

19-6598

No. \_\_\_\_\_

Supreme Court, U.S.  
FILED

AUG 13 2019

OFFICE OF THE CLERK

IN THE  
SUPREME COURT OF THE UNITED STATES

ROBERT HERCENBERGER  
Applicant-Plaintiff,

vs.

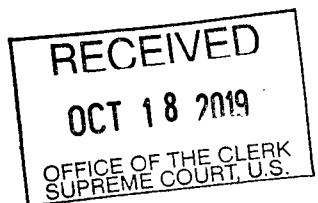
GARY A. MARTIN  
Respondent-Defendant.

On Petition for a Writ of Certiorari to the  
Appellate Court of the State of Oregon

**PETITION FOR WRIT OF CERTIORARI**

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**ORIGINAL**



## QUESTIONS PRESENTED

### **Where Equal Protection of the laws definition apply for all:**

A phrase in the Fourteenth Amendment to the United States Constitution requiring that states guarantee the same right, privileges, and protection to all citizens.

The Equal Protection Clause requires states to treat their citizens equally, and advocates have used it to combat discriminatory laws, policies, and government. The Equal Protection Clause is part of the Fourteenth Amendment to the United States Constitution provides that no state shall deny to any person within its jurisdiction "the equal protection of the laws".

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**IN THE SUPREME COURT OF THE UNITED STATES****PETITION FOR WRIT OF CERTIORARI**

Petitioner Robert Hercenberger respectfully prays that a writ of certiorari issue to review the judgment below. In case number, trial # 17CV17886, CA 168257.

**OPINION BELOW**

The opinion of the Oregon Appellate Court appears at appendix A to this petition.

**JURISDICTION**

The Oregon Appellate Court issued its decision with opinion on Jan.3, 2019.  
A copy at appendix A. Order denying petition for Reconsideration on Feb,7. 2019.  
A copy at appendix B. The Oregon Supreme Court entered its decision Order  
denying Review on May,23. 2019.  
Appendix D. Oregon Supreme Court, Order of Dismissal, signed on 5.23.2019  
The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

**CONSTITUTIONAL PROVISIONS**

No State shall make or enforce any law which shall abridge the privileges or  
immunities of citizens of the United States; nor shall any State deprive any  
person  
of life, liberty, or property, without due process of law; nor deny to any person  
within its jurisdiction the equal protection of the laws.

U.S. Const. Amend. XIV, Section 1

## STATEMENT OF THE CASE

### **A. Facts Giving Rise to this Case in Circuit Court proceeding**

This Court need to know that defendant Mr. Martin lied to court about the paychecks given to plaintiffs and made an falsified record which one not matching that plaintiff have on record.

Circuit court ruling and General Judgment is contrary of Oregon precedence.

ORCP 12 Pleadings are to be liberally construed, so as to disregard any error or defect that does not affect the substantive rights of the adverse party.

Stringer v. Car Data System, Inc., 314 Or 576, 841 P2d 1183 (1992).

**Judge did not follow statutory procedure:** As we know judge cannot change or twist statutes and need to follow binding precedence.

According to Oregon binding precedence. The court was not impartial to the parties in proceeding, because trial Judge did not accept plaintiffs record as evidence just because in different form than respondent presented to court.

If trial court judge would accept the form like plaintiff had presented the received paychecks from respondent or would be directed plaintiff to make in the same form like respondent did.

Trial judge would understand the form and respondent lie would come to light, that respondent own money for plaintiff.

As record show trial judge dismiss plaintiff case because he did not understand the form plaintiff presented the records of received paychecks from Mr. Martin.

## **B. The Oregon Appellate Court Proceedings**

Petitioner (appellant) filed notice of Appeal on Jul.10, 2018.

CA Order waiving appellate court fees on Aug. 1, 2018.

Appellant Motion to waive transcript fees on appeal on Aug. 29, 2018.

CA denied motion for transcript at public expense on Sep.25, 2018.

In that denial CA accepted the amended limited designation of record, because respondent has not filed objection to appellant's limited designation.

Nov.7, 2018. CA issued Notice of Default, appellant answered on Nov.16, 2018.

Nov. 19, 2018. CA issued Compliance with the following is required.

Appellant properly filed motion for that too, on Dec.3, 2018. And the same day received from CA the Order of Dismissal dated Nov.28.2018. (Appendix „D”)

Petitioner on review filed reconsideration on Jan.16, 2019, CA denied on Feb.7,19.

Petition on review with Supreme Court filed on Mar.14, 2019.

And review denied in May.23.2019.

Rather I can ask: Whether, the Oregon Court of Appeals erred construing or applying the law by failing to address mandatory statutory standards prior affirming the lower court judgment without opinion.

Directly contradicts Oregon statutory and case law.

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When construing a statute, our goal is to determine the legislature's intent in enacting the statute. In doing so, we begin with the statutory text and context, which are the best evidence of the legislature's intent.  
State v. Gaines, 346 Or 160, 171, 206 P3d 1042 (2009).

