable doctrine," but this is "not an equitable application." *Ibid.*; see 18 J. Moore, D. Coquillette, G. Joseph, G. Vairo, & C. Varner, Moore's Federal Practice §134.31, p. 134–102 (3d ed. 2026) (explaining that judicial estoppel should be applied "with an intent to achieve substantial justice").

There were other, more equitable options available that would have served the underlying goals of judicial estoppel.

For instance, because the Keathleys had not yet completed the repayment process at the time Keathley filed this claim, the Bankruptcy Court retained jurisdiction over the bankruptcy. That court was better positioned than both the District Court and Fifth Circuit in the personal-injury suit to address any harm to creditors caused by Keathley's belated disclosure of the suit in the bankruptcy proceeding. In the wake of that disclosure, the Bankruptcy Court could have imposed sanctions, Fed. Rule Bkrtcy. Proc. 9011, or modified the repayment plan, 11 U. S. C. §1329. It could have even converted this Chapter 13 bankruptcy to a Chapter 7 case, which would have allowed a trustee to pursue this suit on the creditors' behalf. See §§323(b), 704(a)(1), 1307(c); *Marrama* v. *Citizens Bank of Mass.*, 549 U. S. 365, 372–374 (2007). The Solicitor General of the United States, as *amicus curiae*, lists further options still. See Brief for United States as *Amicus Curiae* 20–23 (surveying tools in a bankruptcy court's arsenal). Judicial estoppel, by contrast, provides one remedy and one remedy only: dismissal of the tort claim. Given that bankruptcy courts can craft full remedies to alleviate any prejudice to creditors caused by a belated disclosure of a claim, it is difficult to see how using judicial estoppel to bar the debtor from pursuing a separate claim, which only harms creditors, is either needed or warranted.

For similar reasons, a bankruptcy court is also well positioned to mitigate any harms to the "integrity of the bankruptcy system," and the judicial system generally, caused by inconsistent positions. For instance, in response to deliberate nondisclosures, a bankruptcy court may, in certain circumstances, revoke an order of confirmation, *e.g.*, §1330(a), decline to discharge the debtor, §§727(a)(2), (4), fine the debtor, 18 U. S. C. §401, or refer the debtor to the United States Attorney's Office for potential perjury, §§152, 1621. It can also protect the broader judicial system's interest in preventing "'inconsistent court determinations,'" *New Hampshire*, 532 U. S., at 751, by simply modifying its earlier orders.* Applying judicial estoppel to a case (and thereby dismissing it) arguably has the opposite effect. Although judicial estoppel might prevent inconsistent judgments in some circumstances, it likely "'undermines the integrity'" of both court systems when it becomes "a tool in the arsenal of potentially bad actors to reap a windfall" and secure that advantage at creditors' detriment. 2025 WL 673434, *8 (CA5, Mar. 3, 2025) (Haynes, J., concurring in judgment), App. to Pet. for Cert. 20a, 22a.

All told, judicial estoppel is based in equity, and "specific factual contexts" must "inform the doctrine's application." *New Hampshire*, 532 U. S., at 751. The above discussion has focused on the context of pending bankruptcy proceedings because the judicial estoppel calculus may look different if the debtor takes an inconsistent position long after discharge. Cf. 11 U. S. C. §350(b) (allowing bankruptcy courts to reopen closed cases to "administer assets" or for other "cause[s]"); Brief for United States as *Amicus Curiae* 22 (observing that, for closed bankruptcies, a bankruptcy court can revoke a discharge within certain time periods depending on the kind of bankruptcy at issue). When such a proceeding is still open, however, it is doubtful that equity ever demands the application of judicial estoppel to a claim asserted by a debtor in a different proceeding, even when that claim relies on a deliberately inconsistent position.

II

This case also illustrates another important facet of judicial estoppel: In assessing whether certain circumstances

*Notably, after Keathley informed the Bankruptcy Court of his claim, the court did not impose any sanctions. In an affidavit submitted to the District Court here, a staff attorney for the Chapter 13 trustee assigned to the case explained, moreover, that "there [was] nothing unusual or misleading about [the Keathleys] not disclosing the [tort claim] while [it] was ongoing," and that even if they had "notified the" Bankruptcy Court "immediately, . . . it would not have had any effect on the administration of the bankruptcy." App. 253.

warrant using this equitable tool, courts should apply tests that account for their totality. As this Court has explained, and reiterates today, "'[t]he circumstances under which judicial estoppel may appropriately be invoked are probably not reducible to any general formulation of principle.'" *New Hampshire*, 532 U. S., at 750 (alteration in original). This stems from the doctrine's grounding in equity, which "eschews mechanical rules" and "depends on flexibility." *Holmberg* v. *Armbrecht*, 327 U. S. 392, 396 (1946).

Although Courts of Appeals have attempted to add structure to this analysis, some have more successfully captured the doctrine's underlying principles than others. Take how courts have approached the judicial estoppel inquiry in the bankruptcy context specifically. If the doctrine is to apply in this context, then the Fifth Circuit's approach, as the Court correctly identifies, was both "too rigid and too broad." *Ante*, at 7. It distilled the test for whether a prior inconsistent position was "inadvertent or a mistake" down to two factors and then defined one of them in such a way that ensured a prior inconsistent position was never inadvertent or mistaken. See *ante*, at 8–9.

The Eleventh Circuit previously employed a test that suffered from a similar problem. That Circuit used to "permi[t] the inference that a plaintiff intended to make a mockery of the judicial system simply because he failed to disclose a civil claim." *Slater* v. *United States Steel Corp.*, 871 F. 3d 1174, 1185 (2017) (en banc) (describing the Circuit's prior test). Like the Fifth Circuit's test, this inference resembled a "one-size-fits-all approach," which did not ensure that judicial estoppel applied "only when a party acted with a sufficiently culpable mental state." *Id.*, at 1185–1186. It also did not allow a court to factor in "any proceedings that occurred in the bankruptcy court after the omission was discovered," which hampered a court's ability to "ensure that the integrity of the bankruptcy court [was] protected" by the application of judicial estoppel. *Id.*, at 1186. Finally, it did not tie the application of the doctrine to the "facts and circumstances" of a given dispute, which "risk[ed] that [its] application" would "give the civil defendant a windfall at the expense of innocent creditors." *Ibid.*

The Eleventh Circuit in *Slater* retreated from this test. It now applies one that considers "all the facts and circumstances of [a] particular case" and therefore one that does not suffer from any of the same shortfalls that arise when the application of the doctrine neglects critical context. *Id.*, at 1185; *id.*, at 1186–1189 (listing a nonexhaustive set of considerations). This new approach appears more closely to adhere to the "'case-by-case'" assessment that equity requires and that judicial estoppel is intended to facilitate. *Ante*, at 7–9 (quoting *Holland* v. *Florida*, 560 U. S. 631, 649–650 (2010)).

Any test for applying judicial estoppel, not only in the bankruptcy context but in other factual contexts as well, must ensure that it captures the totality of the circumstances and consistently leads to equitable applications. The Court rightfully vacates the decision below.

No. 25-6

In the Supreme Court of the United States

THOMAS KEATHLEY,
Petitioner,

v.

BUDDY AYERS CONSTRUCTION, INC.,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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QUESTION PRESENTED

Judicial estoppel is an equitable doctrine designed "'to protect the integrity of the judicial process' by 'prohibiting parties from deliberately changing positions'" to gain an unfair advantage. *New Hampshire v. Maine*, 532 U.S. 742, 749-50 (2001). The doctrine targets those who "'deliberately'" mislead courts, not those whose inconsistent positions stem from "inadvertence or mistake." *Id.* at 750, 753.

Courts regularly apply judicial estoppel when a debtor-plaintiff pursues a claim he failed to disclose to the bankruptcy court. The Eleventh, Ninth, Seventh, Sixth, and Fourth Circuits require courts to look at the totality of the circumstances and find that a debtor subjectively intended to mislead the bankruptcy court before applying judicial estoppel to bar a claim outside of the bankruptcy. In stark contrast, the Fifth and Tenth Circuits have embraced a "rigid" and "unforgiving" judicial estoppel rule in the bankruptcy context that bars claims regardless of whether there is evidence that a plaintiff actually intended to mislead. Pet.App.55a. In those circuits, a debtor's failure to disclose a lawsuit to a bankruptcy court triggers judicial estoppel whenever the debtor knew the facts relevant to the undisclosed claim and had a *potential* motive for concealment—which is virtually always present in the bankruptcy context.

The question presented is:

Whether the doctrine of judicial estoppel can be invoked to bar a plaintiff who fails to disclose a civil claim in bankruptcy filings from pursuing that claim simply because there is a *potential* motive for nondisclosure, regardless of whether there is evidence that the plaintiff in fact acted in bad faith.

PARTIES TO THE PROCEEDINGS BELOW

Petitioner Thomas L. Keathley, Sr. was the plaintiff in the district court and the appellant in the court of appeals.

Respondent Buddy Ayers Construction, Inc. was the defendant in the district court and the appellee in the court of appeals.

Connie Keathley was a plaintiff in the district court but did not participate in the court of appeals. Daniel Fowler was a defendant in district court but did not participate in the court of appeals.

RELATED PROCEEDINGS

There are no proceedings directly related to this case within the meaning of Rule 14.1(b)(iii).

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OPINIONS BELOW

The opinion of the court of appeals (Pet.App.1a-23a) is not reported but available at 2025 WL 673434. The court of appeals' denial of rehearing (Pet.App.57a) is unreported. The district court's decision denying reconsideration (Pet.App.24a-38a) is published at 706 F. Supp. 3d 628, and the district court's order granting summary judgment (Pet.App.39a-56a) is published at 686 F. Supp. 3d 495.

JURISDICTION

The court of appeals entered judgment on March 3, 2025 (Pet.App.1a-23a). The petition for a writ of certiorari was filed on June 27, 2025, and granted on October 20, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

INTRODUCTION

No one wants to go bankrupt. But hundreds of thousands of Americans—many if not most of whom are hardworking and well-intentioned people who, for one reason or another, just cannot make ends meet—have no choice but to file for bankruptcy each year. The bankruptcy laws offer these people a fresh start. The question in this case is what happens when a debtor pursues an action against someone outside of bankruptcy but neglects to timely advise the bankruptcy court of his claim. In that situation, courts may invoke the doctrine of judicial estoppel to bar the suit—but only if they conclude that the debtor-plaintiff sought to mislead the bankruptcy court. That limitation reflects the doctrine's core purpose: Judicial estoppel exists to prevent—and penalize—"deliberate[]" gamesmanship, but not to punish "inadvertence or mistake." *New Hampshire v. Maine*, 532 U.S. 742, 749-50, 753 (2001).

Courts broadly agree that, in the context here, judicial estoppel should not bar a claim outside of bankruptcy if the debtor-plaintiff's failure to timely disclose the claim in bankruptcy was inadvertent or a mistake. But they are divided over the proper inquiry for determining whether the failure to timely disclose the claim was inadvertent or instead an intentional effort to mislead the courts. Most courts sensibly consider the available evidence to determine whether the lack of timely disclosure was intentional. But the Fifth Circuit has adopted a "rigid" and "unforgiving" rule that presumes bad faith whenever a debtor could "*potentially*" benefit from nondisclosure of a known claim—which, by definition, is almost always the case in a bankruptcy. Pet.App.13a-14a, 55a (emphasis added). Everything else bearing on a debtor's real-world intent is irrelevant: the debtor's sophistication, whether he told his bankruptcy counsel about the claim, misunderstood the disclosure rules, promptly amended his filings, drew no creditor objection following disclosure, received no finding of bad faith from the bankruptcy court, and so on. None of that matters under the Fifth Circuit's "unforgiving" rule.

The Fifth Circuit's outlier approach converts what is supposed to be a flexible, equitable inquiry into a harsh regime that makes judicial estoppel "virtually mandatory" whenever a debtor fails to disclose a claim. *Love v. Tyson Foods, Inc.*, 677 F.3d 258, 271 (5th Cir. 2012) (Haynes, J., dissenting). That approach short-circuits the holistic, fairness-driven analysis equity requires. It is out of step with this Court's precedent, which recognizes that the doctrine of judicial estoppel is designed to thwart "deliberate[]"

and "intentional" switches in position. *New Hampshire*, 532 U.S. at 749-51 (citations omitted). It contravenes Congress's judgment, enshrined in the bankruptcy system, that debtors who make honest mistakes ought *not* be subjected to harsh sanctions. And it creates perverse results. The only "winner" under the Fifth Circuit's regime is the alleged wrongdoer, relieved of any responsibility for its conduct. Meanwhile, innocent debtors and creditors suffer—as does the enforcement of all kinds of civil laws. No equitable doctrine should operate that way.

The far sounder approach—consistent with the majority position of the courts of appeals that have addressed the issue—is straightforward: Before invoking the blunt instrument of judicial estoppel to bar a claim outside of bankruptcy, courts must consider the totality of the circumstances bearing on whether the debtor-plaintiff actually intended to manipulate the courts. That approach respects equity's demand for flexibility, enables courts to meaningfully distinguish inadvertence from gamesmanship, and allows courts to give due weight to what the bankruptcy court itself thought about the omission. And most importantly—and unlike the Fifth Circuit's extreme rule that simply presumes bad faith based on a *potential* motive to mislead—it ensures that judicial estoppel's strong medicine is deployed only where doing so actually serves the doctrine's core purpose: protecting the integrity of the judicial process, not punishing the unwary.

This Court should repudiate the Fifth Circuit's outlier rule, hold that courts must engage in the holistic inquiry that equity demands in determining whether to invoke judicial estoppel in this context, and remand for application of that standard here.

STATEMENT OF THE CASE

A. Individual Bankruptcies

Hundreds of thousands of Americans file for bankruptcy each year. Most individuals filing for bankruptcy because of consumer debts (i.e., debts that come from personal, family, or household expenses) proceed under either Chapter 7 or Chapter 13 of the Bankruptcy Code. Under either Chapter, commencing a bankruptcy case creates a bankruptcy estate, and the debtor generally must file schedules listing what he owns and what he owes. *See* 11 U.S.C. § 521(a)(1)(B)(i); Fed. R. Bankr. P. 1007(b)(1)(A). But there are important differences between a Chapter 7 and Chapter 13 bankruptcy, including in the scope and disposition of estate property. *See generally Harris v. Viegelahn*, 575 U.S. 510, 513-14 (2015).

A Chapter 7 case focuses on the debtor's property at the moment he files for bankruptcy. *See id.* at 513-14. A Chapter 7 trustee takes control of non-exempt assets, sells them, and distributes the proceeds to creditors based on the priority rules in the Code. *See* U.S. Courts, *Chapter 7 – Bankruptcy Basics*[1]; *see also* 11 U.S.C. §§ 704, 726. The debtor typically receives a discharge of his qualifying debts. *Chapter 7 – Bankruptcy Basics*; *see* 11 U.S.C. § 727.

By contrast, in a Chapter 13 bankruptcy, individuals usually keep their assets and develop a plan to repay part or all of their debts over time. *See Harris*, 575 U.S. at 514; U.S. Courts, *Chapter 13 –*

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[1] https://www.uscourts.gov/court-programs/bankruptcy/bankruptcy-basics/chapter-7-bankruptcy-basics (last visited December 10, 2025).

Bankruptcy Basics[2]; 11 U.S.C. § 1306(b). The debtor proposes a repayment plan—typically three to five years—to which unsecured creditors and the Chapter 13 trustee may object. 11 U.S.C. §§ 1321, 1325. The bankruptcy court will approve the plan only if unsecured creditors receive at least as much as they would have in a Chapter 7 liquidation. *See id.* §§ 1324-1325. After confirmation, the plan can be modified at the request of the debtor, the bankruptcy trustee, or an unsecured creditor. *Id.* § 1329.

In addition to the fact that a Chapter 13 debtor usually retains possession of his assets, the structure of the Chapter 13 estate also differs sharply from Chapter 7. A Chapter 13 estate includes significantly more of the property a debtor acquires *after* filing his bankruptcy petition. *See Harris*, 575 U.S. at 513-14. As a result, even a lawsuit that arises after the petition is filed may be property of the Chapter 13 estate. *See Chapter 13 Practice & Procedure* § 16:7 (2025, Westlaw); *see also* 11 U.S.C. §§ 541, 1306(a)(1).

Whether and when a Chapter 13 debtor must amend his schedules to disclose property he acquired months or even years after filing his petition is a matter of some uncertainty and disagreement. The Bankruptcy Code and Federal Rules of Bankruptcy Procedure do not expressly impose such a requirement. *See, e.g.*, *Chapter 13 Practice & Procedure* § 16:7; 8 *Collier on Bankruptcy* ¶ 1300.35 (16th ed. 2025). The Fifth Circuit, however, has held that Chapter 13 debtors "have a continuing obligation to disclose post-petition causes of action." *Flugence v.*

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[2] https://www.uscourts.gov/court-programs/bankruptcy/bankruptcy-basics/chapter-13-bankruptcy-basics (last visited December 10, 2025).

Axis Surplus Ins. Co. (In re Flugence), 738 F.3d 126, 129 (5th Cir. 2013). This case proceeded on that understanding. *See* Pet.App.42a.

B. This Litigation

1. Thomas Keathley and his wife live a life of modest means and, at times, have had trouble making ends meet. In December 2019, the Keathleys—who had undergone prior bankruptcies—filed for Chapter 13 bankruptcy in the Eastern District of Arkansas in hopes of finally regaining control over their financial affairs. *Id.* at 2a. After initial disclosures and proceedings, the bankruptcy court confirmed a modified repayment plan in April 2020. *Id.* The confirmed plan provided for 100%, interest-free repayment of the Keathleys' debts to their creditors. *See id.* at 14a, 22a. The Keathleys then turned their efforts to complying with the plan.

Then respondent—who had no connection to the bankruptcy—suddenly disrupted Mr. Keathley's life and, as it turned out, livelihood. In August 2021, more than a year after the Keathleys' Chapter 13 plan was confirmed, a truck driven by an employee of respondent Buddy Ayers Construction, Inc., struck the vehicle Mr. Keathley was driving and seriously injured him. *Id.* at 1a-2a. The collision injured Mr. Keathley's neck, back, and hands, leading to surgery, injections, and prolonged physical therapy. CA5 Record on Appeal (ROA) 494-95. He still suffers lasting physical limitations that have permanently reduced his earning capacity. ROA496-98.

Mr. Keathley informed his bankruptcy counsel of the accident and the basis for his personal injury claims a few weeks after the accident. JA184. His bankruptcy counsel, however, did not inform the bankruptcy court. Pet.App.3a. But this was not unusual. Mr. Keathley furnished evidence that "the usual practice in the Eastern District of Arkansas is not to disclose pending personal injury lawsuits to the bankruptcy courts until shortly before they are resolved or settled." *Id.* at 17a; *see* JA252-54.[3]

2. In December 2021, Mr. Keathley—represented by different counsel—filed this personal injury suit against respondent in the United States District Court for the Northern District of Mississippi, alleging claims for negligence and vicarious liability for respondent's role in the crash and seeking damages to compensate for his injuries. ROA17-25.

In March 2023, respondent moved for summary judgment in the personal injury action on the ground that the case should be barred under the doctrine of judicial estoppel, because Mr. Keathley had purportedly sought to manipulate the courts by failing to update his schedule of assets to disclose his personal injury claims to the bankruptcy court. *See* ROA930-33. Yet, instead of trying to show that Mr. Keathley actually attempted to manipulate the courts, respondent argued that, "under Fifth Circuit precedent, motive [to conceal] is a given when a debtor/personal injury plaintiff fails to disclose his personal injury claim to the bankruptcy court." ROA976; *see* ROA970-78; ROA903-33; ROA1239-54.

Less than a week later, the Keathleys filed an amended schedule of assets notifying the bankruptcy

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[3] In 2022, the Keathleys' bankruptcy counsel filed amended bankruptcy plans in the bankruptcy court. But the relevant forms did not require a schedule of assets and he did not list the personal injury action. *See* JA3-23, JA24-44, JA45-65; JA181.

court of the pending personal injury suit. JA186-205. At that point, the Keathleys were set to continue making payments under the confirmed plan for more than a year. *See* JA49. Yet no creditor moved to modify the Keathleys' plan after receiving notice of the personal injury claims. Nor did the Chapter 13 trustee, who oversaw the Keathleys' bankruptcy. And the bankruptcy court itself did not make any adverse finding, much less formally sanction Mr. Keathley, for any delay. *See generally* Bankruptcy Case Dkt. Nos. 66-110; *see also* Pet.App.22a.[4]

Back in the district court, Mr. Keathley argued that judicial estoppel could not bar his claims because his failure to timely disclose them was "inadvertent." ROA1208-10. In support of that argument, Mr. Keathley submitted an affidavit attesting that he "never intended to make any misrepresentations" about the existence of his personal injury claims; that he "d[id] not know why the personal injury claims were not disclosed to the bankruptcy court sooner"; and that, after he told his bankruptcy attorney about the claims, he "believed [he] had done everything [he] needed to do." JA184. He also submitted an affidavit from his bankruptcy counsel attesting that disclosing the claims to the bankruptcy court "would have had no material effect" on the confirmation of the Keathleys' amended bankruptcy plan, and that

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[4] Separately, the Keathleys moved the bankruptcy court to approve a workers' compensation settlement Mr. Keathley had received as a result of his work-related accident. *See* JA305-07; JA308-10. The bankruptcy court approved the settlement—again without finding any intention to mislead the court or sanctioning the Keathleys for any delay in disclosure. JA313-14.

Mr. Keathley "received no benefit monetarily, or otherwise, from the nondisclosure." JA181-82.

3. The district court granted respondent's summary judgment motion and dismissed this case. Pet.App.56a; ROA1297. Focusing on inadvertence, the court "follow[ed] the directives of the Fifth Circuit" and asked only whether Mr. Keathley knew of the facts underlying his personal injury claims and had some hypothetical motive to conceal them from the bankruptcy court and creditors. Pet.App.44a; *see id.* at 43a-52a. It concluded that Mr. Keathley's "arguments of inadvertent error and mistakes of counsel" were insufficient to establish inadvertence under the Fifth Circuit's "consciously . . . rigid and unforgiving standards." *Id.* at 55a; *see id.* at 52a-53a.

Mr. Keathley moved for reconsideration. In support of his motion, he submitted an affidavit from Kellie Emerson, a staff attorney for the Chapter 13 trustee assigned to the Keathleys' case. JA252-54. Ms. Emerson attested that there was "nothing unusual or misleading about" the Keathleys "not disclosing the personal injury action while [it was] ongoing," and that it was "not uncommon" in the Eastern District of Arkansas "for debtors to amend their bankruptcy filings to disclose post-petition claims for personal injury actions prior to the settlement or resolution of the personal injury action." JA253. And she stated that the Keathleys "ha[d] received no benefit from the non-disclosure": Even if they had "immediately" disclosed the claims after the wreck, "it would not have had any effect on the administration of the bankruptcy" or "the amount the Keathleys would have had to pay or the time they would have had to pay it." JA254.

The district court denied reconsideration.

4. A panel of the Fifth Circuit affirmed. Applying its prior circuit precedent, the Fifth Circuit focused its analysis of whether Mr. Keathley's nondisclosure was "inadvertent" on whether he "stood to potentially benefit" from the concealment of his personal injury claims. Pet.App.12a-14a. The court did not consider evidence that he had told his bankruptcy attorney about the claims or that the bankruptcy court chose not to sanction him for any delay in disclosure. *See supra* at 8. Instead, the court relied on the fact that the Keathleys' 100% repayment plan was interest-free to conclude that Mr. Keathley had a *possible* motive to mislead—i.e., an attempt to avoid interest payments. Pet.App.14a. The court emphasized that this "'motivation sub-element is almost always met if a debtor fails to disclose a claim or possible claim to the bankruptcy court.'" *Id.* (citation omitted).

Judge Haynes concurred only in the judgment, explaining that Fifth Circuit precedent—under which merely a "*hypothetical* motive" to mislead the court was sufficient to trigger judicial estoppel—left her no choice. *Id.* at 20a-21a, 23a (emphasis added). She expressed "doubt" that applying judicial estoppel to bar Mr. Keathley's claims advanced the doctrine's purposes given "evidence that [his] failure to disclose the personal injury claim[s] on his bankruptcy schedules was an honest mistake"—one that "was of little concern to the bankruptcy court and would not impact Keathley's creditors." *Id.* at 21a. She further opined that it made "little sense" for respondent "to benefit from something it ha[d] no involvement in and for which the bankruptcy court [did] not appear to think the plaintiff should be sanctioned." *Id.* at 22a. In her view, applying judicial estoppel in these circumstances would hand respondent an "unwarranted windfall." *Id.*

5. In late 2024, while this case was pending, the Keathleys completed their Chapter 13 repayment plan—which no creditor had sought to modify based on Mr. Keathley's potential personal injury claims. Bankruptcy Case Dkt. No. 99. Their eligible debts were discharged, and their bankruptcy case was closed. Bankruptcy Case Dkt. Nos. 106, 110. Yet this action remains barred under the Fifth Circuit's extreme judicial estoppel rule, even though Mr. Keathley continues to suffer from injuries that he sustained as a result of respondent's negligence.

SUMMARY OF ARGUMENT

The Fifth Circuit erred in invoking judicial estoppel to dismiss Mr. Keathley's personal injury claim—and thereby hand respondent an undeserved windfall—based on the existence of a *potential* financial motive to mislead the bankruptcy court.

I. The Fifth Circuit's outlier judicial estoppel rule cannot be squared with the equitable roots of the judicial estoppel doctrine, the rules and objectives of the bankruptcy system, or common sense.

First, the Fifth Circuit's rule flouts the flexibility that equity demands. This Court has time and again made clear that "[e]quity eschews mechanical rules" and requires "flexi[ble]," all-things-considered judgments. *Holmberg v. Armbrecht*, 327 U.S. 392, 396 (1946). The Fifth Circuit's presumption of bad faith is precisely the kind of "rigid rule" this Court has repeatedly rejected. *Holland v. Florida*, 560 U.S. 631, 651 (2010). It treats as dispositive a factor present in nearly every bankruptcy—a *potential* motive to conceal assets—while walling off evidence of a debtor's actual intent, such as reliance on counsel, prompt corrections, the bankruptcy court's own assessment of the debtor's intent, and other context-specific factors. An equitable doctrine like judicial estoppel demands a more holistic analysis.

