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

Syllabus

TAYLOR *v.* STURGELL, ACTING ADMINISTRATOR, FEDERAL AVIATION ADMINISTRATION, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 07–371. Argued April 16, 2008—Decided June 12, 2008

Greg Herrick, an antique aircraft enthusiast seeking to restore a vintage airplane manufactured by the Fairchild Engine and Airplane Corporation (FEAC), filed a Freedom of Information Act (FOIA) request asking the Federal Aviation Administration (FAA) for copies of technical documents related to the airplane. The FAA denied his request based on FOIA's exemption for trade secrets, see 5 U. S. C. §552(b)(4). Herrick took an administrative appeal, but when respondent Fairchild, FEAC's successor, objected to the documents' release, the FAA adhered to its original decision. Herrick then filed an unsuccessful FOIA lawsuit to secure the documents. Less than a month after that suit was resolved, petitioner Taylor, Herrick's friend and an antique aircraft enthusiast himself, made a FOIA request for the same documents Herrick had unsuccessfully sued to obtain. When the FAA failed to respond, Taylor filed suit in the U. S. District Court for the District of Columbia. Holding the suit barred by claim preclusion, the District Court granted summary judgment to the FAA and to Fairchild, as intervenor in Taylor's action. The court acknowledged that Taylor was not a party to Herrick's suit, but held that a nonparty may be bound by a judgment if she was "virtually represented" by a party. The D. C. Circuit affirmed, announcing a five-factor test for "virtual representation." The first two factors of the D. C. Circuit's test—"identity of interests" and "adequate representation"—are necessary but not sufficient for virtual representation. In addition, at least one of three other factors must be established: "a close relationship between the present party and his putative representative," "substantial participation by the present party in the first case," or "tactical maneuvering on the part of the present party to

avoid preclusion by the prior judgment." The D. C. Circuit acknowledged the absence of any indication that Taylor participated in, or even had notice of, Herrick's suit. It nonetheless found the "identity of interests," "adequate representation," and "close relationship" factors satisfied because the two men sought release of the same documents, were "close associates," had discussed working together to restore Herrick's plane, and had used the same lawyer to pursue their suits. Because these conditions sufficed to establish virtual representation, the court left open the question whether Taylor had engaged in tactical maneuvering to avoid preclusion.

Held:

1. The theory of preclusion by "virtual representation" is disapproved. The preclusive effects of a judgment in a federal-question case decided by a federal court should instead be determined according to the established grounds for nonparty preclusion. Pp. 9–21.

(a) The preclusive effect of a federal-court judgment is determined by federal common law, subject to due process limitations. Pp. 9–13.

(1) Extending the preclusive effect of a judgment to a nonparty runs up against the "deep-rooted historic tradition that everyone should have his own day in court." *Richards* v. *Jefferson County*, 517 U. S. 793, 798 (internal quotation marks omitted). Indicating the strength of that tradition, this Court has often repeated the general rule that "one is not bound by a judgment *in personam* in a litigation in which he is not designated a party or to which he has not been made a party by service of process." *Hansberry* v. *Lee*, 311 U. S. 32, 40. Pp. 9–10.

(2) The rule against nonparty preclusion is subject to exceptions, grouped for present purposes into six categories. First, "[a] person who agrees to be bound by the determination of issues in an action between others is bound in accordance with the [agreement's] terms." Restatement (Second) of Judgments §40. Second, nonparty preclusion may be based on a pre-existing substantive legal relationship between the person to be bound and a party to the judgment, *e.g.,* assignee and assignor. Third, "in certain limited circumstances," a nonparty may be bound by a judgment because she was "'adequately represented by someone with the same interests who [wa]s a party'" to the suit. *Richards*, 517 U. S., at 798. Fourth, a nonparty is bound by a judgment if she "assume[d] control" over the litigation in which that judgment was rendered. *Montana* v. *United States*, 440 U. S. 147, 154. Fifth, a party bound by a judgment may not avoid its preclusive force by relitigating through a proxy. Preclusion is thus in order when a person who did not participate in litigation later brings suit as the designated representative or agent of a person who was a

party to the prior adjudication. Sixth, a special statutory scheme otherwise consistent with due process—*e.g.,* bankruptcy proceedings—may "expressly foreclos[e] successive litigation by nonlitigants." *Martin* v. *Wilks*, 490 U. S. 755, 762, n. 2. Pp. 10–13.

(b) Reaching beyond these six categories, the D. C. Circuit recognized a broad "virtual representation" exception to the rule against nonparty preclusion. None of the arguments advanced by that court, the FAA, or Fairchild justify such an expansive doctrine. Pp. 13–22.

