

AUG 05 2021

OFFICE OF THE CLERK

No. 21-7203

IN THE  
SUPREME COURT OF THE UNITED STATES

Hamid Michael Hejazi — PETITIONER  
(Your Name)

vs.

Michael Schwab — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

\_\_\_\_\_  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Hamid Michael Hejazi

(Your Name)

Inmate ID# 3925882  
Lane County Adult Corrections  
101 West 5th Avenue

(Address)

Eugene, OR 97401-2695

(City, State, Zip Code)

N/A

(Phone Number)

**ORIGINAL**

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### QUESTION(S) PRESENTED

1) Was it justified for the appellate commissioner to dismiss Petitioner's appeal, on the grounds that Petitioner failed to serve the notice of appeal on the 'adverse' party within 30 days of entry of the judgement - when there was no adverse party to be served, no opposing (other) party having been served, summoned, appeared, or participated in any lower court proceeding?

2) Was the Oregon Supreme Court justified in denying review of the appellate court decision - in so far as the appellate court wrongly attributed to the other party (Michael Schwab) 'Defendant' the status of adverse party 'Respondent'?

## LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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## TABLE OF AUTHORITIES CITED

CASES

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### STATUTES AND RULES

Oregon Revised Statutes (ORS)	19.270(2)(a)	3,5
	19.240(2)(a)	3,5
	19.250(1)(c)(d)	3,5
	19.500	3,5
Oregon Rules of Appellate Procedure*		
(ORAP)	2.05(10)(a)	3,5

\*Or, Oregon 'Revised' Appellate Procedure

OTHER

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

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the State Court of Appeals court appears at Appendix \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

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## JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was May 6, 2021.  
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

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## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Oregon's appellate law provides for only adverse parties to be served with a notice of appeal - as a jurisdictional requirement (19.270).

However, an adverse party is defined as a party that appeared in the lower court's proceedings\*.

\* Each of ORS 19.270 (2) (a), 19.240 (2) (a), 19.250 (1) (c) (d), 19.500, and ORAP 2.05 (10) (a) all state "... a notice [service] on all parties who have appeared in the action, suit, or proceeding [or "who have appeared in the trial court"]".



#### STATEMENT OF THE CASE

Respondent, Michael Schwab, neither appeared, was served, summoned, nor was involved in any lower court proceeding in the case underlying Petitioner's appeal; yet the appellate commissioners erroneously assigned Respondent 'adverse party' status (even though the case underlying the appeal had been dismissed for want of service upon Respondent — and thus for want of prosecution — which Petitioner made perfectly clear to the appellate courts); dismissing Respondent's appeal for want of service of Petitioner's notice of appeal upon Respondent — the Oregon Supreme Court denying review; prompting this petition.

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### REASONS FOR GRANTING THE PETITION

It is of the broadest importance that any state's appellate courts not be allowed to deny allowing an appeal on jurisdictional grounds that are unsupported by law, ~~or~~ the facts of the case; where so doing invites anarchy into the legal system.

It is a standard appellate practice, that when an opposing party has yet to become adverse to a case (one dismissed on procedural grounds before service has been effectuated, for instance; as in the case underlying this petition), as actually codified into Oregon law (ignored by the appellate courts herein), where the party in question has yet to appear in any lower court proceedings underlying the appeal (see ORS 19.270(2)(a), 19.240(2)(a), 19.250(1)(c)(d), 19.500, and ORAP 2.05(10)(a) - setting forth that an adverse party is one that has appeared in the trial court) in any manner - that the party not be mandated to be served notice of appeal (or mandated to be involved), in an appeal challenging

the perfunctory procedural grounds upon which the case was dismissed. This practice and legal practice should be protected as good law; indicating that Oregon's Supreme Court should have granted review, and that the appellate commissioner was in error.

The alternative, the rationale of the appellate courts in this case, makes no sense at all — arbitrarily deciding to name Respondent as an adverse party. In so doing Oregon has turned the court into a circus clown act (!).

#### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael J. Jiri

Date: August 4, 2021

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