Second, the Fifth Circuit's rule collapses the crucial line between "intentional" misconduct and honest "mistake" that judicial estoppel exists to police. *New Hampshire*, 532 U.S. at 749-51, 753 (citations omitted). The Fifth Circuit's test "essentially concludes that *any* debtor who fails to disclose a claim has a nefarious motive to do so." *Love*, 677 F.3d at 271 (Haynes, J., dissenting) (emphasis added). But given judicial estoppel's purpose, equity demands a rule that actually distinguishes between intentional manipulation and honest mistakes. And, for similar reasons, the Fifth Circuit's near-absolute presumption of intent cannot be squared with how presumptions operate in civil litigation more generally. The presumption says nothing meaningful about an intent to mislead and is, for all practical purposes, irrebuttable—even though there is no valid reason to think all (or virtually all) bankruptcy omissions are the product of intentional deception.

Third, the Fifth Circuit's rule yields deeply *in*equitable results, undermining the animating purpose of an equitable doctrine like judicial estoppel. It hands windfalls to alleged wrongdoers like respondent that have no connection to the bankruptcy, denies victims the opportunity to recover for tortious conduct, civil rights violations, or other harms, and denies innocent creditors potential recoveries—even when considering the totality of the circumstances would show that the failure to disclose a claim was inadvertent. These unjust results are further proof that the Fifth Circuit's rule is wrong.

Finally, the Fifth Circuit's rule conflicts with the bankruptcy system's purpose and structure—from the foundational "fresh start" for honest debtors, to Congress's decision to allow liberal amendments to asset schedules, to the Bankruptcy Code's graduated, intent-based sanctions for misconduct, including the concealment of assets. The Fifth Circuit's harsh rule—which effectively treats every omission or belated disclosure as fraud—defies that system.

II. Instead, this Court should hold that courts must consider the totality of the circumstances in deciding whether a debtor's nondisclosure was inadvertent or intentional before invoking the blunt hammer of a dismissal based on judicial estoppel. That approach aligns with equity's tradition of flexibility and ensures that judicial estoppel is not wielded to produce inequitable results or to contravene the bankruptcy system's own calibrated approach to debtor omissions. It is also flexible enough to detect and punish deliberate gamesmanship without ensnaring honest mistakes.

In applying that test, courts should weigh a variety of factors, such as the debtor's sophistication and explanation for the omission, communications with bankruptcy counsel, the timing and promptness of any corrective actions, whether the delay resulted in any unfair benefit to the debtor, and the bankruptcy court's own findings or actions after becoming aware of the omission. Because the bankruptcy court is best positioned to assess the debtor's conduct in context, its actions—including any findings or sanctions—or inaction should meaningfully inform the analysis. But the Fifth Circuit's rule leaves no room for such considerations.

III. The judgment below should be vacated and the case remanded for application of the proper standard. Because the Fifth Circuit's decision is based on the circuit's outlier presumption of bad faith, it treated evidence bearing directly on Mr. Keathley's intent to mislead as irrelevant and never engaged in a holistic assessment of the facts and surrounding circumstances. Consistent with this Court's usual practice, it should remand for the lower courts to apply the correct standard in the first instance.

ARGUMENT

I. THE FIFTH CIRCUIT'S OUTLIER JUDICIAL ESTOPPEL RULE SHOULD BE REJECTED

Judicial estoppel is an equitable doctrine with a focused aim: to "'protect the integrity of the judicial process' by 'prohibiting parties from deliberately changing positions according to the exigencies of the moment.'" *New Hampshire v. Maine*, 532 U.S. 742, 749-50 (2001) (citations omitted). Its target is not every inconsistency, but "*deliberate[]*" gamesmanship, *id.* (emphasis added) (citation omitted)—preventing litigants from "playing 'fast and loose with the courts,'" *Scarano v. Central R. Co.*, 203 F.2d 510, 513 (3d Cir. 1953) (citation omitted). That purpose distinguishes judicial estoppel from equitable estoppel: "[I]n contrast to equitable estoppel's concentration on the integrity of the parties' relationship to each other, judicial estoppel focuses on the integrity of the judicial process." *Konstantinidis v. Chen*, 626 F.2d 933, 937 (D.C. Cir. 1980).

Central to this case is the longstanding principle—acknowledged by the Court in *New Hampshire*—that judicial estoppel applies when "the party who is alleged to be estopped 'intentionally misled the court to gain unfair advantage.'" *John S. Clark Co. v. Faggert & Frieden, P.C.*, 65 F.3d 26, 29 (4th Cir. 1995) (citation omitted); *see New Hampshire*, 532 U.S. at 751. Because judicial estoppel "looks toward cold manipulation and not unthinking or confused blunder," *Konstantinidis*, 626 F.2d at 939 (citation omitted), it does not apply when a party's inconsistent positions were the product of "inadvertence or mistake," *John S. Clark*, 65 F.3d at 29; *see New Hampshire*, 532 U.S. at 753 (quoting *John S. Clark*, 65 F.3d at 29); Rand G. Boyers, Comment, *Precluding Inconsistent Statements: The Doctrine of Judicial Estoppel*, 80 Nw. U. L. Rev. 1244, 1249 (1986) (It is only the "*intentional* assertion of an inconsistent position [that] perverts the judicial machinery." (emphasis added)). A contrary rule would uncouple judicial estoppel from its proper object: deterring the intentional manipulation of the courts.

The Fifth Circuit has "recognized three particular requirements" for applying judicial estoppel as to claims potentially impacting bankruptcies: (1) the debtor must have taken "'clearly inconsistent'" positions; (2) the bankruptcy court must have "'accepted the previous position'"; and (3) the inconsistent positions "'must not have been inadvertent.'" *Kane v. National Union Fire Ins. Co.*, 535 F.3d 380, 385-86 (5th Cir. 2008) (citation omitted). The Fifth Circuit treats the first two of these factors as satisfied whenever a debtor fails to disclose a lawsuit to the bankruptcy court and secures plan confirmation or a discharge. *See, e.g.*, *Allen v. C & H Distributors, L.L.C.*, 813 F.3d 566, 572-73 (5th Cir. 2015). Its analysis of those two factors is not disputed here. Rather, this case turns on the third requirement: that the omission not be "inadvertent." *Kane*, 535 F.3d at 385-86 (citation omitted).

Whereas other circuits look to the totality of the circumstances to assess whether a debtor's omission was inadvertent or an honest mistake before invoking judicial estoppel to bar his claim, the Fifth Circuit mechanically presumes bad faith whenever a *potential* financial motive to mislead the bankruptcy court exists, as it virtually always does in the bankruptcy context. The Fifth Circuit's rule presuming bad faith based on the existence of a potential motive to mislead defies judicial estoppel's nature and purpose. It turns a flexible doctrine into a rigid rule of near strict liability. And it transforms a tool designed to promote equity by policing intentional wrongdoing into a blunt instrument civil defendants can use to secure a windfall without establishing actual intent to mislead. It should be rooted out for multiple, independent reasons.

A. The Fifth Circuit's Rule Cannot Be Reconciled With Equity's Tradition Of Flexibility

As an equitable doctrine, judicial estoppel must be flexible. But the Fifth Circuit's rule is the opposite.

1. This Court has long made clear that "[e]quity eschews mechanical rules" and "depends on flexibility." *Holmberg v. Armbrecht*, 327 U.S. 392, 396 (1946); *see Hecht Co. v. Bowles*, 321 U.S. 321, 329 (1944) ("The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case."). The Court has explained that equity's defining features include its "resistance to rigid rules" and

demand for "case-by-case" judgments made based on *all* the relevant circumstances. *Holland v. Florida*, 560 U.S. 631, 649-51 (2010) (citation omitted); *see Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 248 (1944) (underscoring the "flexibility" inherent in "equitable procedure").

Time and again, this Court has rejected categorical or *per se* approaches to equitable doctrines, and instead insisted on a totality-of-the-circumstances inquiry grounded in fairness. In *Hecht*, for example, the Court made clear that the availability of injunctive relief turns on case-specific circumstances, not one-size-fits-all criteria. *See* 321 U.S. at 329-30. In *eBay Inc. v. MercExchange, L.L.C.*, it refused a "categorical rule" for when patent holders could establish irreparable harm to secure injunctions. 547 U.S. 388, 391-94 (2006). And in *Holland*, the Court rejected an "absolute legal rule[]" on when attorney misconduct could trigger equitable tolling in favor of a "'case-by-case,'" context-specific inquiry. 560 U.S. at 649-51, 653-54 (citation omitted).

Across these decisions—and many others—the Court has made clear that equitable principles work only when courts consider the whole picture on the dispositive question. That's because bright-line rules can work real injustice, which undermines the entire point of equitable doctrines: to produce *fair* outcomes.

The Fifth Circuit's outlier judicial estoppel rule is precisely the kind of "rigid rule[]" this Court's precedents—and equity—foreclose. *Holland*, 560 U.S. at 651. It deems a debtor's omission not inadvertent whenever the debtor has some *potential* "motive to conceal" a known claim. *In re Flugence*, 738 F.3d at 130-31; *see Allen*, 813 F.3d at 574; Pet.App.13a-14a. If such a motive exists—as it almost always does by virtue of the bankruptcy itself—the Fifth Circuit brands the debtor's failure to disclose intentional, and then stops.[5]

Under that blunt framework, evidence probative of the debtor's intent is legally "irrelevant" and need not be considered. *In re Flugence*, 738 F.3d at 130-31 (dismissing possibility that debtor did not understand disclosure obligations). So courts simply ignore evidence that, for example, a debtor told his bankruptcy lawyer about the claim, *see* Pet.App.52a-53a, relied on his attorney's advice, *see In re Flugence*, 738 F.3d at 130, misunderstood his disclosure obligations, *see Fornesa v. Fifth Third Mortg. Co.*, 897 F.3d 624, 628 (5th Cir. 2018), or acted promptly to correct his omission once he realized it, *see In re Vioxx Prods. Liability Litig.*, 889 F. Supp. 2d 857, 861-62 (E.D. La. 2012). None of that matters under the Fifth Circuit's rule. There is thus no effort "to do equity and to mould each decree to the necessities of the particular case." *Hecht*, 321 U.S. at 329.

But as an "equitable" doctrine, judicial estoppel cannot be flattened into a "precise formula or test." *Zedner v. United States*, 547 U.S. 489, 504 (2006); *see New Hampshire*, 532 U.S. at 750 ("[T]he circumstances under which judicial estoppel may appropriately be invoked are probably not reducible to any general formulation of principle." (citation omitted)). Its equitable character instead demands a full, fact-specific review before deploying its strong

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[5] The Fifth Circuit also considers whether the debtor knew the "facts giving rise to" his claim at the time he failed to disclose it in the bankruptcy court. *In re Flugence*, 738 F.3d at 130 (citation omitted). But that factor is essentially meaningless except in cases that involve latent injuries or concealed harms.

medicine—just as this Court requires for other equitable remedies. *See supra* at 17; *see, e.g.*, *Martineau v. Wier*, 934 F.3d 385, 394 (4th Cir. 2019) ("Whether the equitable doctrine of judicial estoppel should be invoked depends on the 'specific factual context[]' of a case." (alteration in original) (quoting *New Hampshire*, 532 U.S. at 751)). And that principle necessarily requires courts to evaluate the totality of the circumstances bearing on whether an omission was the product of a deliberate attempt to mislead the court, rather than inadvertence or a mistake, before invoking judicial estoppel to bar a claim.

A "rigid rule[]" that presumes bad faith whenever a *potential* motive to mislead exists defies this Court's repeated admonition that equitable doctrines be applied through a case-specific, context-driven analysis. *Holland*, 560 U.S. at 649-51.

2. In opposing certiorari, respondent suggested that requiring courts to assess a debtor's intent before applying judicial estoppel is *itself* a rigid rule at odds with the "flexible" nature of equitable doctrines. BIO 17-18. But the Fifth Circuit *agrees* that judicial estoppel does not apply where a debtor's omission was inadvertent, *see, e.g.*, *Kane*, 535 F.3d at 385-86—as this Court has recognized, *see supra* at 14-15. The only question here is whether courts should look to the totality of the circumstances in gauging whether an omission was inadvertent, or instead presume bad faith based solely on the existence of a hypothetical motive to mislead the bankruptcy court. The answer is clear. Only a totality-of-the-circumstances test honors the flexibility demanded by equity.

Nor does respondent's broader premise—that requiring a defendant to satisfy *any* specific element of judicial estoppel is *always* inherently too "rigid"—

find support in this Court's cases or in common sense. BIO 17-18. Equity is flexible, but it is not amorphous. Indeed, equity is filled with substantive rules that channel the exercise of discretion. In *Minerva Surgical, Inc. v. Hologic, Inc.*, for instance, the Court explained that "assignor estoppel comes with limits" that "guard[] the doctrine's boundaries"—there, that the doctrine "appl[ies] only when its underlying principle of fair dealing comes into play." 594 U.S. 559, 576 (2021). And in *Menominee Indian Tribe of Wisconsin v. United States*, the Court held that it was not "overly rigid" to require a litigant seeking to invoke equitable tolling to establish two "elements" first. 577 U.S. 250, 255-56 (2016).

The same goes here. Judicial estoppel's essential guardrail is the need to show an intent to mislead—a requirement that prevents misuse of its "'strong medicine.'" *Ah Quin v. County of Kauai Dep't of Transp.*, 733 F.3d 267, 277 (9th Cir. 2013) (quoting *Ryan Operations G.P. v. Santiam-Midwest Lumber Co.*, 81 F.3d 355, 363 (3d Cir. 1996)).

B. The Fifth Circuit's Rule Fails To Distinguish Intentional Efforts To Mislead A Court From Honest Mistakes

The Fifth Circuit's rule also fails to separate honest mistakes from intentional manipulation, and thus does not advance the aim of judicial estoppel.

1. The Fifth Circuit's rule triggers judicial estoppel based on only a generic financial motive that exists in practically every Chapter 13 case. It is enough that some "*potential* financial benefit" might flow from concealment—a condition that is almost always met, because nearly every debtor could theoretically benefit from shielding assets from

creditors. *Allen*, 813 F.3d at 574 (emphasis added) (citation omitted); *see* Pet.App.14a (debtor "almost always" has a sufficient motive to conceal (citation omitted)); *Slater v. United States Steel Corp.*, 871 F.3d 1174, 1184 (11th Cir. 2017) (en banc) ("[A] Chapter 13 debtor would always have a potential motive to conceal a civil claim from creditors so as to 'keep the proceeds for herself and den[y] creditors a fair opportunity to claim what was rightfully theirs.'" (alteration in original) (citation omitted)). The result is thus already baked into the analysis under the Fifth Circuit's rule. Proving the point, the Fifth Circuit has *never* found that an omission was inadvertent in a precedential decision in which it applied its rule presuming bad faith.

At the same time, the Fifth Circuit's rule ignores evidence that bears directly on whether a debtor actually intended to mislead. Did the debtor misunderstand his disclosure obligations? Tell his bankruptcy attorney about the claim? Promptly amend his schedules once he realized the omission? Did the bankruptcy court make any finding of misconduct? And so on. Under the Fifth Circuit's rule, none of that—or any other evidence bearing on a debtor's actual intent—matters, because bad faith is presumed based solely on the existence of a potential motive to mislead. *See supra* at 18. Yet such evidence is obviously relevant to whether an omission was inadvertent or instead intentional.

What's more, the Fifth Circuit's presumption of intent is entirely unfounded. There is no reason to think that all, nearly all, or even most debtors are out to game the system whenever possible. That assumption harkens back to the—rightfully repudiated—era in which debtors were categorically deemed morally corrupt and is wildly out of step with reality. As the American Bankruptcy Institute's Commission on Consumer Bankruptcy explained:

> Even with the aid of an attorney, a consumer has a huge task to assemble the information needed to complete [the upwards of 20 forms that may be required]. Moreover, a consumer might not appreciate that a potential lawsuit is an asset in the same way as a house or a bank account. Also, it can be unclear when a cause of action arises thereby creating a duty to disclose in the debtor.

American Bankruptcy Institute, *Final Report on Consumer Bankruptcy* 29 (2019).

Indeed, most Americans navigating the Chapter 13 bankruptcy process are unsophisticated when it comes to the legal process. Even when they are fortunate enough to have attorneys, it may be unclear to them exactly what obligations they bear. "[M]echanical applications" of judicial estoppel—like the Fifth Circuit's rule—"do not appreciate the context of a consumer bankruptcy filing." *Id.*

To be sure, the possibility for wrongdoing exists. Thus, "*[s]ome* omissions will be culpable and should be punished." *Metrou v. M.A. Mortenson Co.*, 781 F.3d 357, 360 (7th Cir. 2015) (Easterbrook, J.) (emphasis added). "But other omissions will be innocent"—such as where they are "based on poor communication between bankruptcy counsel and tort counsel, or based on a belief that the tort claim will not be valuable"—"and should not be punished." *Id.* The goal of an equitable doctrine like judicial estoppel is to look at the facts and circumstances and sort the bad from the innocent. Yet the Fifth Circuit's rule forecloses any such inquiry by deeming virtually every untimely disclosure a bad act.

2. The Fifth Circuit's rule is also irreconcilable with how presumptions are supposed to operate in civil litigation more generally.

The Fifth Circuit's approach "effectively creates a presumption" in favor of the defendant asserting the affirmative defense of judicial estoppel. *Love v. Tyson Foods, Inc.*, 677 F.3d 258, 270 n.8 (5th Cir. 2012) (Haynes, J., dissenting). It "presume[s] . . . fraudulent intent simply from nondisclosure itself," because "'knowledge' is a given, and 'motive,' according to the [Fifth Circuit] is 'self-evident.'" *Id.* at 271 n.9; *see* Pet.App.30a (noting that "something approaching an absolute presumption of intent exists" in the Fifth Circuit "in cases where a debtor fails to disclose a tort lawsuit to a bankruptcy court"). In other words, in practical effect, virtually *every* debtor is deemed to have acted in bad faith.

But under this Court's precedents, a presumption must be "rational[ly] connect[ed]" to the ultimate fact it is meant to establish, and it normally must remain genuinely rebuttable. *Mobile, Jackson & Kansas City R.R. Co. v. Turnipseed*, 219 U.S. 35, 43 (1910). Presumptions cannot wall off probative, contrary evidence, *see id.*, or function as a conclusive rule when doing so would cause the court to sometimes "miss the mark," *Johnson v. Williams*, 568 U.S. 289, 301-02 (2013) (refusing to adopt "irrebuttable" presumption in the habeas context); *cf. Vlandis v. Kline*, 412 U.S. 441, 452 (1973) (rejecting an "irrebuttable presumption" under the Due Process Clause that was not "necessarily or universally true").

The Fifth Circuit's rule that presumes bad faith based solely on a potential motive to mislead fails both requirements. It says nothing meaningful about intent, because such a potential motive is present in virtually every bankruptcy. *See supra* at 20-21. And as discussed, the presumption of intent is, for all practical purposes, irrebuttable—even though that inference is often wrong. *See supra* at 21-23. This is precisely the kind of categorical device equity abhors and this Court's presumption precedents forbid.

C. The Fifth Circuit's Rule Grants Unwarranted Windfalls To Wrongdoers, Harms Creditors, And Undermines The Public Interest In Enforcing The Laws

The Fifth Circuit's approach is also fundamentally inequitable. As an equitable doctrine, judicial estoppel is—by definition—supposed to yield *equitable* results. *See, e.g.*, *Meyer v. United States*, 375 U.S. 233, 237-39 (1963). Any faithful interpretation of the doctrine must therefore yield, in the run of cases, "fair and right" outcomes. *Black's Law Dictionary* (12th ed. 2024) (defining "equity" as "[t]he body of principles constituting what is fair and right"). But the Fifth Circuit's rule systematically does the opposite—"produc[ing] a decidedly non-equitable result" by barring honest debtors from vindicating their claims for relief, conferring windfalls on civil defendants accused of wrongdoing, and depriving innocent creditors of potential recoveries. *Martineau*, 934 F.3d at 396. Those results run "counter to the very underpinnings of judicial estoppel." *Id.*

The Fifth Circuit's rule "'operates . . . to the benefit of only an alleged bad actor'"—the civil defendant who "stand[s] to gain a potential 'windfall'" when the claim against him is dismissed—even without any showing of bad faith by the debtor. *Id.* (omission in original) (citations omitted). When a court applies judicial estoppel, the defendant charged with wrongdoing "avoids liability on an otherwise potentially meritorious civil claim." *Slater*, 871 F.3d at 1187. In cases like this, the result is even more extreme, because the allegedly manipulative conduct is in a different proceeding (the bankruptcy action) in which the civil defendant is not involved. Yet the defendant—like respondent here—walks away scot-free. That "do[es] nothing to protect the integrity of the courts" where there was no intent by the plaintiff to mislead; if anything, it undermines the judicial system. *Ah Quin*, 733 F.3d at 276; *see* Pet.App.21a (Haynes, J., concurring in the judgment) ("[P]reventing Keathley's personal injury action [from proceeding] might undermine the judicial system [judicial estoppel] claims to protect.").

This result leaves victims without redress, even for serious wrongdoing. As explained in the petition, the Fifth Circuit's rule has led to the dismissal of a broad range of claims, including claims not only for personal injuries (as here), but also for sex discrimination, pregnancy discrimination, disability discrimination, and other wrongs. Pet.22-23 (citing cases). In those cases, wrongdoers evade responsibility, no matter how blatant their misconduct or how serious the harm they caused. By the same token, the Fifth Circuit's rule "undermines enforcement of the substantive law"—from contract to antidiscrimination law, and everything in between. 18B Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 4477.9 (3d ed. 2025, Westlaw). There is "little in the way of equities" to recommend such an undesirable and grossly unfair outcome. *Martineau*, 934 F.3d at 396.

Finally, innocent creditors lose out, too, because applying judicial estoppel may "vaporiz[e] assets that could be used for the creditors' benefit." *Biesek v. Soo Line R.R. Co.*, 440 F.3d 410, 413 (7th Cir. 2006) (Easterbrook, J.). When judicial estoppel wipes out a civil claim, it can do more than bar the debtor's own personal recovery—it may also erase an asset that could otherwise "increase the value of the bankruptcy estate." *Slater*, 871 F.3d at 1188. That outcome "in turn harms creditors" by depriving them of a potential source of recovery through no fault of their own, undermining a central purpose of the bankruptcy process: to marshal estate assets for the creditors' benefit. *Id.*; *see Ah Quin*, 733 F.3d at 275 ("By not permitting the civil action to go forward, the *creditors lose out* on a potential recovery."). In other words, the Fifth Circuit's rule unfairly penalizes the very stakeholders it is supposedly intended to protect.[6]

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[6] In some cases, a Chapter 13 trustee might be able to pursue a claim for the benefit of creditors. *See, e.g.*, *In re Flugence*, 738 F.3d at 128, 131-32. *But see In re Bowker*, 245 B.R. 192, 200 (Bankr. D.N.J. 2000) (concluding that Chapter 13 debtor alone had standing to pursue pre-petition claim); *Boyden v. City of Villa Rica, Georgia*, No. 05-cv-033, 2006 WL 8553652, at *3 (N.D. Ga. Jan. 31, 2006) (same). But requiring Chapter 13 trustees to pursue civil claims in place of the actual plaintiffs would impose significant "administrative burden[s]"—like having to "assess [the] merits" of a debtor's claim; "make a cost benefit analysis of pursuing" it; "select and retain counsel" and potentially "expert witnesses and investigators"; "incur expenses for filing fees, transcripts and other costs of litigation"; and participate in "formulating litigation strategy, discovery and

This case illustrates the pernicious consequences of the Fifth Circuit's approach. The lower courts barred Mr. Keathley's personal injury action seeking damages for serious injuries that required costly medical care and continue to impact his daily life and the kind of work he can do, even though "there was evidence that Keathley's failure to disclose the personal injury claim[s] on his bankruptcy schedules was an honest mistake," and his delay in disclosing the claims did "not impact Keathley's creditors." Pet.App.21a (Haynes, J., concurring in the judgment). Meanwhile, respondent will simply walk away without bearing any responsibility for the injuries its employee's negligence inflicted on Mr. Keathley, even though respondent was in no way harmed by Mr. Keathley's delay in disclosing the claims because this action is "totally unrelated to the bankruptcy." *Id.* That result is in no way fair or just.[7]

D. The Fifth Circuit's Rule Is At Odds With The Rules And Policies Underlying The Bankruptcy System

Finally, the Fifth Circuit's rigid rule contravenes the policy judgments Congress enshrined in the bankruptcy system itself. And that is no small matter: Even the Fifth Circuit recognizes that judicial estoppel must be applied "against the

negotiating settlement." *In re Bowker*, 245 B.R. at 200. As a result, a Chapter 13 trustee may abandon claims the debtor would have pursued, to creditors' potential detriment.

[7] On the other side of the ledger, the Fifth Circuit has suggested that its harsh rule "deter[s] dishonest debtors." *Reed v. City of Arlington*, 650 F.3d 571, 574 (5th Cir. 2011). But petitioner's rule excuses only inadvertent or honest mistakes—and thus equally deters dishonest debtors.

backdrop of the bankruptcy system and the ends it seeks to achieve." *Reed v. City of Arlington*, 650 F.3d 571, 574 (5th Cir. 2011) (en banc) (citation omitted). Yet its rule undercuts those very ends.

For starters, the Fifth Circuit's rule is incompatible with "[t]he principal purpose of the Bankruptcy Code": "grant[ing] a 'fresh start' to the 'honest but unfortunate debtor.'" *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 367 (2007) (citation omitted). The Code is designed to give debtors the chance to restart—and rebuild—their lives. Denying victims recovery for wrongs committed against them impedes that objective. Yet the Fifth Circuit's rule does just that, extinguishing potentially valuable claims and related remedies based solely on good-faith mistakes. A rule that deprives honest debtors of the means to restart their lives cannot be squared with the Code's core purpose.

