

## Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

**SUPREME COURT OF THE UNITED STATES**

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NEW HAMPSHIRE *v.* MAINE

## ON MOTION TO DISMISS COMPLAINT

No. 130, Orig. Argued April 16, 2001— Decided May 29, 2001

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; *New Hampshire v. Maine*, 434 U. S. 1, 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 the earlier proceedings bar New Hampshire's complaint.

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*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. 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 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 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.

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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 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 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. 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. 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, or a change in facts essential to the prior judgment, cf. *Montana v. United States*, 440 U. S. 147, 159. 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.

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