(1) The D. C. Circuit purported to ground its doctrine in this Court's statements that, in some circumstances, a person may be bound by a judgment if she was adequately represented by a party to the proceeding yielding that judgment. But the D. C. Circuit's definition of "adequate representation" strayed from the meaning this Court has attributed to that term. In *Richards*, the Alabama Supreme Court had held a tax challenge barred by a judgment upholding the same tax in a suit by different taxpayers. 517 U. S., at 795–797. This Court reversed, holding that nonparty preclusion was inconsistent with due process where there was no showing (1) that the court in the first suit "took care to protect the interests" of absent parties, or (2) that the parties to the first litigation "understood their suit to be on behalf of absent [parties]," *id.*, at 802. In holding that representation can be "adequate" for purposes of nonparty preclusion even where these two factors are absent, the D. C. Circuit misapprehended *Richards*. Pp. 14–15.

(2) Fairchild and the FAA ask this Court to abandon altogether the attempt to delineate discrete grounds and clear rules for nonparty preclusion. Instead, they contend, only an equitable and heavily fact-driven inquiry can account for all of the situations in which nonparty preclusion is appropriate. This argument is rejected. First, respondents' balancing test is at odds with the constrained approach advanced by this Court's decisions, which have endeavored to delineate discrete, limited exceptions to the fundamental rule that a litigant is not bound by a judgment to which she was not a party, see, *e.g., Richards*, 517 U. S., at 798–799. Second, a party's representation of a nonparty is "adequate" for preclusion purposes only if, at a minimum: (1) the interests of the nonparty and her representative are aligned, see *Hansberry*, 311 U. S., at 43, and (2) either the party understood herself to be acting in a representative capacity or the original court took care to protect the nonparty's interests, see *Richards*, 517 U. S., at 801–802. Adequate representation may also require (3) notice of the original suit to the persons alleged to have been represented. See *id.*, at 801. In the class-action context, these limitations are implemented by Federal Rule of Civil Procedure 23's procedural safeguards. But an expansive virtual representation doctrine

would recognize a common-law kind of class action shorn of these protections. Third, a diffuse balancing approach to nonparty preclusion would likely complicate the task of district courts faced in the first instance with preclusion questions. Pp. 15–19.

(3) Finally, the FAA contends that nonparty preclusion should apply more broadly in "public-law" litigation than in "private-law" controversies. First, the FAA points to *Richards'* acknowledgment that when a taxpayer challenges "an alleged misuse of public funds" or "other public action," the suit "has only an indirect impact on [the plaintiff's] interests," 517 U. S., at 803, and "the States have wide latitude to establish procedures [limiting] the number of judicial proceedings that may be entertained," *ibid.* In contrast to the public-law litigation contemplated in *Richards*, however, a successful FOIA action results in a grant of relief to the individual plaintiff, not a decree benefiting the public at large. Furthermore, *Richards* said only that, for the type of public-law claims there envisioned, States were free to adopt procedures limiting repetitive litigation. While it appears equally evident that *Congress* can adopt such procedures, it hardly follows that *this Court* should proscribe or confine successive FOIA suits by different requesters. Second, the FAA argues that, because the number of plaintiffs in public-law cases is potentially limitless, it is theoretically possible for several persons to coordinate a series of vexatious repetitive lawsuits. But this risk does not justify departing from the usual nonparty preclusion rules. *Stare decisis* will allow courts to dispose of repetitive suits in the same circuit, and even when *stare decisis* is not dispositive, the human inclination not to waste money should discourage suits based on claims or issues already decided. Pp. 19–22.

2. The remaining question is whether the result reached by the courts below can be justified based on one of the six the established grounds for nonparty preclusion. With one exception, those grounds plainly have no application here. Respondents argue that Taylor's suit is a collusive attempt to relitigate Herrick's claim. That argument justifies a remand to allow the courts below the opportunity to determine whether the fifth ground for nonparty preclusion—preclusion because a nonparty to earlier litigation has brought suit as an agent of a party bound by the prior adjudication—applies to Taylor's suit. But courts should be cautious about finding preclusion on the basis of agency. A mere whiff of "tactical maneuvering" will not suffice; instead, principles of agency law indicate that preclusion is appropriate only if the putative agent's conduct of the suit is subject to the control of the party who is bound by the prior adjudication. Finally, the Court rejects Fairchild's suggestion that Taylor must bear the burden of proving he is not acting as Herrick's agent. Claim

preclusion is an affirmative defense for the defendant to plead and prove. Pp. 22–25.

490 F. 3d 965, vacated and remanded.

GINSBURG, J., delivered the opinion for a unanimous Court.