Nor does the Fifth Circuit's rule remotely reflect how bankruptcy law itself understands the realities of disclosure obligations. Disclosure is undoubtedly important. But "bankruptcy law, perhaps more than any other legal field, recognizes that people will make mistakes and need not be penalized for every error." *Mayor of Baltimore v. West Virginia (In re Eagle-Picher Indus., Inc.)*, 285 F.3d 522, 529 (6th Cir. 2002) (citation omitted). For example, "[o]missions frequently occur in the . . . Schedules of Assets and Liabilities a debtor files with his bankruptcy petition." *Slater v. United States Steel Corp.*, 820 F.3d 1193, 1240 (11th Cir. 2016) (Tjoflat, J., specially concurring), *on reh'g en banc*, 871 F.3d 1174 (11th Cir. 2017). And that is hardly surprising: The forms are complicated, and individual debtors often rely on overburdened or inexperienced counsel—to the extent they have counsel at all. *See supra* at 22.

The Bankruptcy Rules account for that reality, permitting a Chapter 13 debtor to "amend a voluntary petition, list, schedule, or statement at any time before the case is closed." Fed. R. Bankr. P. 1009(a)(1). That liberal amendment regime reflects Congress's recognition that omissions inevitably will occur—and policy judgment that debtors should be able to correct them without forfeiting valuable rights. It is flatly "inconsistent" with that congressional judgment to treat a failure to list a lawsuit as presumptive "manipulat[ion]" and then wield judicial estoppel in the name of protecting the bankruptcy system. *Slater*, 871 F.3d at 1187.

The Fifth Circuit's rule also is at odds with the fact that the bankruptcy system itself distinguishes between intentional omissions and honest mistakes. For example, when a Chapter 13 debtor mistakenly omits an asset, the bankruptcy court can order him to amend an incomplete schedule, Fed. R. Bankr. P. 1009(a); the trustee can request that the debtor modify a Chapter 13 plan, including to increase the amount paid, 11 U.S.C. § 1329; and a closed bankruptcy can be reopened for the undisclosed asset to be administered, preventing an unwarranted windfall to the debtor, *id.* § 350. In other words, mistakes are corrected, not punished.

Knowing concealment, by contrast, can trigger far more severe sanctions: The bankruptcy court can revoke a Chapter 13 plan's confirmation or revoke a Chapter 13 debtor's discharge. *Id.* §§ 1330(a), 1328(e). And a bankruptcy court or trustee must report a debtor to a U.S. Attorney if there are reasonable grounds for believing that the debtor knowingly and fraudulently concealed estate property or knowingly and fraudulently made various false statements. 18 U.S.C. §§ 3057(a), 152; *see, e.g.*, U.S. Department of Justice, Executive Office for United States Trustees, *Handbook for Chapter 13 Standing Trustees*, at 5-1 to 5-4 (Jan. 31, 2025 update), https://www.justice.gov/media/1293866/dl?inline (describing duty to report and refer suspected criminal activity, including knowing or fraudulent concealment of assets); 28 U.S.C. § 586(a)(3)(F) (imposing similar duty on U.S. Trustee). This calibrated scheme reflects Congress's judgment that consequences should track a debtor's intent—harsh sanctions for knowing misconduct, but far more leniency for honest errors.

The Fifth Circuit's rigid rule stands in stark contrast. By failing to distinguish fraud from honest mistakes, it punishes the latter just as harshly as the former. As the district court below put it, the Fifth Circuit's "stringent approach will, no doubt, result in many debtors who did, in fact, make an honest mistake being barred from pursuing potentially meritorious tort claims." Pet.App.55a-56a. That outcome is irreconcilable not just with equity, but with the policy judgments that Congress embedded in the very system the Fifth Circuit's rule purports to protect. *See, e.g.*, *Reed*, 650 F.3d at 574.

The Fifth Circuit's outlier rule cannot stand.

II. THE COURT SHOULD HOLD THAT COURTS MUST LOOK TO THE TOTALITY OF THE CIRCUMSTANCES IN DETERMINING WHETHER A FAILURE TO DISCLOSE WAS INADVERTENT

In deciding whether to invoke judicial estoppel, courts should undertake a holistic assessment of all facts and circumstances bearing on a debtor's intent to mislead. Such a holistic approach is consistent with the Court's broader equity jurisprudence. It accords with the majority approach to the question presented in the court of appeals. And it ensures that judicial estoppel is not deployed in ways that work inequity or contravene the bankruptcy system's own calibrated approach to debtor omissions.

A. Courts Must Consider The Totality Of The Circumstances To Determine Whether A Debtor's Nondisclosure Was Inadvertent

The proper rule is the one already embraced by numerous circuits: When a debtor-plaintiff fails to timely disclose a claim, judicial estoppel should not bar that claim unless a court determines that the debtor intended to mislead the bankruptcy court about the claim's existence after considering the totality of the circumstances. If a court concludes that the failure to timely disclose a claim was inadvertent or mistaken, estoppel is not warranted.

In *Slater v. United States Steel Corp.*, for example, the unanimous en banc Eleventh Circuit reconsidered and rejected its prior precedent "treat[ing] the fact that the plaintiff could *potentially* benefit from the nondisclosure as sufficient to establish that the plaintiff, in fact, intended to deceive the court and manipulate the proceedings." 871 F.3d at 1182 (emphasis added). Instead, the en banc court held that a court "must consider all the facts and circumstances" concerning whether a debtor actually intended to mislead the courts before invoking judicial estoppel to bar his claim. *Id.* at 1180. As the court explained, this holistic approach also "allows a district court to consider any findings or other actions by the bankruptcy court that might help in determining whether the debtor purposely intended to mislead the court and creditors." *Id.* at 1186.

Other circuits likewise use a holistic approach. The Fourth Circuit requires courts to undertake "a full analysis of all the 'specific facts and circumstances'" of a debtor-plaintiff's case to determine whether he "'intentionally misled the court to gain [an] unfair advantage.'" *Martineau*, 934 F.3d at 393-96 (alteration in original) (citations omitted). The Ninth and Seventh Circuits have recognized that, when a debtor tries to correct his error, "[t]he relevant inquiry is not limited to the plaintiff's knowledge of the pending claim and the universal motive to conceal a potential asset," but instead must look more "broadly" to the debtor's "intent when filling out and signing the bankruptcy schedules." *Ah Quin*, 733 F.3d at 276-77; *see Spaine v. Community Contacts, Inc.*, 756 F.3d 542, 547-48 (7th Cir. 2014) (considering debtor's testimony about oral disclosure). And the Sixth Circuit likewise considers facts bearing on whether the plaintiff actually intended to mislead the courts before invoking judicial estoppel to bar a claim. *See, e.g.*, *Stanley v. FCA US, LLC*, 51 F.4th 215, 219, 221 (6th Cir. 2022); *Eubanks v. CBSK Fin. Grp., Inc.*, 385 F.3d 894, 898-99 (6th Cir. 2004).

Such a holistic approach to this inquiry honors judicial estoppel's equitable—and flexible—nature.

See Part I.A, *supra*. As the Eleventh Circuit explained, "[r]equiring the district court to consider all facts and circumstances in evaluating the plaintiff's intent is the more flexible, less mechanical approach that equity demands." *Slater*, 871 F.3d at 1187. And "limiting judicial estoppel to those cases in which the facts and circumstances warrant it is more consistent with the equitable principles that undergird the doctrine." *Id.* at 1186. The holistic approach is also better calibrated than the Fifth Circuit's "one-size-fits all" rule to "ensure[] that judicial estoppel is applied only when a party acted with a sufficiently culpable mental state." *Id.* at 1185-86; *see supra* at 20-24. In addition, undertaking a holistic assessment "reduce[s] the risk that the application of judicial estoppel will give the civil defendant a windfall at the expense of innocent creditors." *Slater*, 871 F.3d at 1186.

The holistic inquiry is also consistent with the approach recommended by the American Bankruptcy Institute's Commission on Consumer Bankruptcy. In 2019, the Commission—whose members included retired bankruptcy judges, scholars, and practitioners—expressed "concern[]" that, in the bankruptcy context, some courts apply judicial estoppel "mechanically in a way that is not faithful to the Supreme Court's directive in *Maine v. New Hampshire* as well as the doctrine's historical roots." *Final Report on Consumer Bankruptcy*, *supra*, at 28; *see id.* Appendix A (identifying members). The Commission thus recommended that, "[i]n deciding whether to apply judicial estoppel, courts should consider the totality of the circumstances"—an analysis "consistent with the Eleventh Circuit's approach in *Slater*." *Id.* at 28-29; *see* Amici Hon. Melanie Cyganowski (Ret.) *et al.* Br. 15-17.

A holistic approach also aligns with how bankruptcy courts *themselves* regularly assess debtors' intent—by "consider[ing] the 'totality of circumstances.'" *Warchol v. Barry (In re Barry)*, 451 B.R. 654, 659 (B.A.P. 1st Cir. 2011) (citation omitted) (assessing intent "to hinder, delay, or defraud" that would support denying a discharge under 11 U.S.C. § 727(a)(2)(A) (citation omitted)); *see also, e.g.*, *Cook v. Knight (In re Knight)*, 621 B.R. 529, 536-37 (Bankr. N.D. Ga. 2020) (when determining whether debtor committed embezzlement or larceny, court should consider "the totality of the circumstances . . . as to fraudulent intent"); *Webb v. Isaacson (In re Isaacson)*, 478 B.R. 763, 788 (Bankr. E.D. Va. 2012) (absent "direct evidence of fraudulent intent," "the Court must consider all of the facts and circumstances presented by the evidence" in assessing whether debtor acted with fraudulent intent that would warrant denying discharge under 11 U.S.C. § 727 (a)(4)(A)). It makes no sense for federal district courts weighing judicial estoppel to consider a narrower universe of evidence than would a bankruptcy court contemplating intent-based sanctions.

B. A Range Of Factors Bear On Whether The Failure To Disclose A Claim Was Inadvertent Or An Honest Mistake

The totality-of-the-circumstances test is just that. Under a proper test for inadvertence or mistake, "[t]he relevant inquiry is not limited to the plaintiff's knowledge of the [facts underlying his] claim and the universal motive to conceal a potential asset—though those are certainly factors." *Ah Quin*, 733 F.3d at 276.

Instead, courts should consider *all* relevant facts and circumstances, which also may include:

- The debtor's level of sophistication;[8]
- The debtor's explanation for the nondisclosure;[9]
- Whether the debtor told his bankruptcy attorney about the civil claim;[10]
- Whether the same, or different, counsel handled the bankruptcy and civil claim;[11]
- Whether the debtor had filed for bankruptcy before;[12]
- The clarity of the bankruptcy form(s) the debtor filed[13] or rules governing disclosure;
- Whether the debtor's cause of action accrued before or after his initial bankruptcy filings;[14]

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[8] *Slater*, 871 F.3d at 1185; *e.g.*, *Ryder v. Lifestance Health Grp., Inc.*, No. 22-cv-2050, 2024 WL 1119821, at *4 (M.D. Fla. Feb. 12, 2024); *Pruitt v. Quality Labor Servs., LLC*, No. 16-cv-9718, 2018 WL 5808461, at *3 (N.D. Ill. Nov. 6, 2018).

[9] *Slater*, 871 F.3d at 1177; *e.g.*, *Ellis v. Alexander*, No. 16-cv-5155, 2018 WL 1942650, at *3-4 (N.D. Ill. Apr. 25, 2018); *Pruitt*, 2018 WL 5808461, at *2-3.

[10] *Slater*, 871 F.3d at 1185; *e.g.*, *Javery v. Lucent Techs., Inc. Long Term Disability Plan for Mgmt. or LBA Emps.*, 741 F.3d 686, 698 (6th Cir. 2014).

[11] *E.g.*, *Brown v. Keystone Foods LLC*, No. 20-cv-1619, 2022 WL 2346376, at *4 (N.D. Ala. June 29, 2022); *see Ryder*, 2024 WL 1119821, at *4.

[12] *E.g.*, *Weakley v. Eagle Logistics*, 894 F.3d 1244, 1246-47 (11th Cir. 2018).

[13] *E.g.*, *Henderson v. Franklin*, 782 F. App'x 866, 872 (11th Cir. 2019) (per curiam).

[14] *See James v. Penney OpCo, LLC*, No. 24-12086, 2025 WL 883963, at *1, *3 (11th Cir. Mar. 21, 2025) (per curiam).

- Whether the debtor submitted amended bankruptcy filings (especially asset schedules) without adding the omitted claim;[15]
- The time and distance between the relevant proceedings;[16]
- Whether and under what circumstances the debtor corrected his initial nondisclosure (or tried to do so);[17]
- Whether the bankruptcy trustee or creditors were aware of the undisclosed claim;[18]
- What actions, if any, creditors or the trustee took after a belated disclosure;[19]
- Whether the debtor identified other lawsuits to which he was party;[20]
- Other irregularities in bankruptcy schedules, like under-valuing disclosed assets;[21]
- Whether the debtor secured an unfair

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15 *See Weakley*, 894 F.3d at 1246.

16 *E.g.*, *Brown*, 2022 WL 2346376, at *4.

17 *Slater*, 871 F.3d at 1185; *e.g.*, *Ah Quin*, 733 F.3d at 272-73; *Eubanks*, 385 F.3d at 898-99; *Pruitt*, 2018 WL 5808461, at *4.

18 *Slater*, 871 F.3d at 1185; *e.g.*, *Eubanks*, 385 F.3d at 898.

19 *See Nowling v. SN Servicing Corp.*, No. 19-cv-1605, 2020 WL 1244809, at *7 (D. Minn. Mar. 16, 2020); *Harper-Cox v. Gateway-Detroit E.*, No. 14-cv-13048, 2015 WL 3652750, at *5 (E.D. Mich. June 11, 2015).

20 *Slater*, 871 F.3d at 1185; *e.g.*, *Weakley*, 894 F.3d at 1246.

21 *E.g.*, *Leighton v. Homesite Ins. Co. of the Midwest*, No. 21-cv-490, 2022 WL 5585907, at *6 (E.D. Va. Aug. 5, 2022), *report and recommendation adopted*, 2022 WL 19075650 (E.D. Va. Oct. 18, 2022).

advantage from nondisclosure;[22]

- Any findings or actions by the bankruptcy court after the omission was discovered;[23] and
- Any other relevant consideration.

Considering all of the facts and circumstances bearing on intent "ensures that judicial estoppel is applied only when a party acted with a sufficiently culpable mental state." *Slater*, 871 F.3d at 1185-86.

C. A Holistic Approach Allows For Consideration Of The Bankruptcy Court's Own, Firsthand Findings And Actions

A holistic approach also allows for consideration of the bankruptcy court's own findings or actions as to any omissions or delayed disclosures. Bankruptcy courts are uniquely positioned to evaluate a debtor's intent because they have firsthand knowledge of the debtor, his estate, and the way in which he has acted during the course of the proceedings. Moreover, as several courts of appeals have noted in this context, "[b]ankruptcy courts have multiple ways of protecting their own integrity against fraudulent nondisclosures." *Martineau*, 934 F.3d at 395; *see also, e.g.*, *Slater*, 871 F.3d at 1187; *Ah Quin*, 733 F.3d at 275. So in cases (like this one) where "the bankruptcy court exercised none" of its sanctioning powers, that is "a strong indication that it did not believe [the debtor] acted in bad faith." *Martineau*, 934 F.3d at 395. Particularly given judicial estoppel's goal of

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[22] *E.g.*, *Krystal Cadillac-Oldsmobile GMC Truck, Inc. v. General Motors Corp.*, 337 F.3d 314, 324 & n.11 (3d Cir. 2003); *cf. Nowling*, 2020 WL 1244809, at *7.

[23] *Slater*, 871 F.3d at 1185; *e.g.*, *Martineau*, 934 F.3d at 395; *Harper-Cox*, 2015 WL 3652750, at *5-6 & n.6.

"'protect[ing] the integrity of the judicial process,'" "it makes little sense" for a civil defendant like respondent "to benefit from something it has no involvement in and for which the bankruptcy court does not appear to think [the debtor-plaintiff] should be sanctioned." Pet.App.22a (Haynes, J., concurring in the judgment) (citation omitted).

Bankruptcy courts are also best positioned to assess the financial ramifications, if any, of a debtor's belated disclosure. In this case, the district court observed that it "certainly d[id] not consider itself knowledgeable regarding Chapter 13 bankruptcy law, and it doubt[ed] that most district courts are." *Id.* at 49a. Yet the court concluded that Mr. Keathley had a motive to conceal his personal injury claims because his creditors might have sought interest on their own claims, *id.* at 51a-52a—even though neither the bankruptcy trustee nor any of the Keathleys' creditors sought post-petition interest, and bankruptcy courts themselves "are split as to whether [Chapter 13] debtors opting to pay unsecured claims in full . . . must pay interest on the unsecured claims." *In re Peters*, No. 25-80018, 2025 WL 3144843, at *2 (Bankr. M.D.N.C. Nov. 10, 2025); *see In re Gillen*, 568 B.R. 74, 77-78 (Bankr. C.D. Ill. 2017) (collecting cases).

A bankruptcy court's own statements or actions, or lack thereof, therefore are an important part of the equation in assessing the totality of the circumstances in determining whether a debtor acted in bad faith.

III. THE COURT SHOULD VACATE AND REMAND FOR RECONSIDERATION UNDER A PROPER HOLISTIC ANALYSIS

The customary course when this Court concludes that a lower court applied the wrong legal standard is to remand for consideration under the right one. That tried and true path is particularly appropriate here. Both the district court and the Fifth Circuit treated evidence that bore on Mr. Keathley's actual intent to mislead as irrelevant—focusing instead on whether Mr. Keathley *might have* gained from nondisclosure. *See* Pet.App.13a-15a; *id.* at 41a-44a, 51a-53a.

For example, the Fifth Circuit declined even to weigh Mr. Keathley's own sworn statement that he told his bankruptcy attorney about the accident, JA184; that he then believed he had done all he needed to do, *id.*; and that he never intended to mislead the bankruptcy court, *id.* Nor did either lower court meaningfully consider facts or evidence bearing directly on Mr. Keathley's intent, such as:

- Mr. Keathley's personal injury claims arose more than a year after the bankruptcy court first confirmed his Chapter 13 plan.
- The Keathleys promptly amended their bankruptcy filings once the omission was brought to their attention. Pet.App.4a.
- No creditor sought to modify the Keathleys' repayment plan or sought post-petition interest after Mr. Keathley's personal injury claims were disclosed, despite having ample time (months) to do so. *See generally* No. 19-bk-16848 (Bankr. E.D. Ark.), Dkt. Nos. 66-110.
- Disclosing the claims sooner would not have materially affected the Keathleys' plan. JA253-54.
- The Keathleys obtained no benefit from the delayed disclosure. JA254; JA182.
- The bankruptcy court itself did not find any wrongdoing on the Keathleys' part, much less

> find any intent to mislead the court or impose any sanction, even though it was fully aware that the Keathleys had not promptly updated their schedules to reflect the personal injury claims. *See id.*; Pet.App.22-23a (Haynes, J., concurring in the judgment).

None of these facts—or other circumstances bearing on Mr. Keathley's actual intent—was relevant under the Fifth Circuit's rigid rule that simply presumes bad faith based on the existence of a hypothetical motive to mislead. But all of this evidence should be considered under the holistic inquiry equity requires. In addition, Mr. Keathley never had an opportunity to develop the factual record under the proper legal standard.

This case should be remanded for the lower courts to engage in a proper holistic inquiry. Because the courts below "erroneously relied on an overly rigid *per se* approach, no lower court has yet considered in detail the facts of this case" to determine whether Mr. Keathley actually intended to mislead. *Holland*, 560 U.S. at 653-64. In circumstances like these—where the Court adopts an "'equitable, often fact-intensive' inquiry"—it has "recognize[d] the prudence . . . of allowing the lower courts 'to undertake [that inquiry] in the first instance.'" *Id.* at 654 (citation omitted).

The lower courts are best equipped to undertake this inquiry in the first instance, applying the standard adopted by this Court's decision.

CONCLUSION

The court of appeals' judgment should be vacated and the case remanded for further proceedings.

Respectfully submitted,

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December 12, 2025

No. 25-6

In the Supreme Court of the United States

THOMAS KEATHLEY,
Petitioner,
v.
BUDDY AYERS CONSTRUCTION, INC.,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF FOR PETITIONER

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INTRODUCTION

The Fifth Circuit's outlier judicial estoppel rule—which irrebuttably presumes an intent to manipulate the courts based merely on a *potential* financial motive to mislead the bankruptcy court—is so indefensible respondent does not even try to defend it. That is not surprising given the obvious flaws with that rule. But what respondent offers instead is—the even more extreme theory that judicial estoppel applies whenever a litigant would benefit from inconsistent positions, regardless of whether that inconsistency was the product of an "intent to deceive" the courts. Resp. Br. 27. That cannot be right. This Court and others have long recognized that judicial estoppel applies to those who deliberately manipulate the court to gain an unfair advantage. *See New Hampshire v. Maine,* 532 U.S. 742, 751 (2001); Pet. Br. 14-15. And an inconsistency that is the product of inadvertence or mistake is, by definition, not the result of a deliberate effort to manipulate the courts.

Once respondent's sweeping premise is rejected, the case resolves itself. The proper inquiry into whether a change in positions was intentional or inadvertent must be holistic, as most circuits hold. And while the holistic test largely looks to objective factors, nothing justifies categorically excluding a litigant's own explanation from the mix. As its name suggests, a holistic analysis considers all relevant evidence of intent. Respondent dismisses this approach as unruly and unworkable, but the totality approach reflects how courts resolve intent questions every day. Likewise, the flexibility to consider all relevant circumstances is a hallmark of equity.

The United States—in a forceful amicus brief that respondent essentially ignores—agrees. Not only is the United States "the Nation's largest creditor," but here it also represents the interests of United States Trustees, who "are charged with supervising the administration of bankruptcy cases and have a strong interest in ensuring transparency and deterring violations of disclosure requirements." U.S. Br. 1. The United States agrees (at 24) that, in determining whether a debtor acted "inadvertently or intentionally" in failing to disclose a claim in bankruptcy, courts should consider "all relevant evidence" of intent. And it further explains that the Fifth Circuit "erred by limiting its analysis to a test that did not consider either the bankruptcy-specific context or relevant evidence of intent." *Id.* at 14.

The Fifth Circuit's decision cannot stand.

ARGUMENT

I. JUDICIAL ESTOPPEL DOES NOT APPLY TO INCONSISTENCIES ARISING FROM INADVERTENCE OR MISTAKE

Respondent's core position is that judicial estoppel applies whenever a litigant would benefit from inconsistent positions—full stop, regardless of whether that inconsistency was part of a deliberate effort to manipulate the courts or instead an honest mistake. *See, e.g.*, Resp. Br. 3-5, 24-28, 30-32. That view ignores the doctrine's reason for being, contradicts how courts have applied judicial estoppel for over a century, and rests on inapposite authority addressing a different doctrine altogether—equitable estoppel. Respondent's position should be rejected.

A. Judicial Estoppel Targets Deliberate Efforts To Manipulate The Courts

Respondent's argument hinges on the premise (at 24, 30) that judicial estoppel's "purpose" is to prevent "the same litigant [from] win[ning] two cases by advancing positions clearly inconsistent with each other"—"period." Whether the litigant intended to manipulate the courts is, in respondent's telling, irrelevant. That vastly oversimplifies—and, at the same time, expands—the reach of the doctrine. And respondent's own concessions betray this theory.

1. Judicial estoppel exists to prevent a specific and serious vice: "the cold manipulation of the courts." *John S. Clark Co. v. Faggert & Frieden, P.C.*, 65 F.3d 26, 29 (4th Cir. 1995); *see* Pet. Br. 14-15. The doctrine's purpose, as courts have long recognized, is to prevent parties from playing "'fast and loose with the courts'" through "intentional self-contradiction." *Scarano v. Central R.R. Co.*, 203 F.2d 510, 513 (3d Cir. 1953); *see, e.g.*, *Edwards v. Aetna Life Ins. Co.*, 690 F.2d 595, 599 (6th Cir. 1982) (judicial estoppel is designed "to prevent intentional inconsistency" and "perversion of judicial machinery"). As this Court put it in *New Hampshire v. Maine*, "courts have uniformly recognized that [judicial estoppel's] purpose is 'to protect the integrity of the judicial process' by 'prohibiting parties from deliberately changing positions according to the exigencies of the moment.'" 532 U.S. 742, 749-50 (2001). The doctrine is thus designed to prevent *manipulation*—not to punish or eliminate all inconsistencies, however innocent.

This focus on manipulation does more than explain the doctrine's purpose; it defines its limits. As the Court explained in *Minerva Surgical, Inc. v.*

Hologic, Inc., an estoppel doctrine's boundaries must remain "true to the doctrine's reason for being." 594 U.S. 559, 576 (2021); *see* U.S. Br. 17-18. In *Minerva*, the Court declined to extend assignor estoppel beyond situations "when its underlying principle of fair dealing comes into play." 594 U.S. at 576. The same goes here: Where no manipulation has occurred, judicial estoppel has no purchase. *See* U.S. Br. 29.

Respondent's contrary position relies almost exclusively on treatises and other authorities addressing the separate doctrine of *equitable* estoppel.[1] But equitable estoppel is different. It is concerned with "fairness in the relationship" between two parties, and so applies when one party reasonably relied on another's prior representation and would be prejudiced by a change in position. *Konstantinidis v. Chen*, 626 F.2d 933, 937 (D.C. Cir. 1980). Because reliance by an adversary—not the integrity of the judicial system—is the touchstone, equitable estoppel is "not limited to precluding bad faith inter-trial inconsistencies." Mark J. Plumer, Note, *Judicial Estoppel: The Refurbishing of a Judicial Shield*, 55 Geo. Wash. L. Rev. 409, 416 (1987).

By contrast, judicial estoppel serves a "widely divergent" goal: protecting courts themselves from manipulation. Rand G. Boyers, Comment, *Precluding Inconsistent Statements: The Doctrine of Judicial*

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[1] *See, e.g.,* Resp. Br. 5 & n.1, 6-7, 32 (citing *Continental Nat'l Bank v. National Bank of Commonwealth*, 50 N.Y. 575, 583 (1872); John Norton Pomeroy & John Norton Pomeroy, Jr., *Treatise on Equity Jurisprudence* 1640-41, 1660 (4th ed. 1918); John S. Ewart, *Exposition of the Principles of Estoppel by Misrepresentation* 85 (22d ed. 1900); 28 Am. Jur. 2d *Estoppel and Waiver* § 46; Restatement (First) of Torts § 894 (1939); Restatement (Second) of Torts § 894 (1979)).