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("[A]s this court and other authorities long have observed, there is no more persuasive evidence of the intent of the legislature than 'the words by which the legislature undertook to give expression to its wishes.'" (Quoting prior case law; citation omitted.)). Where the words in a statute have acquired a well-defined legal meaning, we apply that legal definition.

Bergerson v. Salem-Keizer School District, 341 Or 401, 143, 144 P3d 918 (2006).

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Appellant contends that Court of Appeal made factual error in his decision based pursuant to ORAP 6.25 (1) (a) , and pursuant to ORAP 6.25 (1) (e) that the court of appeal erred in construing or applying the laws.

### **Oregon Rule of Appellate Procedure**

#### **In: ORAP 1.2**

(3) If a party responsible for causing a transcript to be prepared and filed fails to do so, after notice and opportunity to cure the default, **the court may direct that the appeal proceed without the transcript**. If the court directs that the appeal proceed without the transcript and the party is the appellant, the appellant shall file a statement of points relied on.

**(5) For good cause, the court on its own motion or on motion of any party may waive any rule.**

Court of Appeal recognized that appellant cannot afford to pay Appellate court fees and waived it correctly.

Appellant applied for ORS 21.695 if he cannot pay for court fees, how in the world he would be able to afford payment for transcript?

Court failed to used the following rules knowing that appellant is homeless and cannot afford to pay for transcript.

The Court knowing the circumstances, should been easy apply the ORAP 1.20(3)(5)

Instead the court clearly denying an **homeless man** access to justice because he could not afford to pay for transcript fees.

## **REASONS WHY CERTIORARI SHOULD BE GRANTED**

### **1. Importance**

Cases of substantial legal significance, such as a clarification of a rule of evidence or an administrative procedure, can be important enough to merit this court's.

#### **a, Oregon State Courts Decision Conflicts With This Court's Precedents.**

Certiorari is also warranted because the Oregon courts decision is wrong on the merits. But denied in my case which one contradict the equal protection of law. Whenever such action is appropriate to accomplish justice.

Klapprott v. United States, 335 U.S. 601, 614-15 (1949).

### **2. Potential impact on many People**

In this case Oregon Courts flagrantly disregarded for accepted legal doctrine.

If Oregon Courts continue to ignore or disregard the **Equal Protection**

**Clause** law, especially in Pro Se cases then many people will be impacted.

**Equal Protection of the laws definition:** A phrase in the Fourteenth Amendment to the United States Constitution requiring that states guarantee the same right, privileges, and protections to all citizens.

The Equal Protection Clause requires states to treat their citizens equally, and advocates have used it to combat discriminatory laws, policies, and government. The Equal Protection Clause is part of the Fourteenth Amendment to the United States Constitution provides that no state shall deny to any person within its jurisdiction "the equal protection of the laws".

## Review is Warranted Because Potential impact on many people

### U.S. Supreme Court

### Griffin v. Illinois, 351 U.S. 12 (1956)

*Held:* Petitioners' constitutional rights were violated, the judgment of the Illinois Supreme Court is vacated, and the cause is remanded to that Court for further action affording petitioners adequate and effective appellate review.

Pp. 351 U. S. 13-26. Judgment vacated, and cause remanded. Page 351 U. S. 13

(Griffin) wanted to appeal his conviction and petitioned the trial court on grounds of indigence for a free copy of the trial court record.

Griffin filed a second petition alleging that the denial of transcripts violated the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

### Decision

The U.S. Supreme Court had to decide if denying the defendants a free transcript violated the due process rights guaranteed to them by the 14th Amendment. The Supreme Court determined that the defendants' rights were violated. Justice Hugo Black wrote the majority opinion in which he started his analysis with the assumption that the alleged errors made in the trial court were valid and could well amount to a reversal of the conviction. He then reasoned that if a reversal was a possibility, then the defendants may have been denied a chance of relief based on their status of being poor.

If a state generally offers appellate review, it cannot deny appellate review on the basis of financial capacity.

(Illinois concedes) that these petitioners needed a transcript in order to get adequate appellate review of their alleged trial errors," and further, "We must therefore assume for purpose of this decision that errors were committed in the trial which would merit reversal, but that the petitioners could not get appellate review of those errors solely because they were too poor to buy a transcript.

Mr. Justice Black. At the outset of his opinion he states the question to be "whether Illinois may, consistent with the Due Process and Equal Protection Clauses of the Fourteenth Amendment, administer so as to deny adequate appellate review to the poor while granting such review to all others"

"There can be no equal justice where the kind of trial a man gets depends on the amount of money he has. Destitute defendants must be afforded as adequate appellate review as defendants who have money enough to buy transcripts."

How about civil cases? Here again, as Mr. Justice Harlan points out, logic would seem to place no limits upon the Griffin rule. It would seem to be equally applicable both to plaintiffs and to defendants.

It is the duty of the courts to be watchful for the CONSTITUTIONAL RIGHTS of the Citizen, against any stealthy encroachments thereon.

Boyd v. U.S. 116 US 616, 635, (1885).