Estoppel, 80 Nw. U. L. Rev. 1244, 1248 (1986). Its concern is "culpable behavior vis-à-vis the court," *Montrose Med. Grp. Participating Sav. Plan v. Bulger*, 243 F.3d 773, 780-81, 785 (3d Cir. 2001)—namely, "intentionally misle[ading] the court to gain unfair advantage," *Tenneco Chems., Inc. v. William T. Burnett & Co.*, 691 F.2d 658, 665 (4th Cir. 1982).

Respondent's own authorities prove the point. For example, respondent invokes (at 7) a section of American Jurisprudence addressing *equitable* estoppel to argue that a party's intentions are irrelevant—while conspicuously omitting sections of that same treatise concerning *judicial* estoppel. Those sections make clear that judicial estoppel turns on "intentional contradictions, not simple error or inadvertence," 28 Am. Jur. 2d *Estoppel and Waiver* § 67 (2026 update, Westlaw); that judicial estoppel "is intended to protect the courts from being manipulated by chameleonic litigants," *id.*; and that most courts require that inconsistencies "be part of an intentional effort to mislead the court," *id.* § 69. The treatise further explains that "[e]quitable estoppel is distinct from judicial estoppel," and that judicial estoppel targets only those inconsistencies amounting to "deliberate manipulation of the courts." *Id.* § 33.

This focus on intent squarely refutes respondent's conception of the doctrine. It also yields an obvious corollary: Where the relevant inconsistency resulted from inadvertence or honest mistake, judicial estoppel should not apply because there is no "cold manipulation" to remedy. *John S. Clark Co.*, 65 F.3d at 29; *see, e.g.*, *Johnson Serv. Co. v. Transamerica Ins. Co.*, 485 F.2d 164, 175 (5th Cir. 1973) (Texas law) (Judicial estoppel does not apply when inconsistency stems from "inadvertence[] or mistake" because the doctrine "looks towards cold manipulation and not an unthinking or confused blunder.").

This limitation is as old as the doctrine itself. *Hamilton v. Zimmerman*—widely credited as the origin of judicial estoppel—recognized that when a party's prior statements "were made inconsiderately or by mistake," the doctrine does not apply. 37 Tenn. 39, 48 (1857). Leading commentary calls this "[p]erhaps the most important caveat to the entire doctrine of judicial estoppel." Boyers, *supra*, at 1264. Indeed, as the United States explains (at 29), policing "honest mistakes is generally not necessary to 'protect the integrity of the judicial process.'"

2. For all its bluster, respondent does not actually deny that inadvertence or mistake defeats judicial estoppel. *See* Resp. Br. 6-7, 21-23, 25-28, 33, 38, 42, 49 (assuming an "inadvertence" limitation of some kind exists). Instead, it tries a different tack: accepting the "inadvertence" limitation in name only, then defining it out of existence.

According to respondent, an inconsistency qualifies as "inadvertent" or "mistaken" only when the plaintiff lacked "knowledge of the facts concerning inconsistent positions." *Id.* at 7 (emphasis omitted). In bankruptcy, that means a debtor must lack knowledge of the underlying facts giving rise to an undisclosed claim. *See id.* at 24, 32. Yet respondent never explains how its test is tethered to any coherent account of the doctrine's purpose. It does not fit respondent's own theory of judicial estoppel: If the doctrine exists simply to prevent litigants from successfully adopting contrary positions—"period"—why should lack of knowledge of facts matter? *See id.* at 30. An "inadvertent" inconsistency—however defined—is still an inconsistency. Under respondent's stated rationale, it should trigger judicial estoppel just the same.

Nor does respondent's test make sense on any other terms. It has no grounding in ordinary meaning. Respondent asserts (at 6-7) that "mistake" "generally means a mistake of fact"—but the sole authority respondent cites for this is a section of Pomeroy titled "Concerning *Equitable* Estoppel." John Norton Pomeroy & John Norton Pomeroy, Jr., *Treatise on Equity Jurisprudence* 1632 (4th ed. 1918) (capitalization normalized) (emphasis added); *see* Resp. Br. 7 (citing Pomeroy, *supra*, at 1640-41, 1660). And respondent offers no account of "inadvertence," which by ordinary usage refers to "unintentional" conduct. *See, e.g.*, Inadvertent, *Webster's Third New International Dictionary*, https://www.merriam-webster.com/dictionary/inadvertent (last updated Feb. 12, 2026) (defining "inadvertent" as "unintentional"; "not focusing the mind on a matter; inattentive"). There is no reason to deviate from "the ordinary understanding of 'mistake' and 'inadvertence'" here. *Ah Quin v. County of Kauai Dep't of Transp.*, 733 F.3d 267, 277 (9th Cir. 2013).

Respondent's cramped definition of "inadvertence or mistake" also ignores the many ways a litigant who has taken inconsistent positions may know the "facts" underlying a potential claim yet still lack an intent to manipulate the courts. For instance, a litigant may not realize that his earlier conduct communicated any particular position at all, such as a debtor who knows he was injured in an accident but does not understand that failing to amend an asset schedule that was accurate when filed communicates the position that no personal injury claim exists.[2] Or consider "a litigant who is not represented by counsel or who speaks English as a second language and fails to include a claim on her bankruptcy schedule because she does not understand that she was required to do so." *Ah Quin*, 733 F.3d at 272 n.3. In each case, the litigant knew the "facts" but did not engage in a deliberate manipulation in changing positions later.

Respondent's definition would also exclude cases where a litigant lacked any meaningful "opportunity or incentive" to assert a different position in the first proceeding, *New Hampshire*, 532 U.S. at 754, or reasonably understood his first position to be narrower than it is later characterized. These are ordinary, "commonly understood" applications of "inadvertence or mistake," *Ah Quin*, 733 F.3d at 276. But respondent's rule accounts for none of them.

Ultimately, even respondent cannot stick to its own rule. Throughout its brief, respondent assumes that facts bearing on a party's intent to manipulate the courts—beyond mere knowledge of the facts underlying a claim—sometimes *do* matter. For example, respondent seems to accept that courts can ask whether a litigant's positions reflect a "conscious" or "knowing decision," Resp. Br. 5, 38; whether they were "knowingly inconsistent," *id.* at 30 (emphasis omitted); and whether a position resulted from "scrivener's error," *id.* at 21. But none of that should matter if mere-inconsistency-plus-knowledge-of-the-facts-of-the-claim alone triggered judicial estoppel.

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[2] This would be particularly understandable in jurisdictions that do not impose any continuing disclosure obligation on Chapter 13 debtors. *See infra* at 21-22.

3. Respondent's appeal to *New Hampshire* is no more persuasive. Respondent claims (at 21, 26-27, 34) that "this Court did not look at New Hampshire's intent at all" before applying judicial estoppel, then leaps to the conclusion that *New Hampshire* forecloses an inquiry into a debtor's intent in this context. This argument is wrong in multiple respects.

To begin, *New Hampshire* made unmistakably clear that judicial estoppel exists to protect "'the integrity of the judicial process'" by "'prohibiting parties from deliberately changing positions according to the exigencies of the moment.'" 532 U.S. at 749-50; *see id.* at 751 (citing cases holding that the doctrine "forbids use of 'intentional self-contradiction . . . as a means of obtaining unfair advantage'" (alteration in original)). In *New Hampshire*, there was no need to probe that requisite intent because it was obvious. New Hampshire had deliberately switched positions across two proceedings to secure incompatible advantages in each. *See id.* at 746-48, 751-55.

The situation here is completely different. The alleged misrepresentation arose from inaction—the failure to update a form in bankruptcy. A court must determine whether that inaction was intentional or inadvertent—because only a *deliberate* nondisclosure, followed by assertion of the claim concealed, reflects the kind of conscious decision to manipulate the courts that is the touchstone for invoking judicial estoppel. *See supra* at 3-6; *see also, e.g.*, *Martineau v. Wier*, 934 F.3d 385, 393-97 (4th Cir. 2019) (reaffirming, after *New Hampshire*, that omission must be intentional and in "bad faith"). Furthermore, *New Hampshire* made clear that it was not establishing "an exhaustive formula for determining the applicability of judicial estoppel"—no matter the context. 532 U.S. at 751. That is reason enough to reject respondent's argument (at 26-27) that *New Hampshire* somehow forecloses an inquiry into a debtor's intent in the nondisclosure context here.

Respondent's reliance on *Davis v. Wakelee*, 156 U.S. 680 (1895)—and the maxim that "ignorance of the law" is no excuse—is also unavailing. *See* Resp. Br. 29, 36. Respondent claims (at 29) that *Davis* forecloses any "inquiry into [a] litigant's subjective intent" because it "rejected" a "mistake-of-law defense" to estoppel. But respondent conflates two distinct questions. A mistake-of-law defense presupposes intentional conduct—in the judicial estoppel context, that the litigant knowingly adopted incompatible positions to gain dual advantages but misunderstood the legal correctness of the first position when he took it. *See Davis*, 156 U.S. at 689-91. The inadvertence inquiry simply asks whether there was deliberate self-contradiction to secure an additional benefit in the first place.[3]

B. Adopting Respondent's Contrary Rule Would Work A Sea Change In How Lower Courts Assess Judicial Estoppel

Respondent suggests (at 3, 23, 35) that lower-court practice supports its intent-free rule. Not true.

[3] Respondent also overreads (at 29-30) *Philadelphia, Wilmington & Baltimore Railroad Co. v. Howard*, 54 U.S. (13 How.) 307 (1852). The Court's aside that the railroad could not retreat from its prior position "even if . . . made by mistake"—"of which there [wa]s no evidence"—came in a case of blatant litigation gamesmanship: The railroad had deliberately flipped positions to win twice in different courts. *Id.* at 335-37.

Respondent's position would overturn decades of precedent in the courts of appeals.

Courts have—repeatedly and expressly—held that judicial estoppel does not apply when the plaintiff did not intend to manipulate the courts. As the Fourth Circuit put it: "Without bad faith, there can be no judicial estoppel." *Zinkand v. Brown*, 478 F.3d 634, 638 (4th Cir. 2007). The Third Circuit agrees: Judicial estoppel "does not apply 'when the prior position was taken because of a good faith mistake rather than as part of a scheme to mislead the court.'" *Ryan Operations G.P. v. Santiam-Midwest Lumber Co.*, 81 F.3d 355, 358 (3d Cir. 1996); *see Mesabi Metallics Co. v. Cleveland-Cliffs, Inc. (In re ESML Holdings Inc.)*, 135 F.4th 80, 92 (3d Cir. 2025) (similar). So too the Sixth and Eighth Circuits, which require "bad faith," *White v. Wyndham Vacation Ownership, Inc.*, 617 F.3d 472, 477-78 (6th Cir. 2010), or "deliberate manipulation," *Stallings v. Hussmann Corp.*, 447 F.3d 1041, 1049 (8th Cir. 2006), before judicial estoppel attaches. The same goes for bankruptcy cases in particular, where courts have likewise required proof that the debtor "intended to make a mockery of the judicial system," *Slater v. United States Steel Corp.*, 871 F.3d 1174, 1180 (11th Cir. 2017), or otherwise engaged in "deceit," *Spaine v. Community Contacts, Inc.*, 756 F.3d 542, 547-48 (7th Cir. 2014), before invoking judicial estoppel. Respondent acknowledges none of this.

Nor can respondent find refuge in the circuits it ostensibly defends. Even the Fifth Circuit's two-factor "inadvertence" test from the bankruptcy context rests on the premise that judicial estoppel applies only to "'intentional self-contradiction.'" *Superior Crewboats Inc. v. Primary P&I Underwriters*

(In re Superior Crewboats, Inc.), 374 F.3d 330, 334-35 (5th Cir. 2004); *see Eastman v. Union Pac. R.R. Co.*, 493 F.3d 1151, 1157 (10th Cir. 2007) (analyzing same factors to assess "deliberate manipulation"). That is precisely why the Fifth Circuit inquires into a party's "*motive* for concealment"—motive is relevant only to a rule concerned with intent. *Fornesa v. Fifth Third Mortg. Co.*, 897 F.3d 624, 628 (5th Cir. 2018) (emphasis added); Pet.App.12a-13a. The Fifth Circuit's error is not in rejecting an intent requirement (as respondent advocates), but in assuming intent based simply on the existence of a *possible* motive to mislead. Pet. Br. 10.

Respondent's authorities do nothing to bridge the gap. Most, as discussed, concern equitable estoppel and thus are inapposite. *See supra* at 4-5. But the handful of judicial estoppel authorities respondent does cite (at 4, 6) only make matters worse. These authorities recognize—correctly—that the doctrine turns on "intent to mislead or deceive." *Ryan*, 81 F.3d at 364; *see Davis v. District of Columbia*, 925 F.3d 1240, 1256 (D.C. Cir. 2019) (judicial estoppel "'looks toward cold manipulation and not unthinking or confused blunder'"); Plumer, *supra*, at 424 & n.100 (distinguishing a "good-faith mistake" from a "willful attempt to use the judicial system to obtain a double recovery"). Respondent never explains how its intent-free conception of "inadvertence" could be squared with cases requiring an intent to deceive.[4]

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[4] Respondent quotes (at 32) the First Circuit's statement in *Botelho v. Buscone (In re Buscone)* that it has never formally adopted an inadvertence exception. 61 F.4th 10, 23 (2023). But respondent neglects to mention that decision affirmed the denial

Adopting respondent's extreme conception of judicial estoppel would revolutionize the doctrine.

II. COURTS MUST LOOK TO THE TOTALITY OF THE CIRCUMSTANCES IN DETERMINING WHETHER A FAILURE TO DISCLOSE WAS INADVERTENT

Because intent has always mattered to judicial estoppel, the core question here is not whether to assess it, but how. And on *that* score, respondent's brief is most remarkable for what it does not say: Respondent does not defend the Fifth Circuit's rule finding an intent to mislead based only on knowledge of facts and a *possible* financial motive to mislead. Nor does respondent claim that its "knowledge of facts" test measures intent at all. Lacking a test of its own, respondent resorts to taking shots at the holistic approach followed in most circuits. Its sundry attempts to discredit the inquiry fail.

1. As explained, a totality test best advances both judicial estoppel's purpose and the bankruptcy system's goals, while honoring the flexibility equity demands. Pet. Br. 16-30. On the judicial estoppel side, a holistic inquiry ensures that only intentional inconsistencies—the kind that threaten judicial integrity—trigger the doctrine's severe remedy, while giving courts the flexibility to weigh all relevant circumstances in deciding whether an inconsistency is intentional or inadvertent. *Id.* at 16-24. And on the bankruptcy side, the totality approach honors the system's promise of a "fresh start" for honest debtors while reflecting the bankruptcy system's own

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of judicial estoppel because, among other reasons, the defendant offered insufficient evidence that the plaintiff had "engaged in intentional conduct" to manipulate the courts. *Id.* at 23-28.

distinction between honest errors (which warrant leniency) and intentional concealment (which justify severe sanctions). *Id.* at 27-30.

Respondent does not dispute that, in cases like this, judicial estoppel must be applied "against the backdrop of the bankruptcy system and the ends it seeks to achieve." *Id.* at 27-28 (quoting *Reed v. City of Arlington*, 650 F.3d 571, 574 (5th Cir. 2011) (en banc)). But respondent protests (at 44) that a totality test would "disserve the goals of bankruptcy" by failing to "deter dishonest debtors" and "protect[] innocent creditors." Wrong on both counts.

As for deterrence, petitioner's rule protects only honest mistakes; it offers no refuge to those who intentionally conceal their claims. Pet. Br. 27 n.7. As the United States explains (at 29), judicial estoppel still would apply to intentional concealment, preserving whatever deterrent force the doctrine properly carries. And respondent never explains how harsh consequences would deter mistakes that, by definition, the debtor did not realize he was making.

Nor can respondent reconcile its harsh view of bankruptcy with how the bankruptcy system itself treats disclosure errors. That system permits liberal amendment of schedules precisely because Congress recognized that mistaken omissions happen—and made a policy judgment that debtors should be able to correct them freely. Pet. Br. 28-29.

Rather than engage with any of this, respondent simply invokes (at 34) the "early history of bankruptcy," which "treated debtors harshly." That is a strange place to seek refuge. The punitive era is long gone—modern bankruptcy law now promises honest debtors a "fresh start." *Marrama v. Citizens*

Bank of Mass., 549 U.S. 365, 367 (2007). A totality test ensures that this promise is not illusory when an honest debtor makes an honest mistake.

As for the impact on creditors, the United States—the "Nation's largest creditor"—has explained that the totality test best "accounts for the interests of innocent creditors who may be harmed if [a] tort claim cannot go forward." U.S. Br. 1, 3; *see id.* at 13, 19-21, 24, 28. A rigid rule like the Fifth Circuit's harms creditors by destroying claims that would otherwise augment a bankruptcy estate. *Id.* at 19-21; *see* Pet. Br. 26. Respondent has no response.

At bottom, the practical effect of the Fifth Circuit's rule is not to deter dishonesty or protect creditors, but to reward alleged bad actors with no connection to the first proceeding. Pet. Br. 24-26. As the United States notes (at 30-31), a windfall to the civil defendant is warranted only when there is some corresponding benefit to the integrity of the judicial system—which neither the Fifth Circuit's rule nor respondent's more extreme position ensures. Respondent, which walks away scot-free under the Fifth Circuit's rule after its employee negligently struck and injured petitioner, offers no real answer, except to fall back (at 31 n.3) on its position that an inconsistency—alone—triggers the severe remedy of dismissal. That extreme version of judicial estoppel would have draconian consequences, depriving individuals of their day in court for wrongs of all types even where there is no evidence the litigant intended to manipulate the courts. Pet. Br. 24.

2. Respondent next argues (at 35-45) that the totality test's focus on intent renders it impermissibly "subjective" and therefore unworkable. But respondent's concerns are vastly overstated.

To begin, any intent inquiry is "necessarily subjective"—it asks *why* the particular party actually did (or did not do) something. Dan B. Dobbs et al., *The Law of Torts* § 29 (2d ed. Apr. 2025 update, Westlaw); *see Ah Quin,* 733 F.3d at 276-77 ("The relevant inquiry is . . . the plaintiff's subjective intent when filling out and signing the bankruptcy schedules."). But the subjective nature of intent does not mean there is no manageable way to assess it. Courts routinely infer subjective intent from objective circumstances in a host of contexts. The holistic test follows the same approach—considering "*all* evidence relevant to determining whether the debtor's nondisclosure was inadvertent [or intentional]." U.S. Br. 26 (emphasis added); *see id.* at 13-14.

As is often the case in assessing intent, *objective* evidence is critical. Pet. Br. 35-37. For example, the totality test considers the debtor's level of sophistication; whether the undisclosed claim arose after the debtor's initial bankruptcy filings; whether the debtor identified other lawsuits to which he was a party; and whether the bankruptcy court made any adverse findings after the omission was discovered. *See id.*; *see also* U.S. Br. 14 (enumerating some of the "[m]any objective factors" that "may assist in assessing inadvertence"); *Slater*, 871 F.3d at 1185 (listing factors). As the United States explains, "[f]ocusing on objective indicia of intent is consistent with the way courts commonly identify subjective intent." U.S. Br. 26-27 (citing cases); *cf., e.g.*, *Intel Corp. Inv. Pol'y Comm. v. Sulyma*, 589 U.S. 178, 189 (2020) ("inference from circumstantial evidence" is a "usual way[]" of proving actual knowledge).

Such objective indicia of intent can outweigh (or discredit) a debtor's own testimony. U.S. Br. 26-27;

see Slater, 871 F.3d at 1186 n.12. But that is no reason to exclude subjective evidence from the holistic analysis altogether. Courts consider relevant actors' own accounts in virtually every context where intent is at issue. *See, e.g.*, *Alexander v. South Carolina State Conference of the NAACP*, 602 U.S. 1, 13, 19-24 (2024) (considering testimony of state senate's map drawer and colleagues in determining whether electoral map had racial target); *Johnson v. California*, 545 U.S. 162, 170 (2005) (*Batson* framework "assume[s]" "that the trial judge [will] have the benefit of all relevant circumstances, including the prosecutor's explanation, before deciding whether it was more likely than not that the [peremptory] challenge was improperly motivated"); *Morissette v. United States*, 342 U.S. 246, 276 (1952) (intent to steal must be determined "no[t] only from the act of taking, but from that together with defendant's testimony and all of the surrounding circumstances"). The totality inquiry reasonably considers *all* relevant evidence—objective and subjective alike—before deciding whether the omission was deliberate or mistaken.[5]

Nor is there any reason to bar consideration of whether a debtor told his bankruptcy attorney about the undisclosed claim. *Contra* Resp. Br. 35-38. The question for judicial estoppel is not whether the nondisclosure was legally excusable—it is whether it was *inadvertent*. And even respondent concedes

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[5] While a proper holistic analysis considers all relevant evidence of intent, the Fifth Circuit's rule cannot stand even if the analysis were limited to objective evidence. Indeed, for all its complaints about subjective evidence, respondent never really tries to explain why possible objective indicia of intent—beyond mere knowledge of facts—should be disregarded.

(at 38) that "the fact that a debtor disclosed a cause of action to the attorney might be relevant to establishing true inadvertence." *See Bisno v. United States*, 299 F.2d 711, 719 (9th Cir. 1961) (while advice of counsel is not "a separate and distinct defense" to liability, it is "a circumstance indicating good faith which the trier of fact is entitled to consider" in assessing debtor's intent); *Robinson v. Worley*, 849 F.3d 577, 586 (4th Cir. 2017) ("reliance on counsel" can "absolve[] a debtor of fraudulent intent"). As such, it should be included in the mix of factors. The same goes for a debtor's understanding of his disclosure obligations, which likewise bears on whether a failure to update a form was intentional or inadvertent. *Contra* Resp. Br. 35-36.

3. Respondent's various administrability objections to the totality test fare no better.

Respondent first warns (at 39-44) that a holistic inquiry would be "amorphous" and "unmanageable." But this Court has prescribed many totality tests—for reasonable suspicion, *see, e.g.*, *Navarette v. California*, 572 U.S. 393, 396-97 (2014); probable cause, *see, e.g.*, *District of Columbia v. Wesby*, 583 U.S. 48, 57 (2018); whether a case is "exceptional," *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U.S. 545, 554 (2014), and so on, *see, e.g.*, *Monasky v. Taglieri*, 589 U.S. 68, 71, 84 (2020) (whether a child is "at home" in a particular country). And the Court has specifically approved totality tests for assessing mental states. *See, e.g.*, *Schneckloth v. Bustamonte*, 412 U.S. 218, 227 (1973) (whether consent to search was voluntary); *Moran v. Burbine*, 475 U.S. 412, 421 (1986) (whether waiver of *Miranda* rights was voluntary, knowing, and intelligent). Courts across the country apply these tests daily without any apparent difficulty.

Balancing tests may well have shortcomings in other contexts. Resp. Br. 39-40. But judicial estoppel is an equitable doctrine—and this Court has long held that equity resists the kind of rigid, categorical rule respondent proposes. Pet. Br. 16-17; U.S. Br. 17-18. Indeed, respondent itself acknowledges (at 40) that "equity must avoid rigidity and respond to context." That principle cannot be reconciled with respondent's inflexible "knowledge of facts" test. But it fits perfectly with a totality approach, which the American Bankruptcy Institute's Commission on Consumer Bankruptcy has endorsed, and which most courts of appeals already embrace. Pet. Br. 31-34. Nor has respondent identified any administrability problems in the circuits that have already adopted the totality test, *see id.* at 31-32, or in the bankruptcy courts that similarly use a totality test to assess debtors' intent across various contexts, *see id.* at 34.

Respondent caricatures (at 22, 39) petitioner's position as proposing a "17-plus factor" test. But petitioner simply identified potentially relevant factors that courts have already considered in applying the totality test. *Id.* at 35-37 (observing that the "relevant facts and circumstances" "*may* include [various factors]" (emphasis added)). The relevant and available factors in each case will vary. That is the essence of applying the kind of "flexible, case-by-case analysis" that equity demands. U.S. Br. 15.

Respondent's parade of horribles ultimately is just that. Respondent warns (at 40-41) of complex and "wide-ranging" discovery "aimed at reconstructing the debtor's state of mind at the time he made incomplete disclosures." But courts assess intent through holistic tests all the time—in fraud cases, discrimination cases, and countless others—and respondent offers no reason why the inquiry would somehow become uniquely unmanageable in the judicial estoppel context. *See supra* at 17-18. As the United States observes (at 30), "[i]ntent-based standards are prevalent throughout the law," and "there is no basis to suggest that courts are incapable of applying [a similar] standard here."

Respondent claims (at 41-42) that the totality test is unworkable because it permits courts to consider what happened in the bankruptcy court after the debtor disclosed his claim—suggesting this would require "certify[ing]" questions to the bankruptcy court. That is another strawman. The point is not that district courts must affirmatively seek out bankruptcy courts' guidance; it is that they should not ignore it when it already exists. Pet. Br. 37-38.

Here, after Mr. Keathley disclosed the claim in an amended schedule, no creditor moved to modify the plan, the Chapter 13 trustee took no action, and the bankruptcy court imposed no sanction—even though the Keathleys had more than a year of payments remaining. *Id.* at 7-8. That is strong evidence that those closest to the bankruptcy did not view the omission as intentional concealment. There is no reason to require a district court to "blind itself" to such proceedings, including the bankruptcy court's own assessment (if any) of the nondisclosure or steps to correct it. *Slater*, 871 F.3d at 1187; *see* U.S. Br. 26.

Respondent complains (at 42-43) that bankruptcy courts' remedial tools are "too blunt" or "too confined to the bankruptcy proceeding" to address nondisclosure. But it is the Fifth Circuit's rule that is too "blunt"—punishing honest mistakes just as harshly as knowing fraud, harming innocent creditors, and handing undeserved windfalls to strangers to the bankruptcy. Pet. Br. 24-30. Congress, meanwhile, provided bankruptcy courts with a number of tools "more precisely calibrated to address nondisclosure in this context" than judicial estoppel. U.S. Br. 20-23; *see* Pet. Br. 28-30. Of course, judicial estoppel remains available—if otherwise warranted—when those remedies fall short. But that is reason to treat judicial estoppel as a backstop, not a blunt instrument to be deployed without regard to what the bankruptcy court considered and rejected.

Nor is respondent right to suggest (at 43) that only "the *second* court" can "prevent the harm that inconsistent positions inflict[] on the judiciary." Judicial estoppel guards against "'the perception that *either* the first or the second court was misled'" in a way that "threat[ens]" "judicial integrity." *New Hampshire*, 532 U.S. at 750-51 (emphasis added). And particularly where a debtor stands accused of intentionally concealing an asset to game the bankruptcy system, there is no basis to ignore the bankruptcy court's own actions, or decision not to act, in response to that alleged deceit.

Respondent frets (at 43) that the totality test might require a district court to account for differences in governing law when the bankruptcy court sat in another jurisdiction. But such differences are plainly relevant to a debtor's intent. Under respondent's rule, for example, judicial estoppel would apply even when a debtor's schedules were accurate when filed, and even when the bankruptcy jurisdiction imposed no continuing duty to amend—so long as the governing law in the *later* forum would have required ongoing disclosure. *See* Resp. Br. 43; *see also* National Consumer Bankruptcy Rights Center et al. Amici Br. (discussing differing disclosure regimes in Chapter 13 context). That is not a rule against manipulation; it is a trap for the unwary.

4. Finally, respondent says (at 2, 21-22, 44) that a holistic analysis would render judicial estoppel "essentially unavailable." But the track record in the courts applying the totality test tells a different story. Applying the test, courts have not hesitated to bar claims when the facts show an intent to manipulate. *See, e.g.*, *Weakley v. Eagle Logistics*, 894 F.3d 1244, 1247 (11th Cir. 2018) (per curiam); *Leighton v. Homesite Ins. Co. of the Midw*est, No. 21-cv-490, 2022 WL 5585907, at *6-7 (E.D. Va. Aug. 5, 2022), *report and recommendation adopted*, 2022 WL 19075650 (E.D. Va. Oct. 18, 2022); *Cagle v. C&S Wholesale Grocers, Inc.*, 505 B.R. 534, 539 (E.D. Cal. 2014).

On the flip side, respondent's severe rule would have justified applying the blunt force of judicial estoppel in cases with powerful innocent explanations for any inconsistency, including where:

- A debtor was diagnosed with mesothelioma just weeks before completing his Chapter 13 bankruptcy plan, alerted his bankruptcy counsel to this information, "trusted him to do what was required under the law," and "disclosure 'would not have altered the outcome'" of the bankruptcy;[6]
- A debtor was "seriously dyslexic," "totally unsophisticated in finances," "never graduated

[6] *Clark v. AII Acquisition, LLC*, 886 F.3d 261, 264-68 (2d Cir. 2018).

from high school," and relied on her attorney for bankruptcy filings;[7] and

- A Title VII plaintiff was told by her employment lawyers "'to refrain from speaking to anyone about" her claim, her employment and bankruptcy counsel did not coordinate, and she lacked "sophistication and experience with bankruptcy proceedings."[8]

The holistic approach avoids such *in*equitable results and "ensures that judicial estoppel is applied only when a party acted with a sufficiently culpable mental state." *Slater*, 871 F.3d at 1185-86.

III. THE COURT SHOULD VACATE AND REMAND FOR RECONSIDERATION UNDER A PROPER HOLISTIC ANALYSIS

Respondent does not dispute that if the Fifth Circuit applied the wrong standard for determining whether to invoke judicial estoppel, this case should be remanded for further factual development and application of the proper holistic test. Pet. Br. 38-40; *see* U.S. Br. 31-32. Remand is therefore warranted.

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[7] *Julie Kagan & Saborax, Ltd. v. Bercu (In re Bercu)*, 293 B.R. 806, 810-11 (Bankr. M.D. Fla. 2003).

[8] *Brown v. Keystone Foods LLC*, No. 20-cv-1619, 2022 WL 2346376, at *4 (N.D. Ala. June 29, 2022).

CONCLUSION

The judgment below should be vacated and the case remanded for further proceedings.

Respectfully submitted,

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February 26, 2026

No. 25-6

IN THE

Supreme Court of the United States

THOMAS KEATHLEY,

Petitioner,

v.

BUDDY AYERS CONSTRUCTION, INC.,

Respondent.

On Writ of Certiorari to the United States
Court of Appeals for the Fifth Circuit

BRIEF FOR RESPONDENT

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QUESTION PRESENTED

Whether the doctrine of judicial estoppel can be invoked to bar a plaintiff who fails to disclose a civil claim in bankruptcy filings from pursuing that claim, regardless of whether there is evidence that the plaintiff in fact acted in bad faith.

CORPORATE DISCLOSURE STATEMENT

Respondent Buddy Ayers Construction, Inc. certifies that it does not have a parent company and no publicly held company owns ten percent or more of the stock of Buddy Ayers Construction, Inc.

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INTRODUCTION

If you win a dog-bite lawsuit by convincing the court you don't own the dog, you can't then expect to bring your own lawsuit seeking to recover the value of the dog from someone else. That is judicial estoppel: the principle that the same litigant cannot win two cases by taking clearly inconsistent positions.

Courts apply judicial estoppel because clearly inconsistent results, in cases asking the same question about the same litigant, threaten the integrity of the judicial system. That rule is objective, straightforward, and easy to apply. Petitioner's proposed rule would jettison that basic rationale and apply estoppel only when a litigant acts in bad faith—which seemingly means planning all along to switch positions. That would mean that a litigant could keep two clearly inconsistent victories—as long as the litigant cannot be shown to have personally planned to benefit from the inconsistency. Under petitioner's approach, just taking a hands-off approach with two separate litigation counsel could be enough to insulate the litigant from the type of scienter that petitioner says is necessary.

That is not consistent with either this Court's decisions or with the century-plus of estoppel caselaw that underlies them. It is inequitable to keep a benefit, or cause an adversary disadvantage, that depends on convincing the courts of two clearly inconsistent positions. And that is what petitioner seeks here. This Court's references to an exception for positions taken through "inadvertence or mistake" do not shift the analysis from an objective one, based on avoiding inconsistent results, to a subjective one, based only on punishing bad faith. And while petitioner appeals to the notion that courts should consider all relevant evidence of intent, that skips over the question whether lack of bad faith defeats judicial estoppel at all.

Nor is there any reason to be more tolerant of clearly inconsistent adjudications just because one of the adjudications is in bankruptcy court. Although the Court does not need to formulate a special estoppel rule for the bankruptcy context, if anything bankruptcy-related considerations make it all the more important to apply the traditional, objective rule here. Because bankruptcy commonly creates economic incentives for debtors to conceal assets, the system depends on full and accurate disclosure of assets to the court, trustee, and creditors. Any bankruptcy-specific rule should incentivize candor, not reward concealment.

A cause of action is an asset. Representing to the bankruptcy court that an asset does not exist—and achieving a bankruptcy plan and a discharge of debts on that basis—can give rise to judicial estoppel because it is "clearly inconsistent" with later suing (and recovering) on the supposedly nonexistent cause of action. All parties and, indeed, all courts of appeals agree on that point. The only question is whether to formulate an exception for "inadvertence or mistake" so broad that judicial estoppel becomes essentially unavailable in the bankruptcy context. Because that view is unfaithful to the established, objective test for judicial estoppel and would create perverse incentives in the bankruptcy context, this Court should reject it.

STATEMENT OF THE CASE

I. Judicial estoppel protects judicial integrity by prohibiting the same party from winning two clearly inconsistent victories.

A. Judicial estoppel prevents inconsistent adjudication and has never turned on bad faith.

Like many other estoppel doctrines, judicial estoppel prevents inconsistent adjudication. In short, once a litigant has succeeded in convincing a court to accept its position, the litigant cannot deny the correctness of that position in other cases. By preventing litigants from taking clearly inconsistent positions—and winning on both—the doctrine "protect[s] the integrity of the judicial process" and bolsters the "orderly administration of the judicial system." *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001) (citation omitted); Walter S. Beck, *Estoppel Against Inconsistent Positions in Judicial Proceedings*, 9 Brook. L. Rev. 245, 248 (1940). Given the systemic considerations that underlie it, judicial estoppel has never turned on proof of an individual litigant's bad faith.

1. Without adopting any "inflexible" or "general formulation," this Court has identified three factors that typically justify judicial estoppel. *New Hampshire*, 532 U.S. at 750, 751 (citation omitted). First, the "party's later position must be 'clearly inconsistent' with its earlier position." *Id.* at 750 (citation omitted). Second, the party generally must "ha[ve] succeeded in persuading a court to accept that party's earlier position." *Id.* Third, courts consider whether "the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair

detriment on the opposing party if not estopped." *Id.* at 751.

Thus, "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." *Davis v. Wakelee*, 156 U.S. 680, 689 (1895). A party who "helped to induce [a] ruling when the result was to his advantage" cannot later ask courts to "change it … when the result is to his detriment." *Assets Realization Co. v. Roth*, 123 N.E. 743, 744 (N.Y. 1919) (Cardozo, J.).

Significantly, judicial estoppel is not restricted to cases in which all the parties are identical. *E.g.*, *Ryan Operations GP v. Santiam-Midwest Lumber Co.*, 81 F.3d 355, 360 (3d Cir. 1996) (collecting cases). The winner of the first case cannot adopt a clearly inconsistent position in a second case—whether against the same party or (as is more common) someone else. For that reason, judicial estoppel does not require a showing of reliance. *Phila., Wilmington & Balt. R.R. Co. v. Howard*, 54 U.S. (13 How.) 307, 333 (1851); Beck 247.

2. As the name suggests, judicial estoppel derives its origins from estoppel more generally. Beck 245-247. Thus, "like many estoppel rules," it "reflects a demand for consistency in dealing with others." *Minerva Surgical, Inc. v. Hologic, Inc.*, 594 U.S. 559, 575 (2021). In each branch of the doctrine, a person is estopped "when he has done some act which the policy of the law will not permit him to gainsay or deny." Henry M. Herman, *Commentaries on the Law of Estoppel and Res Judicata* 2 (1886).

In both law and equity,[1] estoppel's foundational institutional concern was the functioning and administration of the courts of justice. Herman 17-18. The earliest form of estoppel—estoppel by record—sought to bring credit and finality to the court system by prohibiting litigants from controverting the record of proceedings in the courts of common law and chancery (courts of record). *Id.* at 18, 21. Similar concerns underly the related doctrines of claim preclusion (res judicata) and issue preclusion (collateral estoppel), which both involve questions in dispute that were submitted to a court to decide. Melville M. Bigelow, *Treatise on the Law of Estoppel and its Application in Practice* 8-9, 330 (5th ed. 1890).

Estoppel has particular force where it rests on a person's own knowing decision, in light of "the general doctrine that a man shall not defeat his own act or deny its validity to the prejudice of another." Herman 711. Thus, for example, under the doctrine of election, if a person chooses "between several inconsistent courses of action, he will be confined to that which he first adopts." Bigelow 673. Or in estoppel by deed (for land) or assignor estoppel (for patents), if a person chooses to sell ownership of a piece of real or intellectual property, she is estopped from attacking the validity of her own grant. *Minerva*, 594 U.S. at 567-570. Judicial estoppel addresses these same institutional, practical, and fairness concerns. *See* Bigelow 717, 722; Beck 245-247 (noting that judicial estoppel developed from other types of estoppel); *see also* Note, *The Doctrine of Preclusion Against Inconsistent Positions*

[1] Estoppel developed in both courts of law and equity. Herman 864-865; John Norton Pomeroy & John Norton Pomeroy, Jr., *Treatise on Equity Jurisprudence* 1633 (4th ed. 1918).

in Judicial Proceedings, 59 Harv. L. Rev. 1122 (1946); Mark J. Plumer, *Judicial Estoppel: The Refurbishing of a Judicial Shield*, 55 Geo. Wash. L. Rev. 409, 410 n.8 (1987).

B. "Inadvertence or mistake" may justify an exception to judicial estoppel, but the mere absence of bad faith does not.

This Court noted in *New Hampshire* that "it may be appropriate to resist application of judicial estoppel 'when a party's prior position was based on inadvertence or mistake.'" 532 U.S. at 753 (citation omitted). The Court historically was suspicious of litigants' efforts to get out of their own former solemn representations by claiming mistake. *See Phila., Wilmington & Balt. R.R. Co.*, 54 U.S. (13 How.) at 337 ("[T]he defendant cannot be heard to say, that what was asserted on the former trial was false, even if the assertion was made by mistake. If it was a mistake, of which there is no evidence, it was one made by the defendant, of which he took the benefit, and the plaintiff the loss, and it is too late to correct it."). Thus, the courts of appeals have treated this as (at most) a narrow exception and have required the party changing positions to establish that its previous position resulted from inadvertence or mistake. *See Fornesa v. Fifth Third Mortg. Co.*, 897 F.3d 624, 628 (5th Cir. 2018); *Davis v. District of Columbia*, 925 F.3d 1240, 1256 (D.C. Cir. 2019).

Mistake generally means a mistake of fact arising from a reasonable lack of knowledge. Throughout estoppel doctrine more broadly, for a party to be estopped based on his own representations, "truth concerning the[] material facts represented or concealed must be *known* to the party at the time when his conduct … takes place." Pomeroy 1660 (emphasis added). That does not require mind-reading: A party's knowledge can be established through objective evidence, as where "the circumstances must be such that a *knowledge* of the truth is necessarily imputed to" that party. *Id.* (emphasis added).

But requiring knowledge does not equate to requiring proof of scienter. Applying estoppel requires only *objective knowledge* of the facts concerning inconsistent positions—not *bad faith* with respect to the inconsistency or a *subjective intent* to mislead. Pomeroy 1640-1641 (Equitable estoppel does not require "that the conduct itself—the acts, words, or silence of the party—constituting the estoppel is an actual fraud, done with the actual intention of deceiving."); *Cont'l Nat'l Bank v. Nat'l Bank of Commonwealth*, 50 N.Y. 575, 583 (1872) ("[W]e hold that there need not be, upon the part of the person making a declaration or doing an act, an intention to mislead the one who is induced to rely upon it."). In that sense, "a perfectly innocent misrepresentation ... may be quite sufficient for estoppel." John S. Ewart, *Exposition of the Principles of Estoppel by Misrepresentation* 85 (22d ed. 1900); *see also, e.g.*, 28 Am. Jur. 2d Estoppel and Waiver § 46 (similar); Restatement (First) of Torts § 894 (1939); Restatement (Second) of Torts § 894 (1979).

C. A debtor who denies the existence of a cause of action to the bankruptcy court may be judicially estopped from later asserting that same cause of action.

Judicial estoppel arises with some frequency as a result of bankruptcy. A cause of action is an asset, and debtors must disclose even an unasserted cause of action to the bankruptcy court along with their other assets. When a debtor omits a cause of action from his list of assets, secures bankruptcy relief based on that incomplete disclosure, and then asserts the undisclosed claim in another court, judicial estoppel may result, as the courts of appeals unanimously agree and petitioner does not dispute. In such circumstances, the basic elements of judicial estoppel are all present: a legal position clearly inconsistent with a prior one; judicial acceptance of the earlier position; and an unfair advantage to the litigant.

1. When a debtor files for bankruptcy, all the debtor's "legal or equitable interests" "in property" are made part of the bankruptcy estate, with few exceptions. 11 U.S.C. § 541(a); *City of Chi. v. Fulton*, 592 U.S. 154, 156 (2021). Debtors must disclose these assets in their bankruptcy schedules. *See* 11 U.S.C. § 521(a)(1)(B)(i); Fed. R. Bankr. P. 1007(b)(1)(A).

Because "[t]hese disclosure requirements are crucial to the effective functioning of the federal bankruptcy system," "the importance of full and honest disclosure cannot be overstated." *Ryan Operations*, 81 F.3d at 362; *accord Harrington v. Purdue Pharma L. P.*, 603 U.S. 204, 209 (2024); *Chartschlaa v. Nationwide Mut. Ins. Co.*, 538 F.3d 116, 122 (2d Cir. 2008) (per curiam) ("[F]ull disclosure by debtors is essential to the proper functioning of the bankruptcy system...."). Depending on when it accrues, a cause of action belonging to the debtor may be among the assets that belong to the bankruptcy estate and thus subject to the disclosure requirements. *Celotex Corp. v. Edwards*, 514 U.S. 300, 307 n.5 (1995). The potential value of the claim to creditors—the claim's significance to the bankruptcy estate and the value of its prompt disclosure—may also vary depending on the type of bankruptcy proceeding. Differences between two forms of bankruptcy, Chapter 7 and Chapter 13, are illustrative here.[2]

2. "Chapter 7 allows a debtor to make a clean break from his financial past, but at a steep price: prompt liquidation of the debtor's assets." *Harris v. Viegelahn*, 575 U.S. 510, 513 (2015). Generally, all of the debtor's assets, including legal claims that exist at the time the Chapter 7 petition is filed, are part of the bankruptcy estate. *See* 11 U.S.C. § 541. "Crucially, however, a Chapter 7 estate does not include the wages a debtor earns or the assets he acquires *after* the bankruptcy filing." *Harris*, 575 U.S. at 513-14 (citing 11 U.S.C. § 541(a)(1)). "Thus, while a Chapter 7 debtor must forfeit virtually all his *prepetition* property, he is able to make a 'fresh start' by shielding from creditors his *postpetition* earnings and acquisitions." *Id.* (emphasis added).

Because all prepetition claims in a Chapter 7 bankruptcy are subject to liquidation to satisfy the petitioner's outstanding debts, the bankruptcy trustee becomes the real party in interest for the claims, "vested with the authority and duty to pursue" them "as an asset of the bankruptcy estate." *Reed v. City of Arlington*, 650 F.3d 571, 574-76 (5th Cir. 2011) (en banc) (citing 11 U.S.C. §§ 323(a)-(b), 704(a)(1)). This

[2] The same principles apply fully to other bankruptcy contexts such as Chapter 11. That chapter allows a bankruptcy plan to specify what happens to claims belonging to the bankruptcy estate, *see* 11 U.S.C. § 1123(b)(3), including enforcement by a "representative," which can introduce complexities not relevant here.

has important consequences for the application of judicial estoppel. As the *amicus* brief of the National Association of Bankruptcy Trustees and the American College of Bankruptcy explains at length (at 5-11), courts (including the Fifth Circuit) generally *do not* apply judicial estoppel when a trustee discovers an undisclosed cause of action and then prosecutes the claim. That makes good sense: Exempting "blameless bankruptcy trustee[s]" from application of the estoppel "preserv[es] the assets of the bankruptcy estate for equitable distribution to the estate's innocent creditors." *Reed*, 650 F.3d at 572.

All parties appear to agree the Court should endorse (or at least leave undisturbed) this rule exempting blameless trustees from application of judicial estoppel. Thus, in the Chapter 7 liquidation context, the role of judicial estoppel is especially narrow. It applies *only* to undisclosed *prepetition* causes of action, and *only* when the bankruptcy trustee declines to assume the claim. Application of the estoppel in that scenario poses no risk to creditors—the trustee has already "abandoned" the cause of action, so the creditors do not stand to recover. *Cannon-Stokes v. Potter,* 453 F.3d 446, 448 (7th Cir. 2006); *In re Wilton Armetale, Inc.*, 968 F.3d 273, 283-84 (3d Cir. 2020) (same). And causes of action that the trustee abandons generally revert back to the debtor, 3 Norton Bankr. L. & Prac. 3d § 74:2—the party against whom the estoppel can properly be applied.

3. "Chapter 13," the type of bankruptcy at issue in this case, "works differently." *Harris*, 575 U.S. at 514. This form of bankruptcy "allows a debtor to retain his property if he proposes, and gains court confirmation of, a plan to repay his debts over a three- to five-year

period." *Id.* (citing 11 U.S.C. §§ 1306(b), 1322, 1327(b)). Three distinctions between Chapter 13 and Chapter 7 are especially relevant for judicial estoppel and this case.

a. First, because Chapter 13 debts are satisfied through gradual repayment from income or earnings, the bankruptcy estate is not liquidated and distributed directly to creditors. "Rather, the court and creditors may examine the Chapter 13 estate, consider the debtor's expected income, and voice their support or objections as to whether a proposed payment plan should be 'confirmed.'" *Hughes v. Canadian Nat'l Ry. Co.*, 105 F.4th 1060, 1066 (8th Cir. 2024). "A court may [then] confirm a debtor's proposed Chapter 13 plan if creditors holding allowed claims will receive value equal to, or in excess of, what they would receive from an immediate liquidation." *Id.* (citing 11 U.S.C. § 1325(a)(4)).

The purpose of the bankruptcy estate in Chapter 13 is therefore "informational." *Hughes*, 105 F.4th at 1067. It allow creditors to determine up-front whether the proposed terms of the payment plan—*e.g.*, how long payment should be spread over the three-to-five-year window, or whether the repayment amount should include interest—are reasonable and provide creditors adequate protections. And because the estate plays an informational role for creditors in Chapter 13, prompt and accurate disclosure of assets is especially critical. Assets uncovered later may be of little use to creditors—they will not get such assets through liquidation, and learning about them late in repayment may render them all but valueless from an informational perspective.

b. Second, the disclosures in Chapter 13 differ not just in purpose, but also in scope. Because repayment is generally made out of a debtor's "future earnings or other future income," 11 U.S.C. § 1322(a), the Chapter 13 bankruptcy estate (unlike the Chapter 7 estate) includes assets, like litigation claims, that the debtor acquires *after* the petition is filed, *id.* § 1306(a). So the Chapter 13 bankruptcy estate includes both pre- and post- petition causes of action. It is therefore unsurprising that a number of courts, including the Fifth Circuit, have held that Chapter 13 debtors "have a continuing obligation to disclose post-petition causes of action." *Flugence v. Axis Surplus Ins. Co. (In re Flugence)*, 738 F.3d 126, 129 (5th Cir. 2013). Petitioner did not seek certiorari on that question and, in this Court, does not dispute that he was bound by this continuing disclosure obligation. *See* Pet.Br.6.

c. Third, because the estate's role in a Chapter 13 bankruptcy is "informational," a creditor's interest in knowing about a debtor's cause of action—both pre- *and* post-petition—varies depending on when the cause of action arises and is disclosed. For example, the repayment plan may not provide for full repayment to creditors. *See* U.S. Courts, *Chapter 13 – Bankruptcy Basics*, https://perma.cc/R4XC-RUSW; 11 U.S.C. § 1325. In that case, if a claim is timely disclosed early in the repayment process, creditors may have a full opportunity and incentive to move for modification of the plan to account for the claim. *See* 11 U.S.C. § 1329. This in turn impacts the application of judicial estoppel. In the subset of cases where a debtor attempted to conceal a cause of action but was discovered early enough to bring value to creditors, a blameless trustee may be able to pursue the cause of action. *See Reed*, 650 F.3d at 574 (A "blameless bankruptcy trustee" is not estopped "from pursuing a judgment that the debtor—having concealed the judgment during bankruptcy—is himself estopped from pursuing"); *Eastman v. Union Pac. R.R. Co.*, 493 F.3d 1151, 1155 n.3 (10th Cir. 2007); *Anderson v. Seven Falls Co.*, 696 F. App'x 341, 344 (10th Cir. 2017) ("[J]udicial estoppel does not apply to a compliant bankruptcy trustee.").

By contrast, a newly-arisen or previously undisclosed claim will be of little use to Chapter 13 creditors if it is discovered far into the process. For example, the claim may only be uncovered at the end of a plan that already provides for full repayment to creditors. In that case, the informational benefit to creditors is too little, too late—they may have proposed different or modified repayment terms *if* the claim had been promptly disclosed, but now the costs of modifying the plan outweigh the benefits. So any value of the claim has already been lost to creditors, and there is no harm to them or to the estate from estopping the debtor from pursuing the claim—and the system benefits generally from deterring other debtors from similarly hiding their causes of action.

That is what happened here.

II. Petitioner's actions lead to judicial estoppel.

A. Despite immediately recognizing his cause of action, petitioner fails to disclose it for nearly two years.

1. On December 27, 2019, petitioner Thomas Keathley filed for Chapter 13 bankruptcy in the United States Bankruptcy Court for the Eastern District of Arkansas. JA.255. His initial disclosures identified $180,054 in liabilities. JA.82.

It was not petitioner's first run through the bankruptcy system. He had petitioned for bankruptcy relief at least three times before. First, in 2001, he filed a Chapter 7 case, for which he received a full discharge of his debts. JA.242-243. Next in 2003, he filed a Chapter 13 bankruptcy case, under which a plan was confirmed allowing petitioner to repay his debts over several years; petitioner received a discharge from that bankruptcy in 2009. JA.244. Finally, in 2015, he filed another Chapter 13 case, which was ultimately converted to a Chapter 7 case. JA.244-245. The Chapter 13 proceedings at issue here followed all those.

The repayment plan ultimately approved by the bankruptcy court offered petitioner generous terms for a fresh start. He was to pay back his debts over the span of five years, entirely interest-free. Pet.App.51a.

2. While his Chapter 13 repayment plan was ongoing, on August 23, 2021, petitioner was involved in a car accident with David Fowler, a driver for respondent Buddy Ayers Construction. JA.1.

Petitioner immediately understood that he had potential legal claims as a result. That same day, he spoke with a personal-injury attorney about the possibility of filing suit. JA.223-224. Three days later, the attorney informed Buddy Ayers's insurer he had been retained by petitioner. JA.1-2. And within a few weeks of the accident, petitioner had told his bankruptcy attorney about it. JA.184. Petitioner did not, however, tell the bankruptcy court or any of his creditors about the accident or the claims he was already preparing to assert—even though he concedes he was under an ongoing obligation to disclose post-petition claims, *see* p. 12, *supra*.

Petitioner then began pursuing his claims. On December 29, 2021, he filed this personal-injury suit against Buddy Ayers and Fowler in the Northern District of Mississippi. ROA.17-25. And before this, in September 2021, petitioner filed a separate workers' compensation claim based on the accident. JA.206.