Indeed, taking into consideration Mr. Justice Black's remarks already quoted as to the possibility in some cases of adequate and effective review without transcripts, it might be said that the Griffin case provides a rule for transcripts parallel to that for counsel in Belts v. Brady—that transcripts must be provided if necessary to an adequate nondiscriminatory appeal just as counsel must be provided if necessary to an adequate hearing,

Lastly, the constitutional implications of a system which may deny access to the courts to civil litigants are examined within the framework of the Equal Protection and Due Process Clauses.

Justice Douglas has put the problem in the following light:

It is part of the larger problem regarding the inability of indigent and deprived persons to voice their complaints through the existing institutional framework, and vividly demonstrates the disparity between the access of the affluent to the judicial machinery and that of the poor in violation of the Equal Protection Clause.

Justice Harlan in *Douglas* made an effort to ameliorate the fact of the differences by providing appellate scrutiny of cases of right, was a system that denied due process.2139 (372 U.S. at 363-67).

For instances in which a transcript was held not to be needed,  
see *Britt v. North Carolina*, 404 U.S. 266 (1971)

Justice Harlan

The Court has reiterated that both due process and equal protection concerns are implicated by restrictions on indigents' exercise of the right of appeal. "In cases like *Griffin* and *Douglas*, due process concerns were involved because the States involved had set up a system of appeals as of right but had refused to offer each defendant a fair opportunity to obtain an adjudication on the merits of his appeal. Equal protection concerns were involved because the State treated a class of defendants—indigent ones—differently for purposes of offering them a meaningful appeal."2140

## CONCLUSION

In all cases the duty of the State is to provide the indigent as adequate and effective an appellate review as that given appellants with funds. . . ." 2142

**Draper v. Washington, 372 U.S. 487, 496 (1963).**

No state may condition the right to appeal 2143

360 U.S. 252 (1959)

or some other type of fee when the petitioner has no means to pay. Similarly, although the states are not required to furnish full and complete transcripts of their trials to indigents when excerpted versions or some other adequate substitute is available, if a transcript is necessary to adequate review of a conviction, either on appeal or through procedures for postconviction relief, the transcript must be provided to indigent defendants or to others unable to pay

"Unfairness results only if indigents are singled out by the State and denied meaningful access to that system because of their poverty."

**in the area of access to justice, the Court also has concluded that states must provide free trial transcripts to indigents (*Griffin v Illinois* (1956)**

Applicant **Robert Hercenberger** who have been treated with unfairness, bias and the appearance of prejudice by this appellate Court , , leaves open the question of how an uninterested, lay person, would question the partiality and neutrality of this court. **"our system of law has always endeavored to prevent even the probability of unfairness."**

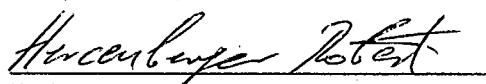
*In re Murchinson*, 349 U.S. 133, 136 (1955).

This court had a duty to ensure fairness. This Court failed, or refused to ensure that fairness. *Marshall v. Jerrico*, 100 S. Ct. 1610, 446 U.S. 238

The petition for a writ of certiorari should be granted, pursuant to equal protection clause and the 14<sup>th</sup> Amendment of Constitution.

Dated: Oct. 14 , 2019.

Respectfully submitted,

  
Robert Hercenberger  
 Robert Hercenberger-Applicant.

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IN THE COURT OF APPEALS OF THE STATE OF OREGON

ROBERT HERCENBERGER,  
Plaintiff-Appellant,

v.

GARY A. MARTIN,  
Defendant-Respondent.

Columbia County Circuit Court No. 17CV17886

Court of Appeals No. A168257

**ORDER ALLOWING RECONSIDERATION BUT ADHERING TO ORDER  
DISMISSING APPEAL**

By order dated November 28, 2018, the court dismissed the appeal on the ground that appellant failed to cause the transcript to be prepared and filed. By order dated December 5, 2018, the court denied appellant's motion to amend his designation of record to include only 10 excerpts from the audio record of one hearing, nine of which excerpts were for a minute or less and one for four minutes. On December 6, 2018, the court received the transcriber's certification of preparation and service of the transcript, but the transcript consists of the 10 snippets of trial court proceedings that were the subject of the December 5 order denying appellant's motion to amend the designation of record.

On December 7, 2018, the court received appellant's motion to reinstate the appeal. On December 12, 2018, the court received appellant's petition for reconsideration of the order of dismissal. The petition for reconsideration is granted to reflect that the transcriber ultimately prepared a transcript. However, the transcript is insufficient to fairly prosecute the appeal; therefore, the motion to reinstate the appeal is denied and, on reconsideration, the court adheres to the order dismissing the appeal.



JAMES C. EGAN  
CHIEF JUDGE, COURT OF APPEALS  
1/3/2019 2:57 PM

c: Robert Hercenberger  
Nicholas O Herman  
Katie Bradford, Transcriber

ej

**ORDER ALLOWING RECONSIDERATION BUT ADHERING TO ORDER DISMISSING APPEAL**

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,  
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563