Petitioner did not inform the bankruptcy court about either action—even as he filed multiple requests for post-confirmation amendments to his Chapter 13 plan, in March 2022 and May 2022. JA.3-23, 45-65. The relevant forms asked about "changes of circumstance," JA.3, but petitioner disclosed neither the personal-injury claim nor his separate workers' compensation claim. On the basis of these filings, the bankruptcy court approved petitioner's amended Chapter 13 plan on July 20, 2022. JA.66-67.

Meanwhile, petitioner continued to press the undisclosed claims. He filed the operative First Amended Complaint in this action, asserting a new demand for punitive damages. ROA.512. A week later, he entered into an agreement settling his workers' compensation suit for $18,000, JA.294-301—a sum amounting to about 9% of his total debts and 75% of his unsecured debts. The Tennessee Court of Workers' Compensation Claims approved the settlement the same day. JA.302-303. Petitioner disclosed none of these developments to the bankruptcy court as they unfolded.

B. The courts below apply judicial estoppel.

1. a. Buddy Ayers filed for summary judgment against petitioner on the basis of judicial estoppel.

The motion explained how all the standard elements of judicial estoppel were readily satisfied on undisputed facts: Petitioner had taken clearly inconsistent positions regarding the existence of the personal-injury claim, implicitly representing to the bankruptcy court that no such claim existed even as he pressed the claim in the district court; he had convinced the bankruptcy court to accept his position regarding the non-existence of the claim by confirming a plan that did not account for the claim; and he had secured an unfair benefit from his inconsistency, by maintaining the personal-injury claim without alerting his creditors. ROA.976-977. Most relevant here, the motion further showed that petitioner's actions were "by no means[] inadvertent." ROA.977. For one thing, petitioner had knowledge of the personal-injury claim from its inception: He realized almost immediately that he had a claim from the accident, but he stayed silent about it in the bankruptcy proceedings—repeatedly omitting it from his filings even as he litigated the personal-injury claim in federal court. For another, petitioner had an obvious motive for concealing the claim: Had it known of this additional asset, the bankruptcy court could have amended his repayment plan to account for it. ROA.977.

b. A few days later, his hand forced by Buddy Ayers's motion for summary judgment based on judicial estoppel, petitioner finally filed an amended schedule in the bankruptcy court disclosing the personal-injury claim. JA.186, 202-203; Pet.App.4a. The disclosure came nearly two years after the accident occurred and about sixteen months after petitioner filed suit. Unsurprisingly, at this point (three years into petitioner's repayment plan), no creditor attempted to modify the plan.

About a week after that, petitioner made his first disclosure of the workers' compensation suit, by filing a motion asking the bankruptcy court to approve the December 2022 settlement of that suit. JA.308-309. In this filing, petitioner revealed that he had already spent $14,000 of the net settlement funds, leaving only $4,000 left for the bankruptcy estate by the time it was disclosed. JA.308.

c. Petitioner then opposed the judicial-estoppel motion. Among other things, he argued that his inconsistent representations concerning the personal-injury claim were inadvertent. He "d[id] not contest [Buddy Ayers's] position that he had knowledge of the undisclosed claims." ROA.1208. Nonetheless, he averred that he had no motive for concealment, because he was "paying his creditors 100%" and "could not possibly pay more pursuant to his plan." ROA.1208. Ultimately, he blamed the non-disclosure on his bankruptcy attorney, to whom he "disclosed his personal injury claims" and upon whom he "relied ... to perform whatever additional steps were necessary." ROA.1209.

2. The district court granted Buddy Ayers's summary judgment motion. The court concluded that all the elements of judicial estoppel were met and rejected petitioner's claim of inadvertence. Petitioner had conceded knowledge of the claim. His contentions about a mistake of law or reliance on counsel were not cognizable "inadvertence." Pet.App.52a-53a. And the court further concluded that he had a clear financial incentive not to disclose his claim. Prompt disclosure could have led petitioner's creditors to demand more stringent terms for his Chapter 13 plan—payment with interest, for example. Pet.App.50a-52a.

While petitioner protested he had never intended to deceive the courts, the court concluded that there was "no" realistic "way of ascertaining his subjective intent in this regard," for the obvious reason that "courts are not mind readers." Pet.App.40a, 48a. The court was also unpersuaded that petitioner's belated disclosure demonstrated good faith. Accepting that logic "would provide perverse incentives for debtors to keep their potential tort actions to themselves and 'wait and see' if they were caught in the act." Pet.App.47a. It would also be "unfair" to opposing parties "if the only consequence of 'catching the plaintiff in the act' were that he simply filed an amended bankruptcy plan." Pet.App.47a.

3. In a motion for reconsideration, petitioner submitted an affidavit as "newly discovered evidence" relevant to inadvertence. ROA.1880. The affiant was a staff attorney for the Chapter 13 Trustee for the district where petitioner had filed his bankruptcy case. JA.252. The affidavit averred that, "[i]n the Eastern District of Arkansas, it is not uncommon for debtors to amend their bankruptcy filings to disclose post-petition claims for personal injury actions prior to the settlement or resolution of the personal injury action." JA.253.

The district court held that the evidence was not properly filed on reconsideration, but also observed that the new "affidavit actually *hurt[]* [petitioner's] position." Pet.App.25a. Rather than showing petitioner's actions were inadvertent, it "strongly suggest[ed] that [petitioner's] non-disclosure was intentional, albeit based upon a misunderstanding of the applicable law," and "a conscious decision based upon a misunderstanding of the law remains a conscious one." Pet.App.33a-34a.

4. The court of appeals affirmed.

Relevant here, the Fifth Circuit found that petitioner had not shown that judicial estoppel should not apply on the ground that his failure to disclose his personal-injury claim was inadvertent. The court observed that, under an objective test, a "debtor's failure to satisfy its statutory disclosure duty is inadvertent only when, in general, the debtor either lacks knowledge of the undisclosed claims or has no motive for their concealment." Pet.App.13a (citation omitted). Petitioner admitted he had knowledge of the claims, and his argument "that he had no motive to conceal his claims from the bankruptcy court because he did not realize he had a duty to disclose them" was "meritless." Pet.App.13a. A mistake of law was no defense, and "[petitioner] conceded in his deposition testimony[] [that] this [was] his fourth time to file for bankruptcy," making it difficult "to accept his representation that he was unaware" of his disclosure duties. Pet.App.13a.

Indeed, much like the district court, the Fifth Circuit found that the affidavit petitioner had submitted from the bankruptcy staff attorney merely "cut[] against [his] argument": "Pointing out that 'non-disclosure was not unusual and is, in fact, routine in the Eastern District of Arkansas,' suggest[ed] that [petitioner's] nondisclosure was actually intentional—not inadvertent as he claim[ed]." Pet.App.13a-14a. Nor was the court persuaded by the affidavit's contentions that petitioner's non-disclosure was immaterial and could not have been to his benefit. He "ha[d] an interest-free repayment plan which [was] spread over five years," and "ha[d] filed multiple times to have his interest-fee repayment plan extended." Pet.App.14a. "If he had disclosed his personal injury claims to the bankruptcy court, his creditors would have had an opportunity to object to his interest-free plan on grounds that his personal injury suit, if successful, would have generated enough revenue to cover the interest he owed on his debts." Pet.App.14a. Thus, petitioner had a clear motive to conceal the claim, and the district court acted within its discretion in applying judicial estoppel. Pet.App.14a-15a.

Judge Haynes concurred in the judgment. She agreed the district court's application of judicial estoppel was a proper exercise of discretion under Fifth Circuit precedent, but expressed reservations about that precedent. Pet.App.20a-23a.

SUMMARY OF ARGUMENT

I. Judicial estoppel does not require proof of bad faith. The doctrine forbids clearly inconsistent results not to punish the litigant, but to protect the integrity of the judicial system from the skepticism that inconsistent decisionmaking produces. It is inequitable to keep a benefit, or cause an adversary disadvantage, that depends on convincing the courts of two clearly inconsistent positions. A mere lack of bad faith, or lack of *proof* of bad faith, does not justify departing from that established principle. This Court should not stretch an "inadvertence or mistake" exception so far as to allow litigants to undo their past positions—while keeping the benefit of their past victories—for essentially any non-malicious reason.

This Court has always judged judicial estoppel by an objective standard. Thus, in assessing the inadvertence-or-mistake exception in *New Hampshire*, this Court did not look at New Hampshire's intent at all. New Hampshire contended that it should be allowed to shed its prior position because it had recently found new historical evidence. This Court did not question New Hampshire's sincerity, but recognized that just because a party now sees advantage in changing positions does not mean that its original position rested on a "mistake."

The rule should be no different in bankruptcy. Denying the existence of a known cause of action as an asset; obtaining a discharge, plan confirmation, or other relief; and then seeking to sue on the undisclosed cause of action meets all the elements of judicial estoppel. A claim of bad legal advice, strategic misjudgment, or general good faith does not establish that the non-disclosure was a "mistake" in the sense that a true scrivener's error would be. And the administration of the bankruptcy system depends on full, timely disclosure of all the debtor's asserts. Adopting a rule in which the only consequence of getting caught is belatedly *making the disclosure that was required anyway* does not create an incentive to disclose fully.

II. Petitioner's amorphous, multi-factor test finds no support in the history of judicial estoppel, in this Court or elsewhere.

To begin, petitioner acknowledges that his rule would open the door to litigants citing mistakes of law, or contending that their legal arguments were selected by counsel and not by them, as reasons to let them keep their clearly inconsistent wins. But reasons like those have never been valid ways of escaping estoppel. To the contrary, estoppel has always recognized that a litigant may be bound by the representations and strategic judgments of its counsel.

Petitioner's rule, with its 17-plus factors, is also too amorphous to produce predictable results. Petitioner appeals to the notion that courts should be able to look at every possible factor in exercising their discretion, but he overlooks that a lack of bad faith has never been a legitimate part of the "inadvertence or mistake" analysis. His test would *require* courts to entertain a search for such evidence despite the significant difficulty in finding it and weighing its credibility years after the schedules were filed.

At bottom, petitioner argues that debtors should be able to avoid judicial estoppel from an undisclosed cause of action by claiming a pure heart and making belated disclosure once caught—even if the debtor unquestionably both knew of the cause of action and had a financial motive for concealment. Petitioner's rule will do nothing to incentivize the full, timely disclosure of assets that creditors, trustees, and bankruptcy courts need—it will do the opposite.

Judicial estoppel is appropriate where a debtor knew of a cause of action, did not disclose it, secured bankruptcy relief, and obtained a benefit by undervaluing his assets or keeping the cause of action for himself. The exception for inadvertence or mistake does not extend to a simple change of heart.

ARGUMENT

The question on which this Court granted certiorari is whether "judicial estoppel can be invoked" in a case like this one "regardless of whether there is evidence that the plaintiff in fact acted in bad faith." Pet.

i. The answer is yes: Judicial estoppel can be invoked without proof of bad faith. Petitioner no longer disputes that he took "clearly inconsistent" positions in the bankruptcy and in this action, that the bankruptcy court accepted his position, and that he would benefit from the change of position. The lower courts ruled against him on all of those elements, and petitioner did not seek certiorari on any of them. When all those considerations are present, judicial estoppel is appropriate. *New Hampshire*, 532 U.S. at 750-51.

None of those three prongs contains a bad-faith requirement, so petitioner attempts to smuggle one in through the inadvertence-or-mistake exception to judicial estoppel. But no precedent, historical principle, or policy consideration supports allowing a litigant to escape judicial estoppel—*i.e.*, to prevail simultaneously on two clearly inconsistent positions—unless his adversary can prove his subjective bad faith.

Much of petitioner's brief styles this case as a dispute about what "evidence" a court should consider in deciding whether a debtor-turned-plaintiff made "an intentional effort to mislead the courts." Pet.Br.2. But that framing skips past the core question: whether proof of an "intentional effort to mislead" is a prerequisite to applying judicial estoppel. It is not. This Court has previously declined to create "inflexible prerequisites" to the application of judicial estoppel. *New Hampshire*, 532 U.S. at 751. It should not now adopt petitioner's position that bad faith is such a prerequisite.

I. Judicial estoppel rests on objective considerations.

Judicial estoppel requires no showing of bad faith. That is apparent from this Court's decisions over nearly two centuries, which base judicial estoppel on the clear inconsistency of the litigant's positions—not on the litigant's reasons for switching positions. And the historical roots of estoppel doctrine more broadly confirm that no bad-faith requirement exists.

To the contrary, judicial estoppel rests on objective considerations: whether the litigant previously took a position clearly inconsistent with its current one; whether a court accepted the litigant's previous position; and whether allowing the litigant to switch positions (while retaining its past victory) would either benefit the switching litigant or disadvantage its adversary. Any exception for "inadvertence or mistake" likewise entails an objective inquiry into ascertainable historical facts about the litigant's representations to the *first* tribunal.

For the same litigant to win two cases by advancing positions clearly inconsistent with each other is a problem not just for the litigants but for the judiciary: It creates an obvious unfairness that would make reasonable observers question the outcome. Judicial estoppel heads off that problem and safeguards the courts' integrity. But that safeguard would be undone if a lack of bad faith—more accurately, a lack of *proof* of bad faith—were sufficient to let the litigant pocket its two clearly inconsistent victories. Petitioner's position thus runs contrary to the basic purpose of judicial estoppel. And the fact that this case deals with the estoppel effect of a bankruptcy adjudication is, if anything, more reason to apply the ordinary rule.

Bankruptcy depends on a full and candid disclosure of assets; the financial incentives to conceal assets are real, and unasserted causes of action are particularly easy assets to hide. This Court should not create a special rule relying on subjective intent in the bankruptcy context alone.

A. An objective standard comports with the history and purpose of judicial estoppel.

An objective standard for judicial estoppel best comports with this Court's precedent and judicial estoppel's doctrinal history. This Court has never looked to subjective bad faith, and in fact has rejected the notion that there is an exception to estoppel for prior mistakes of law—even though a good-faith legal misunderstanding might well be thought to show a lack of malign intent.

1. *New Hampshire*, this Court's primary modern precedent on judicial estoppel, shows that the test for applying the doctrine is objective, not subjective. *See also* pp. 6, 21, *supra*. In that decision, this Court did not consider New Hampshire's possible subjective intent to mislead in taking its position in prior litigation. To the contrary, it dismissed New Hampshire's complaint on the pleadings, without any suggestion that fact development on good faith was warranted. The Court extensively considered whether New Hampshire's change of position could be said to be the result of "inadvertence or mistake," but its inquiry looked nothing like what petitioner proposes.

To begin, the Court did not even need to decide definitively whether to recognize an exception for "inadvertence or mistake." What it said was this: "We do not question that it may be appropriate to resist application of judicial estoppel 'when a party's prior position was based on inadvertence or mistake.'" 532 U.S. at 753 (quoting *John S. Clark Co. v. Faggert & Frieden, P.C.*, 65 F.3d 26, 29 (4th Cir. 1995), and citing two other circuit decisions). In other words, this Court has never recognized such an exception itself, much less held that it is enough to defeat judicial estoppel standing alone.

When this Court proceeded to analyze whether New Hampshire's previous position "fairly may be regarded as a product of inadvertence or mistake," 532 U.S. at 753, it said not a word about whether New Hampshire had acted in bad faith in the prior litigation. Indeed, the notion that the Court would attribute such malign intent to a sovereign State or its counsel—including then-Deputy Attorney General David H. Souter—is farfetched. To the contrary, the Court took at face value New Hampshire's representations that its changed position resulted from a reinterpretation of the historical evidence about a 1740 decree of King George II, *see id.* at 753, 756, presumably a matter on which reasonable minds could plausibly differ. But New Hampshire's evident good faith did not save it.

Instead of treating "inadvertence or mistake" as turning on subjective intent or bad faith, this Court engaged in a limited—and, critically, objective—inquiry into whether New Hampshire could have made a mistake in taking its previous position. 532 U.S. at 753. It found no possible cognizable mistake. All the relevant materials "were no less available 25 years ago," and New Hampshire "had every reason to consult [them]." *Id.* at 754. The Court did not need to delve deeper than that, or to ask *why* New Hampshire or its lawyers decided to take the position it took in the first case.

And it is the first case that matters, as this Court made very clear. 532 U.S. at 753 (asking whether "New Hampshire's position in 1977" came from "inadvertence or mistake"). That shows that "inadvertence or mistake" cannot mean "lack of intent to game the system." Judicial estoppel precludes opportunistic switches of position only after the first case is won. It would not make sense to ask whether New Hampshire intended to game the judicial system when it filed its papers *in the first case*, because the opportunity to benefit from switching position may not arise until after judgment in the first case.

Thus, it is inconsistent with *New Hampshire*'s explanation of judicial estoppel to say (as the Ninth Circuit does) that "[t]he relevant inquiry is, more broadly, the plaintiff's subjective intent when filling out and signing the relevant bankruptcy schedules." *Ah Quin v. Cnty. of Kauai Dep't of Transp.*, 733 F.3d 267, 276-77 (9th Cir. 2013). Again, the requirement for estoppel has always been that the litigant took the original position with *objective knowledge*, not a bad-faith intent to deceive. *See* p. 7, *supra*. A debtor who knows about a cause of action but does not list it on her bankruptcy schedules because she plans never to assert it, and who changes her mind several years later when she learns how much money a jury could award, should not be excused from estoppel based on the purity of her heart at the time of the bankruptcy.

Petitioner discusses none of this in his sparse treatment of *New Hampshire*. Rather, he contends that *New Hampshire* "acknowledged" "that judicial estoppel applies when 'the party who is alleged to be estopped 'intentionally misled the court to gain unfair advantage.''" Pet.Br.14-15. But the quote is not from *New Hampshire*—it is from a Fourth Circuit decision, *John S. Clark*, 65 F.3d at 29. And while this Court cited *John S. Clark* once (for the proposition that there "may" be an inadvertence-or-mistake exception), p. 26, *supra*, that does not mean it endorsed the reasoning petitioner quotes.

Petitioner's primary use of *New Hampshire* is his repeated quotation of the word "deliberately," but that word does not signal that this Court has endorsed a bad-faith standard. The word comes from a passing quote from dictum in a decision by the Fifth Circuit, 532 U.S. at 751—and petitioner's entire submission to this Court is that the Fifth Circuit does *not* ask about bad faith. To the extent "deliberately" tracks this Court's holding, petitioner is misreading it: New Hampshire was estopped, without the Court ever stating that it acted "deliberately" in the way petitioner uses the word.

At bottom, the reason New Hampshire was estopped was that it had previously advanced—and the Court had adopted—a legal position "clearly inconsistent" with its new one. As the Court recognized, if it let New Hampshire switch positions, "'the risk of inconsistent court determinations' would become a reality." 532 U.S. at 755 (citation omitted). So would the consequent "threat to judicial integrity." *Id.* at 751.

2. Earlier precedents also teach that an inquiry into a party's subjective intent to mislead is not required for the application of judicial estoppel.

A subjective inquiry would, for example, naturally encompass a mistake-of-law defense. But this Court long ago rejected that possibility. In *Davis v. Wakelee*, the Court considered the effect of plaintiff Davis's position in a prior proceeding—a bankruptcy. 156 U.S. at 685. Davis had moved to dismiss Wakelee's opposition to his bankruptcy discharge. *Id.* Davis argued that Wakelee's claim had been reduced to a judgment since the commencement of bankruptcy proceedings and so it would be unaffected by his discharge. *Id.* In a later proceeding after discharge, Davis asserted that Wakelee's claim was invalid. This Court held that Davis was estopped from so asserting. Davis resisted the estoppel on the basis that he had made a mistake of law. But this Court held that mistake of law was no defense. Although "Davis may possibly have been m[i]staken in his conclusion that the judgment was valid, … he is conclusively presumed to know the law, and cannot thus speculate upon his possible ignorance of it." *Id.* at 691. Davis had "obtained an order which he could only have obtained upon the theory that the judgment was valid," and this Court held that, despite his mistake-of-law defense, his prior representation amounted to "consent that the judgment should be treated as binding for the purposes of the motion, and he is now estopped to take a different position." *Id.* As in *New Hampshire*, the analysis in *Davis* is incompatible with inquiry into the litigant's subjective intent.

Similarly, in *Philadelphia, Wilmington & Baltimore R.R. Co. v. Howard*, this Court applied estoppel without regard to intent. The plaintiff railroad had, in a prior action, successfully asserted that a contract bore its seal and was thus the deed of the corporation, but it then took the opposite position in a later action.

54 U.S. (13 How.) at 334. This Court was "clearly of opinion, that the defendant cannot be heard to say, that what was asserted on the former trial was false, even if the assertion was made by mistake." *Id.* at 337. The Court explained that if "it was a mistake, of which there is no evidence, it was one made by the defendant, of which he took the benefit, and the plaintiff the loss, and it is too late to correct it." *Id.* The Court rejected the railroad's excuse that its change of position in the prior action would not "have been a fraud upon the administration of justice." *Id.* at 327. It did not matter that the railroad's position was *not fraudulent*—that it was *knowingly inconsistent* was enough to warrant estoppel.

Thus, this Court's precedents already establish that judicial estoppel does not require a subjective intent to mislead the court.

B. An objective standard serves estoppel's essential purpose of preserving consistency across the judicial system.

Clearly inconsistent adjudications of like issues create a problem not just for the losing litigants, but for the judicial system as a whole. That is why estoppel exists: not to punish litigants for intentionally working to produce inconsistent results, but to avoid the inconsistency, period. *See* pp. 3-4, *supra*. Judicial estoppel protects "the integrity of the judicial process," *New Hampshire*, 532 U.S. at 755; indeed, that is a core purpose of estoppel more generally. *Browning Mfg. v. Mims (In re Coastal Plains, Inc.)*, 179 F.3d 197, 213 (5th Cir. 1999) ("[T]he purpose of judicial estoppel is to protect the integrity of courts, not to punish adversaries or to protect litigants"); *Ryan Operations*, 81 F.3d at 360 (similar). The objective-intent standard is the only standard that accords with the history and purposes behind estoppel more broadly.

The reputation of judicial proceedings suffers if a litigant prevails in separate proceedings on two clearly inconsistent arguments (just as it suffers if a litigant prevails on an issue that litigant previously lost, the rationale for collateral estoppel). "[J]udicial acceptance of an inconsistent position in a later proceeding would create 'the perception that either the first or the second court was misled.'" *New Hampshire*, 532 U.S. at 750 (quoting *Edwards v. Aetna Life Ins. Co.*, 690 F.2d 595, 599 (6th Cir. 1982)). That is why one of the core elements of judicial estoppel is acceptance of the prior position by a court.

And once the court accepts the party's first position, estoppel treats a first adjudication as settling the matter. Conversely, asserting that the court got it wrong the first time is not a valid way of refuting the estoppel effect of that first decision—whether under judicial estoppel, collateral estoppel, direct estoppel, or any other estoppel that rests on a judicial judgment. *See, e.g.*, *B & B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 1308-09 (2015); *see also Minerva*, 594 U.S. at 575 (recognizing that assignor estoppel may bar an assignor from challenging a patent even if a court would agree with that challenge).[3]

[3] That point is also the response to petitioner's insistence (at, *e.g.*, 24-25) that judicial estoppel confers a "windfall" on parties that assert it successfully. It would only be a "windfall" if the first court's decision (accepting the party's original position) were wrong and the "clearly inconsistent" new position were right. But the whole point of estoppel (whether judicial estoppel or col-

In this context especially, then, the good faith of the estoppel-denier is naturally subordinated to a more important equitable goal of guarding against the "threat to judicial integrity" from two clearly inconsistent victories. *New Hampshire*, 532 U.S. at 751. That threat is not dispelled just because the twice-victorious litigant subjectively lacked bad faith.

Indeed, adding a bad-faith requirement to those estoppel doctrines would convert those doctrines into fraud by another name. Ewart 83-85; Pomeroy 1638-1640. Similarly here, it would undermine and contradict the equitable principle behind judicial estoppel to narrow the doctrine to instances of fraud—*i.e.* where the estoppel-denier had a subjective intent to mislead.

Judicial estoppel would not serve its function of preventing public distrust in the integrity of the judicial system if it applied only where a party in the first proceeding had a subjective intent to mislead the court. *In re Buscone*, 61 F.4th 10, 23 (1st Cir. 2023) ("[W]e have never recognized such an exception and have noted that deliberate dishonesty is not a prerequisite to application of judicial estoppel." (citation omitted)). That concern is amplified given the practical reality that only a subset of cases lend themselves to proof of subjective bad faith. Requiring such proof means tolerating inconsistent adjudications involving the same party—and allowing that party to keep the benefit of the inconsistency, even when it had full knowledge of the relevant facts and so cannot claim

lateral estoppel) is that, once the first decision reaches final judgment and is not going to be re-examined, no other court will reexamine it either. Estoppel "prevents relitigation of wrong decisions just as much as right ones." *B & B*, 575 U.S. at 1308 (citation and brackets omitted).

true "inadvertence." Accepting such inconsistency can only harm the reliability and reputation of the judicial process. An objective test is crucial to addressing the system-wide value that judicial estoppel provides.

C. An objective standard is the best fit for the bankruptcy context.

The foregoing principles apply with full force in the bankruptcy context, and bankruptcy does not need its own atypical judicial estoppel rule. *Contra* U.S. Br. 18. There is no reason why bankruptcy should be the only area of the law in which judicial estoppel requires proof of bad faith. If anything, bankruptcy-specific considerations support the application of an objective standard even more strongly.

An objective test incentivizes the full and timely disclosure required to maximize the value to creditors, facilitates a speedy resolution of the bankruptcy, and discourages a race to the courthouse by creditors by ensuring a fair and orderly distribution of the bankruptcy estate—all core goals of bankruptcy. And while bankruptcy seeks to provide a debtor a fresh start, that fresh start is contingent on his fair and full disclosure of his assets—bankruptcy simply does not function without that disclosure. *See* p. 8, *supra*.

In the Chapter 7 context, the bankruptcy estate includes pre-petition assets which are then liquidated to repay creditors. Concealed pre-petition assets thus directly impact the amount available to creditors in the bankruptcy. In Chapter 13, a full and fair view of the bankruptcy estate, which includes pre- and post-petition assets, directly informs the repayment plan to creditors. *See* pp. 12-13, *supra*. A debtor's assets are peculiarly within his knowledge, so it is imperative that the debtor disclose the assets he knows about, rather than conceal what he can.

Not only does bankruptcy's practical functioning rely on full and fair disclosure, but the equity of bankruptcy also relies on it. The early history of bankruptcy treated debtors harshly—bankruptcy was seen as relief *from* debtors, not relief *for* debtors. Charles Jordan Tabb, *The History of Bankruptcy Laws in the United States*, 3 Am. Bankr. Inst. L. Rev. 5, 8 (1995). Over time, creditors slowly began to accept the proposition that debtors who cooperated in bankruptcy proceedings should be discharged from their debts, based on the idea that such cooperation would improve recoveries for creditors. *Id.* at 10-11. The success of bankruptcy law relies on fairly balancing the interests of creditors and debtors. *Id.* at 27-38; *see Taggart v. Lorenzen*, 587 U.S. 554, 565 (2019) (noting "that the Bankruptcy Code often seeks to achieve" a "careful balance between the interests of creditors and debtors" (citation omitted)).

That balance is upset without requiring full and fair disclosure of all assets within the debtor's knowledge. And a rule that permits knowing omissions, without consequence, will result in incomplete disclosure. A debtor must be incentivized to come forward with all of the assets *of which he has knowledge*. A debtor *will* be excused for lack of knowledge, but not for a supposed purity of heart in concealing assets. For example, a debtor could demonstrate that he failed to disclose a trespass cause of action because he did not know the source of water flooding onto his property—but not because he sincerely but incorrectly believed that the value of the claim would not affect the court's decision.

II. Petitioner's subjective standard is legally unsound and unworkable.

Against the traditional and administrable objective standard, petitioner proposes (at 31, 34-37) a 17-plus-factor standard "bearing on a debtor's intent to mislead." This multi-factor subjective standard is contrary to settled law, grossly inefficient, and insensitive to the goals of bankruptcy. This Court should reject it.

A. Petitioner's subjective standard is legally flawed.

In addition to proceeding from a flawed premise—that what matters to judicial estoppel is whether the debtor had the "intent to mislead," a point refuted above, pp. 25-30, *supra*—key elements of petitioner's subjective standard flout other established legal principles.

1. Petitioner would have courts consider whether there is evidence the debtor understood the "rules governing disclosure" in bankruptcy. Pet.Br.35. The implication is that a well-intentioned misunderstanding of the disclosure obligations can demonstrate that non-disclosure was inadvertent. But courts—including courts that petitioner says (at 31-32) embrace his subjective standard—have rejected arguments that a debtor's "not know[ing] that [he] ought to have disclosed" a claim shows inadvertence. *Stanley v. FCA US, LLC*, 51 F.4th 215, 221 (6th Cir. 2022) (citation omitted); *see also Flugence*, 738 F.3d at 130; *In re Superior Crewboats, Inc.*, 374 F.3d 330, 335 (5th Cir. 2004).

For good reason. After all, this Court has "long recognized the 'common maxim, familiar to all minds, that ignorance of the law will not excuse any person, either civilly or criminally.'" *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573, 581 (2010) (citation omitted). "Our law is therefore no stranger to the possibility that an act may be 'intentional' for purposes of civil liability, even if the actor lacked actual knowledge that her conduct violated the law." *Id.* at 582-83; *Stanley*, 51 F.4th at 221 ("[I]gnorance of the law is generally not an excuse."). Thus, statutes excusing "bona fide error" routinely do not excuse legal error. *Jerman*, 559 U.S. at 593 (federal statutes), 601 (state statutes). Likewise, the historical record shows that mistake of law is not a defense to estoppel generally. *See* pp. 6-7, 29-30, *supra*. Petitioner has not even attempted to demonstrate why that settled law does not apply here.

2. Equally mistaken is petitioner's assertion (at 35) that "[w]hether the debtor told his bankruptcy attorney about the civil claim" is relevant—with the suggestion that if the bankruptcy attorney was told about the claim and it still goes undisclosed, the fault should lie with the attorney and not the debtor. But the attorney is the debtor's agent, with the actual and apparent authority to make representations to courts that bind the client. That happens every time a lawyer files an answer to a complaint, serves a response to a Request for Admission, or makes a judicial admission in a signed pleading. *See* Fed. R. Civ. P. 8(b), 36(a)(3), 11(b). Having "voluntarily ch[osen] [an] attorney as his representative in [an] action," a party "cannot [then] avoid the consequences of the acts or omissions of this freely selected agent." *Link v. Wabash R.R. Co.*, 370 U.S. 626, 633-34 (1962). "Any other

notion would be wholly inconsistent with our system of representative litigation, in which each party is deemed bound by the acts of his lawyer-agent and is considered to have 'notice of all facts, notice of which can be charged upon the attorney.'" *Id.* (quoting *Smith v. Ayer*, 101 U.S. 320, 326 (1879)).

For exactly that reason, courts across the country, including a number of the circuits petitioner invokes in support of his standard, have held that "bad legal advice does not relieve the client of the consequences of her own" non-disclosure. *Cannon-Stokes*, 453 F.3d at 449; *see, e.g.*, *Putnam v. Day*, 89 U.S. 60, 64 (1874) (applying estoppel because "[i]f his counsel failed to make as good a defence for him as they might have done, it was his misfortune and cannot be rectified after the passing of the decree"); *Stanley*, 51 F.4th at 221 (refusing to "depart from the general rule ... that litigants are bound by the actions of their attorneys" (citation and quotation marks omitted)); *Queen v. TA Operating, LLC*, 734 F.3d 1081, 1094 (10th Cir. 2013) (litigants "cannot escape their responsibility by blaming their bankruptcy attorney"); *Eastman*, 493 F.3d at 1159 ("Gardner's assertion that he simply did not know better and his attorney 'blew it' is insufficient to withstand application of the doctrine."); *Jethroe v. Omnova Sols., Inc.*, 412 F.3d 598, 601 (5th Cir. 2005) (similar).

Indeed, it would make little sense not to apply in the estoppel context a basic concept—an agent's authority to bind the principal—that derived from estoppel in the first place. It is the law of estoppel that "underlies the doctrine of the implied authority of an agent in most of its applications, and which prevents the principal from denying the authority which, by his conduct, he has held the agent out to the world as possessing." Pomeroy 1634; *see, e.g.*, *Bronson's Ex'r v. Chappell*, 79 U.S. 681, 683 (1870) (principal "is estopped to take refuge" in denying his agent's authority "[i]f he has justified the belief of a third party that the person assuming to be his agent was authorized to do what was done"). If a client is estopped from disavowing the actions of the "lawyer-agent," *Link*, 370 U.S. at 634, it follows that those actions can estop the client in subsequent litigation as well.

Conceivably the fact that a debtor disclosed a cause of action to the attorney might be relevant to establishing true inadvertence—such as a paralegal e-filing the wrong schedule of assets. *Cf. Carson v. Hyatt*, 118 U.S. 279, 285-88 (1886) (no estoppel from mistaken averment of domicile promptly corrected). But there is no suggestion that any scrivener's error caused the omission here: The record shows that, if anything, the decision not to disclose petitioner's cause of action was a conscious one, perhaps based on local practice (a dubious one if so).

Rather than rewrite the applicable law, where a party's representation to a tribunal rests on bad legal advice, "[t]he remedy for bad legal advice lies in malpractice litigation against the offending lawyer." *Cannon-Stokes*, 453 F.3d at 449. The remedy is not allowing the party to walk away from the consequences of its (successful) position as long as it can blame the lawyer. In so arguing, petitioner "might as well say that []he is free to ignore any contract that a lawyer advised h[im] to sign with h[is] fingers crossed behind h[is] back." *Id.*

B. Petitioner's subjective standard is amorphous and unmanageable.

Even setting aside the obvious legal flaws, petitioner's subjective standard has nothing to recommend it as a practical matter. On his view, every single motion for judicial estoppel in a bankruptcy-related case would compel district courts to engage in an unbounded, multi-factored balancing test entailing exhaustive fact discovery and requiring certification of legal and factual questions to the bankruptcy court. Pragmatic good sense does not support this approach any more than precedent.

1. To recite petitioner's multi-factor test is practically to discredit it. The standard requires courts to march through *at least* 17 different considerations—petitioner (at 35) makes clear the analysis merely "include[s]" but is by no means limited to his catalogue of factors—all to decide a backstop exception to a doctrine that *already* requires a multi-step analysis. *See* Pet.Br.35-37.

As this Court and its Members have repeatedly observed, "experience has shown that" such "open-ended balancing tests[] can yield unpredictable and at times arbitrary results." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 136 (2014) (statutory standing); *see also, e.g.*, *Taylor v. Sturgell*, 553 U.S. 880, 898, 901 (2008) (non-party claim preclusion) (rejecting a similarly "amorphous," "all-things-considered balancing approach"); *Wooden v. United States*, 595 U.S. 360, 385 (2022) (Gorsuch, J., concurring, joined by Sotomayor, J.) (Armed Career Criminal Act's "[o]ccasions [c]lause") ("Multi-factor balancing tests of this sort, too, have supplied notoriously little guidance in many other contexts, and there is little reason to think one might fare any better here."). The reason why is obvious: "[I]t is no more possible to demonstrate the inconsistency of two opinions based upon a 'totality of the circumstances' test than it is to demonstrate the inconsistency of two jury verdicts." Antonin Scalia, *The Rule of Law as a Law of Rules*, 56 U. Chi. L. Rev. 1175, 1180 (1989).

Petitioner counters (at 16-17) that his nebulous consider-anything-at-all standard is required by the equitable nature of judicial estoppel, which historically prizes "case-by-case" "flexibility." To be sure, equity must avoid rigidity and respond to context (though estoppel is not purely an equitable doctrine). But even in equity, flexibility should not mean formlessness. "Discretion is not whim, and limiting discretion according to legal standards helps promote the basic principle of justice that like cases should be decided alike"—a principle that underlies judicial estoppel as well. *Martin v. Franklin Cap. Corp.*, 546 U.S. 132, 139 (2005); Scalia 1180 ("Only by announcing rules do [judges] hedge [themselves] in."). Even discretionary equitable doctrines require limiting principles and outer bounds. Petitioner's test has none.

2. The only thing certain about petitioner's subjective standard is that it will mire litigants and the lower courts in laborious and prolonged factfinding.

Again, his approach mandates that courts examine the subjective intent of the debtor, the debtor's understanding of the law, and the debtor's communications with bankruptcy counsel. There is scant chance those issues can be decided on the papers. Rather, they will almost inevitably require extensive fact discovery—at a minimum, depositions and wide-ranging document requests aimed at reconstructing the debtor's state of mind at the time he made incomplete disclosures to the bankruptcy court, and perhaps ultimately a trial on the debtor's subjective intent. And difficult questions of privilege and waiver will compound the endeavor's cost and complexity whenever communication between the debtor and his bankruptcy attorney is placed at issue.

In short, this "all-things-considered balancing approach [will] spark wide-ranging, time-consuming, and expensive discovery" into elusive and knotty questions around state of mind and attorney-client confidences. *Taylor*, 553 U.S. at 901. "And after the relevant facts are established, district judges would be called upon to evaluate them under a standard that provides no firm guidance." *Id.* To make matters worse, the "facts" would concern issues of subjective intent that are notoriously difficult to establish no matter how rigorous the discovery process—particularly given the obvious reality that *every* debtor will testify that his failure to disclose a claim was not a product of bad faith.

It is therefore unsurprising that the government recoils from petitioner's emphasis on the debtor's own self-serving testimony on state of mind, and rightly urges that "objective evidence" should win out. U.S. Br. 26. To the extent the Court holds that the inadvertence analysis should be broader than the one conducted by the courts below, then, it should at least place limits on the kind of factfinding that should be typically expected—limits that privilege readily discernible objective evidence over *post hoc* assertions of good faith, or the absence of evidence of bad faith.

3. On top of all this, petitioner's subjective standard would require district courts to effectively certify

aspects of the judicial-estoppel analysis to the bankruptcy courts, asking them to detail their "own findings or actions as to any omissions or delayed disclosures." Pet.Br.37-38. Such an approach would introduce unnecessary inefficiencies and jurisdictional complexities into the doctrine. Judicial estoppel does not ordinarily call for going back to the first court (nor, for that matter, does collateral estoppel or equitable estoppel). There is no reason to adopt that practice here.

Petitioner's standard presents significant challenges for the bankruptcy courts. They would often have to reopen a closed docket to issue findings and conclusions on years-old matters. Resurrecting and analyzing these stale proceedings could well involve another set of full briefing in the original bankruptcy court, on top of the motion practice on judicial estoppel in the court where the claim is being litigated. So the parties would face additional burdens as well, from having to hire a separate set of counsel with local credentials and bankruptcy experience to litigate the parallel proceedings—and that is assuming that the bankruptcy court would allow an unrelated party like respondent to participate in a re-opened proceedings.

Petitioner's insistence on the need to return to bankruptcy court to fully resolve the judicial estoppel inquiry highlights a fundamental flaw with the suggestion that the inadvertence-or-mistake exceptions should be broadened because the bankruptcy court has "other tools" that could replace judicial estoppel. *See* U.S.Br.3; *cf.* Pet.Br.29-30. First, a number of those bankruptcy-court tools are either too blunt (*e.g.*, the possibility of criminal sanctions for fraudulent concealment, 18 U.S.C. § 152) or too confined to the bankruptcy proceeding (*e.g.*, the power to dismiss a pending bankruptcy case, which may be useless if the bankruptcy case is already over by the time the concealed asset is asserted in another court). More fundamentally, this argument ignores that judicial estoppel is a backstop to allow the *second* court to prevent the inequity of allowing parties to take inconsistent positions in separate judicial proceedings and to prevent the harm that inconsistent positions inflicts on the judiciary. It thus serves an important role that cannot be replaced by tools available to the *first* court.

The district courts would confront difficulties as well. Those courts would have to take into account the unfamiliar practices of bankruptcy courts operating in jurisdictions governed by different law. This is not a theoretical concern. Petitioner himself argued below that the district court should reconsider its decision on judicial estoppel based on representations about the disclosure practices of a bankruptcy court in a different regional circuit—practices that were at odds with the precedent of the circuit in which the district court sits. *See* p. 12, *supra*.

Which version of the law is the district court supposed to credit? Must a district court defer to the bankruptcy court's view of the legal significance and intentionality of a non-disclosure—even if the conclusion is plainly contrary to the law binding the district court? Reviewing courts, too, would have to grapple with difficult questions around whether a district court has discretion to discount the bankruptcy court's findings, or to credit legal conclusions from an out-of-circuit court at odds with the reviewing court's own precedent. Straightforward motion practice on a common defense would thus devolve into a procedural quagmire. Nothing in the history of judicial estoppel, this Court's cases, or sound policy requires that result.

C. Petitioner's subjective standard would disserve the goals of bankruptcy.

Petitioner's subjective standard also would not advance the purposes of judicial estoppel in the bankruptcy context: to deter dishonest debtors while protecting innocent creditors.

At bottom, petitioner argues that debtors should be able to avoid judicial estoppel through protestations of a pure heart and with belated disclosure—even if the debtor unquestionably knew of the cause of action before the bankruptcy filing and did not disclose it, and even when there is undisputed evidence of a motive for concealment. That sends a clear message to debtors: First, take a shot at "[c]onceal[ing] your claims; get[ting] rid of your creditors on the cheap, and start[ing] over with a bundle of rights." *Payless Wholesale Distribs., Inc. v. Alberto Culver (P.R.) Inc.*, 989 F.2d 570, 571 (1st Cir. 1993). Then, if things go wrong, simply "back-up, re-open the bankruptcy case, and amend [your] bankruptcy filings," but "only after [your] omission has been challenged by an adversary." *Burnes v. Pemco Aeroplex, Inc.*, 291 F.3d 1282, 1288 (11th Cir. 2002), *overruled by Slater v. U.S. Steel Corp.*, 871 F.3d 1174 (11th Cir. 2017) (en banc). Under such an approach, a debtor plainly "[w]ould consider disclosing potential assets only if he [were] caught concealing them." *Id.*

The systemic disadvantages of this regime are easy to foresee. Disclosures will be less complete and timely, and creditors will lose out on valuable assets and crucial information they need to evaluate bankruptcy plans before they are approved. The more creditors fear they are being "scam[med]" by lax disclosures from at least a minority of debtors who go unpunished, the more that will "drive up interest rates and injure the more numerous honest borrowers." *Cannon-Stokes*, 453 F.3d at 448. In the meanwhile, courts would be saddled with a burdensome, discovery-intensive estoppel standard that rewards gamesmanship and last-minute disclosure. So all constituents of the bankruptcy process—debtors, creditors, and the courts that administer the proceedings—will lose out.

The better course is to endorse "[a] doctrine that induces debtors to be truthful in their bankruptcy filings." *Cannon-Stokes*, 453 F.3d at 448. A "strict[er] estoppel rule" that ensures "better up-front disclosure" will benefit creditors and debtors in the long run, *Ah Quin*, 733 F.3d at 281 (Bybee, J., dissenting), and it promises more efficient proceedings in both the bankruptcy and the district courts. Equity will win out, too: "Ultimately, when a lie is punished, and future lies are deterred—especially in the context of a bankruptcy system so dependent on full and accurate disclosure—equity will usually have been done." *Id.* at 294 (Bybee, J., dissenting).

D. Petitioner's concerns are best addressed by the core requirements for judicial estoppel.

Petitioner's concerns about unfairness and rigid application of estoppel are not best addressed by his multi-factor, consider-any-circumstance test for the inadvertence exception. Rather, those issues are already adequately accounted for in the three primary judicial-estoppel factors, and by the discretionary nature of the doctrine's application.

1. The first judicial estoppel factor requires that the supposed inconsistency must be "clear." *See* p. 3, *supra*; *Zedner v. United States*, 547 U.S. 489, 505 (2006). Offhand statements are not likely to qualify. That is so even in the bankruptcy context, where courts regularly hold that ambiguity cuts against application of judicial estoppel—and that the omission of a cause of action from the schedules may still be ambiguous.

For example, the Second Circuit found no clear inconsistency where a *pro se* debtor listed his whistleblower suit in his Statement of Financial Affairs, even though he did not list it in his Schedule B list of assets. *Ashmore v. CGI Grp., Inc.*, 923 F.3d 260, 271-81 (2d Cir. 2019). The debtor therefore was not estopped from maintaining his whistleblower suit. *Id.* at 283*; see also, e.g.*, *Vehicle Mkt. Rsch., Inc. v. Mitchell Int'l, Inc.*, 767 F.3d 987, 994-96 (10th Cir. 2014) (debtor was not judicially estopped from seeking to recover damages for the misappropriation of assets he had previously listed as worthless in his bankruptcy, because "a plausible inference the other way was possible about each piece of evidence relied upon"). Thus, inconsistencies in the listed *value* of a cause of action in bankruptcy and the amount of damages sought in the subsequent litigation would not qualify as a sufficiently clear inconsistency under the first prong, since those two estimates are driven by different considerations. *Id.*

2. The second prong requires success in convincing the first court of the party's earlier position. *See* p. 3, *supra.* If the party changes its position before

pocketing a victory based on it, it need not worry about judicial estoppel. Conceivably, even after final judgment, Rule 60(b) or its analogues might provide a way to unwind a victory and avoid judicial estoppel.

To be clear, however, in the bankruptcy context, "[t]he bankruptcy court may 'accept' the debtor's assertions by relying on the debtor's nondisclosure of potential claims in many … ways" besides granting a discharge, so vacating the discharge may not be enough to defeat judicial estoppel. *Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 784 (9th Cir. 2001). In the Chapter 13 context, for example, judicial acceptance occurs no later than the first confirmation of the plan, and not at the discharge.

As the government aptly points out, the "judicial-estoppel analysis should not be applied in such a way that debtors can decline to disclose claims until they are caught, and then avoid any consequences by claiming inadvertence or mistake." U.S. Br. 28. Thus, "last minute candor" after being caught often will not be enough. *Jones v. Bob Evans Farms, Inc.*, 811 F.3d 1030, 1032-33 (8th Cir. 2016). If it were, that would "suggest[] that a debtor should consider disclosing personal assets only if he is caught concealing them." *Love v. Tyson Foods, Inc.*, 677 F.3d 258, 265-66 (5th Cir. 2012) (citation omitted); *see Stanley*, 51 F.4th at 221 ("[M]erely allowing a bankruptcy petitioner to avoid judicial estoppel by correcting omissions after an opposing party notifies them of the same 'would encourage gamesmanship' and defeat the purpose of the doctrine.") (citation omitted).

3. As to the third prong, the party asserting judicial estoppel must establish that the party who took inconsistent positions gained an advantage. *See* pp.

3-4, *supra*. Therefore, in scenarios where the debtor truly gains no benefit from the non-disclosure, judicial estoppel does not apply.

For example, a court could conclude that there is no unfair advantage where a Chapter 13 bankruptcy debtor was already required to pay the debtors in full, with interest, and the cause of action arose only a few weeks before the final payment. *E.g.*, *Clark v. AII Acquisition, LLC*, 886 F.3d 261, 264 (2d Cir. 2018). Likewise, there is no unfair advantage if the debtor will "receive no windfall as a result of its failure to disclose its claims, because only [its] creditors will receive the distribution of any recovery." *Browning v. Levy*, 283 F.3d 761, 776 (6th Cir. 2022). And, as already described, courts may not find any unfair advantage to the debtor (or clear inconsistency of position) when a blameless trustee pursues the cause of action. *See Reed,* 650 F.3d at 574-75; *see* also pp. 12-13, *supra*.

That said, in most Chapter 13 bankruptcy cases, debtors "stand[] to benefit from omitting claims during their Chapter 13 bankruptcy proceedings—even if they don't have their debts discharged." *Stanley*, 51 F.4th at 220. That is why, in this case, it initially sufficed for Buddy Ayers to show that petitioner "could have enjoyed personal gains from concealing his claims had they remained undisclosed," after which "the burden [] shift[ed] to [petitioner] to provide some explanation for his failure to meet his disclosure obligations." *Love*, 677 F.3d at 263 n.2. Petitioner failed to meet that burden.

4. Lastly, judicial estoppel is "invoked by a court at its discretion." *New Hampshire*, 532 U.S. at 750 (citation omitted). The court below has repeatedly acknowledged as much: "Because judicial estoppel is

equitable in nature, trial courts are not *required* to apply it in every instance that they determine its elements have been met." *U.S. ex rel. Long v. GSDMIdea City, L.L.C.*, 798 F.3d 265, 271 (5th Cir. 2015); *accord Matter of Parker,* 789 F. App'x 462, 464 (5th Cir. 2020). And indeed, other courts have recognized that the "courts of appeals that have followed the" approach petitioner attacks "have not been 'as rigid as one would expect' in practice." *Marshall v. Honeywell Tech. Sys. Inc.*, 828 F.3d 923, 932 (D.C. Cir. 2016) (quoting *Ah Quin*, 733 F.3d at 277).

Thus, despite petitioner's insistence (at, *e.g.*, 16-18) that the Fifth Circuit's precedent is not "flexible," courts retain discretion to decline to apply the doctrine given the specific circumstances of a particular case. The fact that petitioner could not persuade the courts below to treat his case as an exceptional one hardly supports radically rewriting the inadvertence exception for all future judicial-estoppel cases, bankruptcy and nonbankruptcy alike.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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New Hampshire v. Maine

Supreme Court of the United States

April 16, 2001, Argued ; May 29, 2001, Decided

No. 130, Orig.

Reporter
532 U.S. 742 *; 121 S. Ct. 1808 **; 149 L. Ed. 2d 968 ***; 2001 U.S. LEXIS 3981 ****; 69 U.S.L.W. 4393; 2001 Cal. Daily Op. Service 4303; 2001 Daily Journal DAR 4303; 14 Fla. L. Weekly Fed. S 283

STATE OF NEW HAMPSHIRE v. STATE OF MAINE

Prior History: **[****1]** ON MOTION TO DISMISS COMPLAINT.

Disposition: Motion to dismiss complaint granted.

Syllabus

New Hampshire and Maine share a border that runs from northwest to southeast. At the border's southeastern end, New Hampshire's easternmost point meets Maine's southernmost point. The boundary in this region follows the Piscataqua River eastward into Portsmouth Harbor and, from there, extends in a southeasterly direction into the sea. In 1977, in a dispute between the two States over lobster fishing rights, this Court entered a consent judgment setting the precise location of the States'"lateral marine boundary," *i.e.*, the boundary in the marine waters off the coast, from the closing line of Portsmouth Harbor five miles seaward. New Hampshire v. Maine, 426 U.S. 363, 48 L. Ed. 2d 701, 96 S. Ct. 2113; New Hampshire v. Maine, 434 U.S. 1, 2, 54 L. Ed. 2d 1, 98 S. Ct. 42. **[****2]** The Piscataqua River boundary was fixed by a 1740 decree of King George II at the "Middle of the River." See 426 U.S. at 366-367. In the course of litigation, the two States proposed a consent decree in which they agreed, *inter alia*, that the descriptive words "Middle of the River" in the 1740 decree refer to the middle of the Piscataqua River's main navigable channel. Rejecting the Special Master's view that the quoted words mean the geographic middle of the river, this Court accepted the States' interpretation and directed entry of the consent decree. Id. at 369-370. The final decree, entered in 1977, defined "Middle of the River" as "the middle of the main channel of navigation of the Piscataqua River." 434 U.S. at 2. The 1977 consent judgment fixed only the lateral marine boundary and not the inland Piscataqua River boundary. In 2000, New Hampshire brought this original action against Maine, claiming on the basis of historical records that the inland river boundary runs along the Maine shore and that the entire Piscataqua River and all of Portsmouth Harbor belong to New Hampshire. Maine has filed a motion to dismiss, urging that **[****3]** the earlier proceedings bar New Hampshire's complaint.

Held: Judicial estoppel bars New Hampshire from asserting that the Piscataqua River boundary runs along the Maine shore. Pp. 5-13.

(a) Judicial estoppel is a doctrine distinct from the res judicata doctrines of claim and issue preclusion. Under the judicial estoppel doctrine, 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, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him. Davis v. Wakelee, 156 U.S. 680, 689, 39 L. Ed. 578, 15 S. Ct. 555. The purpose of the doctrine is to protect the integrity of the judicial process by prohibiting parties from deliberately changing positions according to the exigencies of the moment. Courts have recognized that the circumstances under which judicial estoppel may appropriately be invoked are not reducible to any general formulation. Nevertheless, several factors typically inform the decision whether to apply the doctrine in a particular case: First, a party's later position must be clearly **[****4]** inconsistent with its earlier position. Second, courts regularly inquire whether the party has succeeded in persuading a court to accept that party's earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create the perception that either the first or the second court was misled. Third, courts ask whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped. In enumerating these factors, this Court does not establish inflexible prerequisites or an exhaustive formula for determining the applicability of judicial estoppel. Additional considerations may inform the doctrine's application in specific factual contexts. Pp. 5-8.

(b) Considerations of equity persuade the Court that application of judicial estoppel is appropriate in this case. New Hampshire's claim that the Piscataqua River boundary runs along the Maine shore is clearly inconsistent with its interpretation of the words "Middle of the River" during the 1970's litigation to mean either the middle of the main navigable channel or the geographic middle of the river. Either construction **[****5]** located the "Middle of the River" somewhere other than the Maine shore of the Piscataqua River. Moreover, the record of the 1970's dispute makes clear that this Court accepted New Hampshire's agreement with Maine that "Middle of the River" means middle of the main navigable channel, and that New Hampshire benefited from that interpretation. Notably, in their joint motion for entry of the consent decree, New Hampshire and Maine represented to this Court that the proposed judgment was "in the best interest of each State." Were the Court to accept New Hampshire's latest view, the risk of inconsistent court determinations would become a reality. The Court cannot interpret "Middle of the River" in the 1740 decree to mean two different things along the same boundary line without undermining the integrity of the judicial process. Pp. 8-9.

(c) The Court rejects various arguments made by New Hampshire. The State urged at oral argument that the 1977 consent decree simply fixed the "Middle of the River" at an arbitrary location based on the parties' administrative convenience. But that view is foreclosed by the Court's determination that the consent decree proposed a wholly permissible final **[****6]** resolution of the controversy both as to facts and law, *426 U.S. at 368-369*. The Court rejected the dissenters' view that the decree interpreted the middle-of-the-river language "by agreements of convenience" and not "in accordance with legal principles," *id. at 369*. New Hampshire's contention that the 1977 consent decree was entered without a searching historical inquiry into what "Middle of the River" meant is refuted by the pleadings in the lateral marine boundary case and by this Court's independent determination that nothing suggests the location of the 1740 boundary agreed upon by the States is wholly contrary to relevant evidence, *ibid.* Nor can it be said that New Hampshire lacked the opportunity or incentive to locate the river boundary at Maine's shore. In its present complaint, New Hampshire relies on historical materials that were no less available in the 1970's than they are today. And New Hampshire had every reason to consult those materials: A river boundary running along Maine's shore would have resulted in a substantial amount of additional territory for New Hampshire. Pp. 9-11.

(d) Also unavailing is New Hampshire's reliance **[****7]** on this Court's recognition that the doctrine of estoppel or that part of it which precludes inconsistent positions in judicial proceedings is ordinarily not applied to States, *Illinois ex rel. Gordon v. Campbell, 329 U.S. 362, 369, 91 L. Ed. 348, 67 S. Ct. 340*. This is not a case where estoppel would compromise a governmental interest in enforcing the law. Cf. *Heckler v. Community Health Services of Crawford Cty., Inc., 467 U.S. 51, 60, 81 L. Ed. 2d 42, 104 S. Ct. 2218*. Nor is this a case where the shift in the government's position results from a change in public policy, cf. *Commissioner v. Sunnen, 333 U.S. 591, 601, 92 L. Ed. 898, 68 S. Ct. 715*, or a change in facts essential to the prior judgment, cf. *Montana v. United States, 440 U.S. 147, 159, 59 L. Ed. 2d 210, 99 S. Ct. 970*. Instead, it is a case between two States, in which each owes the other a full measure of respect. The Court is unable to discern any substantial public policy interest allowing New Hampshire to construe "Middle of the River" differently today than it did 25 years ago. Pp. 11-13.

Motion to dismiss complaint granted.

Counsel: Paul Stern argued the cause for defendant.

Jeffrey P. Minear argued the cause for the United States, as amicus curiae, by special leave of court.

Leslie J. Ludtke argued the cause for plaintiff.

Judges: GINSBURG, J., delivered the opinion of the Court, in which all other Members joined, except SOUTER, J., who took no part in **[****8]** the consideration or decision of the case.

Opinion by: GINSBURG

Opinion

[1812]** **[***974]** **[*745]** JUSTICE GINSBURG delivered the opinion of the Court.

[1A] [2A]The Piscataqua River lies at the southeastern end of New Hampshire's boundary with Maine. The river begins at the headwaters of Salmon Falls and runs seaward into Portsmouth Harbor (also known as Piscataqua Harbor). On March 6, 2000, New Hampshire brought this original action against Maine, claiming that the Piscataqua River boundary runs along the Maine shore and that the entire river and all of Portsmouth Harbor belong to New Hampshire. Maine has filed a motion to dismiss on the ground that two prior proceedings -- a 1740 boundary determination by King George II and a 1977 consent judgment entered by this Court -- definitively fixed the Piscataqua River boundary at the middle of the river's main channel of navigation.

[*975]** The 1740 decree located the Piscataqua River boundary at the "Middle of the River." Because New Hampshire, in the 1977 proceeding, agreed without reservation that the words "Middle of the River" mean the middle of the Piscataqua River's main channel of navigation, we conclude that New Hampshire is estopped from asserting now that the boundary runs along **[****9]** the Maine shore. Accordingly, we grant Maine's motion to dismiss the complaint.

I

New Hampshire and Maine share a border that runs from northwest to southeast. At the southeastern end of the **[*746]** border, the easternmost point of New Hampshire meets the southernmost point of Maine. The boundary in this region follows the Piscataqua River eastward into Portsmouth Harbor and, from there, extends in a southeasterly direction into the sea. Twenty-five years ago, in a dispute between the two States over lobster fishing rights, this Court entered a consent judgment fixing the precise location of the "lateral marine boundary," *i.e.*, the boundary in the marine waters off the coast of New Hampshire and Maine, from the closing line of Portsmouth Harbor five miles seaward to Gosport Harbor in the Isles of Shoals. *New Hampshire v. Maine, 426 U.S. 363, 48 L. Ed. 2d 701, 96 S. Ct. 2113 (1976)*; *New Hampshire v. Maine, 434 U.S. 1, 2, 54 L. Ed. 2d 1, 98 S. Ct. 42 (1977)*. This case concerns the location of the Maine-New Hampshire boundary along the inland stretch of the Piscataqua River, from the mouth of Portsmouth Harbor westward to the river's headwaters at Salmon Falls. (A map of the region appears as an appendix to **[****10]** this opinion.)

[1813]** In the 1970's contest over the lateral marine boundary, we summarized the history of the interstate boundary in the Piscataqua River region. See *New Hampshire v. Maine, 426 U.S. at 366-367*. The boundary, we said, "was in fact fixed in 1740 by decree of King George II of England" as follows:

"'That the Dividing Line shall pass up thro the Mouth of Piscataqua Harbour and up the Middle of the River . . . . And that the Dividing Line shall part the Isles of Shoals and run thro the Middle of the Harbour between the Islands to the Sea on the Southerly Side . . . .'" *Id. at 366* (quoting the 1740 decree).

In 1976, New Hampshire and Maine "expressly agreed . . . that the decree of 1740 fixed the boundary in the Piscataqua Harbor area." *Id. at 367* (internal quotation marks omitted). "Their quarrel was over the location . . . of the 'Mouth of Piscataqua River,' 'Middle of the River,' and 'Middle of the Harbour' within the contemplation of the decree." **[*747]** *Ibid.* The meaning of those terms was essential to delineating the lateral marine boundary. See Report of Special Master, O. T. 1975, No. 64 Orig., pp. 32-49 (hereinafter **[****11]** Report). In particular, the northern end of the lateral marine boundary required a determination of the point where the line marking the "Middle of the [Piscataqua] River" crosses the closing line of Piscataqua Harbor. Id. at 43.

In the course of litigation, New Hampshire and Maine proposed a **[***976]** consent decree in which they agreed, *inter alia*, that the words "Middle of the River" in the 1740 decree refer to the middle of the Piscataqua River's main channel of navigation. Motion for Entry of Judgment By Consent of Plaintiff and Defendant in *New Hampshire* v. *Maine*, O. T. 1973, No. 64 Orig., p. 2 (hereinafter Motion for Consent Judgment). The Special Master, upon reviewing pertinent history, rejected the States' interpretation and concluded that "the geographic middle of the river and not its main or navigable channel was intended by the 1740 decree." Report 41. This Court determined, however, that the States' interpretation "reasonably invested imprecise terms" with a definition not "wholly contrary to relevant evidence." *New Hampshire v. Maine, 426 U.S. at 369*. On that basis, the Court declined to adopt the Special Master's construction of "Middle **[****12]** of the River" and directed entry of the consent decree. *Id. at 369-370*. The final decree, entered in 1977, defined "Middle of the River" as "the middle of the main channel of navigation of the Piscataqua River." *New Hampshire v. Maine, 434 U.S. at 2*.

The 1977 consent judgment fixed only the lateral marine boundary and not the inland Piscataqua River boundary. See Report 42-43 ("For the purposes of the present dispute, . . . it is unnecessary to lay out fully the course of the boundary as it proceeds upriver . . . ."). In the instant action, New Hampshire contends that the inland river boundary "runs along the low water mark on the Maine shore," Complaint 49, and asserts sovereignty over the entire river **[*748]** and all of Portsmouth Harbor, including the Portsmouth Naval Shipyard on Seavey Island located within the harbor just south of Kittery, Maine, id. at 34. * Relying on various historical records, New Hampshire urges that "Middle of the River," as those words were used in 1740, denotes the main branch of the river, not a mid-channel boundary, Brief in Opposition to Motion to Dismiss 12-16, and that New Hampshire, not Maine, exercised **[****13]** sole jurisdiction over shipping and military activities in Portsmouth **[**1814]** Harbor during the decades before and after the 1740 decree, *id. at 17-19*, and nn. 35-38.

While disagreeing with New Hampshire's understanding of history, see Motion to Dismiss 9-14, 18-19 (compiling evidence that Maine continually exercised jurisdiction over the harbor and shipyard from the 1700's to the present day), Maine primarily contends that the 1740 decree and the 1977 consent judgment divided the Piscataqua River at the middle of the main channel of navigation -- a division that places Seavey Island within Maine's jurisdiction. Those earlier proceedings, according to Maine, bar New Hampshire's complaint under principles **[****14]** of claim and issue preclusion as well as judicial estoppel.

[1B] [2B] [3] [4]We pretermit the States' competing historical claims along with their arguments on the application *vel non* of the res judicata doctrines commonly called claim and issue preclusion. Claim preclusion generally refers to the effect of a **[***977]** prior judgment in foreclosing successive litigation of the very same claim, whether or not relitigation of the claim raises the same issues as the earlier suit. Issue preclusion generally refers to the effect of a prior judgment in foreclosing successive litigation of an issue of fact or law actually **[*749]** litigated and resolved in a valid court determination essential to the prior judgment, whether or not the issue arises on the same or a different claim. See *Restatement (Second) of Judgments §§ 17*, *27*, pp. 148, 250 (1980); D. Shapiro, Civil Procedure: Preclusion in Civil Actions 32, 46 (2001). In the unusual circumstances this case presents, we conclude that a discrete doctrine, judicial estoppel, best fits the controversy. Under that doctrine, we hold, New Hampshire is equitably barred from asserting -- contrary to its position in the 1970's litigation -- that the inland Piscataqua River boundary **[****15]** runs along the Maine shore.

II

[5]"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, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him." *Davis v. Wakelee, 156 U.S. 680, 689, 39 L. Ed. 578, 15 S. Ct. 555 (1895)*. This rule, known as judicial estoppel, "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." *Pegram v. Herdrich, 530 U.S. 211, 227, n. 8, 147 L. Ed. 2d 164, 120 S. Ct. 2143 (2000)*; see 18 *Moore's Federal Practice § 134.30*, p. 134-62 (3d ed. 2000) ("The doctrine of judicial estoppel prevents a party from asserting a claim in a legal proceeding that is inconsistent with a claim taken by that party in a previous proceeding"); 18 C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 4477, p. 782 (1981) ("absent any good explanation, a party should not be allowed to gain an advantage by litigation on one theory, and then seek an inconsistent advantage by pursuing an incompatible theory") **[****16]** (hereinafter Wright).

Although we have not had occasion to discuss the doctrine elaborately, other courts have uniformly recognized that its purpose is "to protect the integrity of the judicial process," *Edwards v. Aetna Life Ins. Co., 690 F.2d 595, 598 (CA6* ***[*750]*** *1982)*, by "prohibiting parties from deliberately changing positions according to the exigencies of the moment," *United States v. McCaskey, 9 F.3d 368, 378 (CA5 1993)*. See *In re Cassidy, 892 F.2d 637, 641 (CA7 1990)* ("Judicial estoppel is a doctrine intended to prevent the perversion of the judicial process."); *Allen v. Zurich Ins. Co., 667 F.2d 1162, 1166 (CA4 1982)* (judicial estoppel "protects the essential integrity of the judicial process"); *Scarano v. Central R. Co., 203 F.2d 510, 513 (CA3 1953)* (judicial estoppel prevents **[**1815]** parties from "playing 'fast and loose with the courts'" (quoting *Stretch v. Watson, 6 N.J. Super. 456, 469, 69 A.2d 596, 603 (1949))*). Because the rule is intended to prevent "improper use of judicial machinery," *Konstantinidis v. Chen, 200 U.S. App. D.C. 69, 626 F.2d 933, 938 (CADC*

* According to New Hampshire, the Federal Government in recent years has taken steps to close portions of the shipyard and to lease its land and facilities to private developers. Complaint 34. New Hampshire and Maine assert competing claims of sovereignty over private development on shipyard lands. *Ibid.*

1980), **[****17]** judicial estoppel "is an equitable doctrine invoked by a court at its discretion," **[***978]** Russell v. Rolfs, 893 F.2d 1033, 1037 (CA9 1990) (citation omitted).

[6A] Courts have observed that "the 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).Nevertheless, several factors typically inform the decision whether to apply the doctrine in a particular case: First, a party's later position must be "clearly inconsistent" with its earlier position. United States v. Hook, 195 F.3d 299, 306 (CA7 1999); Browning Mfg. v. Mims (In re Coastal Plains, Inc.), 179 F.3d 197, 206 (CA5 1999); Hossaini v. Western Mo. Medical Center, 140 F.3d 1140, 1143 (CA8 1998); Maharaj v. Bankamerica Corp., 128 F.3d 94, 98 (CA2 1997). Second, courts regularly inquire whether the party has succeeded in persuading a court to accept that party's earlier **[****18]** position, so that judicial acceptance of an inconsistent position in a later proceeding would create "the perception that either the first or the second court was misled," Edwards, 690 F.2d at 599. Absent success **[*751]** in a prior proceeding, a party's later inconsistent position introduces no "risk of inconsistent court determinations," United States v. C. I. T. Constr. Inc., 944 F.2d 253, 259 (CA5 1991), and thus poses little threat to judicial integrity. See Hook, 195 F.3d at 306; Maharaj, 128 F.3d at 98; Konstantinidis, 626 F.2d at 939. A third consideration is whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped. See Davis, 156 U.S. at 689; Philadelphia, W., & B. R. Co. v. Howard, 54 U.S. 307, 13 HOW 307, 335-337, 14 L. Ed. 157 (1852); Scarano, 203 F.2d at 513 (judicial estoppel forbids use of "intentional self-contradiction . . . as a means of obtaining unfair advantage"); see also 18 Wright § 4477, p. 782.

[1C][6B]In enumerating these factors, we do not establish inflexible **[****19]** prerequisites or an exhaustive formula for determining the applicability of judicial estoppel. Additional considerations may inform the doctrine's application in specific factual contexts. In this case, we simply observe that the factors above firmly tip the balance of equities in favor of barring New Hampshire's present complaint.

[1D]New Hampshire's claim that the Piscataqua River boundary runs along the Maine shore is clearly inconsistent with its interpretation of the words "Middle of the River" during the 1970's litigation. As mentioned above, supra, at 3-4, interpretation of those words was "necessary" to fixing the northern endpoint of the lateral marine boundary, Report 43. New Hampshire offered two interpretations in the earlier proceeding -- first agreeing with Maine in the proposed consent decree that "Middle of the River" means the middle of the main channel of navigation, and later agreeing with the Special Master that the words mean the geographic middle of the river. Both constructions located the "Middle of the River" somewhere other than the Maine shore of the Piscataqua River.

[*752] Moreover, the record of the 1970's dispute makes clear that this Court **[***979]** accepted New Hampshire's **[****20]** agreement with Maine that "Middle of the River" means middle of the main navigable channel, and that New Hampshire benefited from that interpretation. New Hampshire, it is true, preferred the interpretation of "Middle of the River" in the Special Master's report. See Exceptions and Brief for Plaintiff in *New Hampshire* v. *Maine*, O. T. 1975, No. **[**1816]** 64 Orig., p. 3 (hereinafter Plaintiff's Exceptions) ("the boundary now proposed by the Special Master is more favorable to [New Hampshire] than that recommended in the proposed consent decree"). But the consent decree was sufficiently favorable to New Hampshire to garner its approval. Although New Hampshire now suggests that it "compromised in Maine's favor" on the definition of "Middle of the River" in the 1970's litigation, Brief in Opposition to Motion to Dismiss 24, that "compromise" enabled New Hampshire to settle the case, see id. at 24-25, on terms beneficial to both States. Notably, in their joint motion for entry of the consent decree, New Hampshire and Maine represented to this Court that the proposed judgment was "in the best interest of each State." Motion for Consent Judgment 1. Relying on that representation, the **[****21]** Court accepted the boundary proposed by the two States. New Hampshire v. Maine, 434 U.S. 1, 54 L. Ed. 2d 1, 98 S. Ct. 42 (1977).

At oral argument, New Hampshire urged that the consent decree simply fixed the "Middle of the River" at "an arbitrary location based on the administrative convenience of the parties." Tr. of Oral Arg. 37. To the extent New Hampshire implies that the parties settled the lateral marine boundary dispute without judicial endorsement of their interpretation of "Middle of the

River," that view is foreclosed by the Court's determination that "the consent decree . . . proposes a wholly permissible final resolution of the controversy both as to facts and law," New Hampshire v. Maine, 426 U.S. at 368-369. Three dissenting Justices agreed with New Hampshire that the consent decree interpreted **[*753]** the middle-of-the-river language "by agreements of convenience" and not "in accordance with legal principles." Id. at 371 (White, J., dissenting, joined by Blackmun and STEVENS, JJ.). But the Court concluded otherwise, noting that its acceptance of the consent decree involved "nothing remotely resembling 'arbitral' rather than 'judicial' functions," **[****22]** id. at 369. The consent decree "reasonably invested imprecise terms with definitions that give effect to [the 1740] decree," *ibid.*, and "[did] not fall into the category of agreements that we reject because acceptance would not be consistent with our Art. III function and duty," *ibid.*

[1E][7]New Hampshire also contends that the 1977 consent decree was entered without "a searching historical inquiry into what that language ['Middle of the River'] meant." Tr. of Oral Arg. 39. According to New Hampshire, had it known then what it knows now about the relevant history, it would not have entered into the decree. *Ibid.* We do not question that it may be appropriate to resist application of judicial estoppel "when a party's prior position was based on inadvertence or mistake." *John S. Clark Co. v. Faggert & Frieden, P. C., 65 F.3d 26, 29* ***[***980]*** *(CA4 1995)*; see *In re Corey, 892 F.2d 829, 836 (CA9 1989)*;Konstantinidis, 626 F.2d at 939.We are unpersuaded, however, that New Hamsphire's position in 1977 fairly may be regarded as a product of inadvertence or mistake.

[1F]The pleadings in the lateral marine boundary **[****23]** case show that New Hampshire did engage in "a searching historical inquiry" into the meaning of "Middle of the River." See Reply Brief for Plaintiff in *New Hampshire* v. *Maine*, O. T. 1975, No. 64 Orig., pp. 3-9 (examining history of river boundaries under international law, proceedings leading up to the 1740 order of the King in Council, and relevant precedents of this Court). None of the historical evidence cited by New Hampshire remotely suggested that the Piscataqua River boundary runs along the Maine shore. In fact, in attempting to place the boundary at the geographic middle of the **[*754]** river, New Hampshire acknowledged that its agents in 1740 understood the King's order to "adjudge *half of the river* to" the portion of Massachusetts that is now *Maine. Id. at 6* (emphasis in original) (quoting *N. H. State Papers*, XIX, pp. **[**1817]** 591, 596-597); see *id. at 4* ("*The intention of those participating in the proceedings leading to the [1740 decree] was to use 'geographic middle' as the Piscataqua boundary.*" (emphasis in original)). In addition, this Court independently determined that "there is nothing to suggest that the location of the 1740 boundary agreed upon by **[****24]** the States is wholly contrary to relevant evidence." *New Hampshire v. Maine, 426 U.S. at 369*.

Nor can it be said that New Hampshire lacked the opportunity or incentive to locate the river boundary at Maine's shore. In its present complaint, New Hampshire relies on historical materials -- primarily official documents and events from the colonial and postcolonial periods, see Brief in Opposition to Motion to Dismiss 12-19 -- that were no less available 25 years ago than they are today. And New Hampshire had every reason to consult those materials: A river boundary running along Maine's shore would have placed the northern terminus of the lateral marine boundary much closer to Maine, "resulting in hundreds if not thousands of additional acres of territory being in New Hampshire rather than Maine," Tr. of Oral Arg. 48 (rebuttal argument of Maine). Tellingly, New Hampshire at the time understood the importance of placing the northern terminus as close to Maine as possible. While agreeing with the Special Master that "Middle of the River" means geographic middle, New Hampshire insisted that the geographic middle should be determined by using the banks of the river, **[****25]** not low tide elevations (as the Special Master had proposed), as the key reference points -- a methodology that would have placed the northern terminus 350 yards closer to the Maine shore. Plaintiff's Exceptions 3.

[*755] In short, considerations of equity persuade us that application of judicial estoppel is appropriate in this case. Having convinced this Court to accept one interpretation of "Middle of the River," and having benefited from that interpretation, New Hampshire now urges an inconsistent interpretation to gain an additional advantage at Maine's expense. Were we to accept New Hampshire's latest view, the "risk of inconsistent court determinations," *C. I. T. Construction,* ***[***981]*** *944 F.2d at 259*, would become a reality. We cannot interpret "Middle of the River" in the 1740 decree to mean two different things along the same boundary line without undermining the integrity of the judicial process.

Finally, notwithstanding the balance of equities, New

Hampshire points to this Court's recognition that "ordinarily the doctrine of estoppel or that part of it which precludes inconsistent positions in judicial proceedings is not applied to states," *Illinois ex rel. Gordon v. Campbell, 329 U.S. 362, 369, 91 L. Ed. 348, 67 S. Ct. 340 (1946)*. **[****26]** Of course, "broad interests of public policy may make it important to allow a change of positions that might seem inappropriate as a matter of merely private interests." 18 Wright § 4477, p. 784. But this is not a case where estoppel would compromise a governmental interest in enforcing the law. Cf. *Heckler v. Community Health Services of Crawford Cty., Inc., 467 U.S. 51, 60, 81 L. Ed. 2d 42, 104 S. Ct. 2218 (1984)* ("When the Government is unable to enforce the law because the conduct of its agents has given rise to an estoppel, the interest of the citizenry as a whole in obedience to the rule of law is undermined. It is for this reason that it is well settled that the Government may not be estopped on the same terms as any other litigant."). Nor is this a case where the shift in the government's position is "the result of a change in public policy," *United States v. Owens, 54 F.3d 271, 275 (CA6 1995)*; cf. *Commissioner v. Sunnen, 333 U.S. 591, 601, 92 L. Ed. 898, 68 S. Ct. 715 (1948)* (collateral estoppel does not apply to Commissioner where pertinent statutory provisions or Treasury **[*756]** regulations have changed between the first and second proceeding), or the result of a change in facts **[****27]** essential to the prior **[**1818]** judgment, cf. *Montana v. United States, 440 U.S. 147, 159, 59 L. Ed. 2d 210, 99 S. Ct. 970 (1979)* ("changes in facts essential to a judgment will render collateral estoppel inapplicable in a subsequent action raising the same issues"). Instead, it is a case between two States, in which each owes the other a full measure of respect.

What has changed between 1976 and today is New Hampshire's interpretation of the historical evidence concerning the King's 1740 decree. New Hampshire advances its new interpretation not to enforce its own laws within its borders, but to adjust the border itself. Given Maine's countervailing interest in the location of the boundary, we are unable to discern any "broad interest of public policy," 18 Wright § 4477, p. 784, that gives New Hampshire the prerogative to construe "Middle of the River" differently today than it did 25 years ago.

* * *

[1G] [2C]For the reasons stated, we conclude that judicial estoppel bars New Hampshire from asserting that the Piscataqua River boundary runs along the Maine shore. Accordingly, we grant Maine's motion to dismiss the complaint.

It is so ordered.

JUSTICE SOUTER took no part in the consideration or decision of **[****28]** this case.

[1819]** **[***982]** APPENDIX TO OPINION OF THE COURT

[Graphic Omitted; see Printed Opinion].

References

28 Am Jur 2d, Estoppel and Waiver 74, *75*, *138-143*, *146*; *32 Am Jur 2d, Federal Courts 578*, *599-601*

L Ed Digest, Estoppel and Waiver 9; Supreme Court of the United States 67

L Ed Index, Boundaries; Consent Judgment or Decree

Annotation References:

Original jurisdiction of United States Supreme Court in suits between states. *68 L Ed 2d 969*.

State or federal law as governing applicability of doctrine of res judicata or collateral estoppel in federal court action. *19 ALR Fed 709*.

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