ORIGINAL

No. 23-112

# In the Supreme Court of the United States



IAN A. MCELROY,

*Petitioner,*

v.

CITY OF CORVALLIS, OREGON,

*Respondent.*

**On Petition for a Writ of Certiorari to the Oregon Supreme Court**

## PETITION FOR A WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

Ian McElroy was secretly, unconstitutionally convicted July 26, 1999 on three separate criminal citations by a City of Corvallis Municipal Judge who lacked subject-matter jurisdiction over a purely state administrative building code *civil penalty* dispute. In ways that shock the conscience, the Judge, acting alone from his private chambers, denied a trial and all means of due process, then secretly entered three convictions against McElroy to his harm and without his knowing of the Judge's actions. For lack of jurisdiction and other causes, the convictions entered are void *ab initio*–legal nullities that remain void to this day to McElroy's harm, including Respondent City's recent attorney fee judgment entered against him June 7, 2023, for $4,786.50 for having exercised his right of appeal to the Court of Appeals under ORS 221.360. [*See* App.26a.]

By motion and appeals under ORS 18.082(1)(e) and ORS 221.360, McElroy made his way to Oregon's Court of Appeals. In 2022, however, the Court in a series of shocking violations of due process, dismissed McElroy's appeal on false claims of lack of jurisdiction to review the circuit court's general judgment.

### THE QUESTIONS PRESENTED ARE:

1. Does the *"right of appeal"* to the Court of Appeals, as provided in ORS 221.360, include a judicial determination of the constitutionality of a municipal city ordinance under which a person was convicted, as required in ORS 221.370, while also ensuring both due process and equal protection rights of that person are protected, thereby compelling the Court of Appeals to exercise its statutory jurisdiction "in all cases,"

including Petitioner's timely appeal, precisely as the Court recently explained and upheld in *Westhaven LLC v. City of Dayton*, 316 Or. App 641, 504 P3d 1279 (2021)?

2. Do ORS 2.570(6) and parallel appellate rule ORAP 7.55(2) prohibit the Appellate Commissioner, a non-judicial officer, from granting Respondent's motion to dismiss appeal on substantive merits of the case then issuing an "Order Dismissing Appeal," as the Court itself explained is impermissible in *Bova v. City of Medford*, 236 Or App 257, 236 P.3d 1279 (2010), thereby depriving Petitioner of his right of appeal under ORS 221.360 based on errors of law from the circuit court below?

## PARTIES TO THE PROCEEDINGS

**Petitioner**

- Ian McElroy

**Respondent**

- City of Corvallis, Oregon

## CORPORATE DISCLOSURE STATEMENT

Petitioner Ian McElroy is an individual person and resident of the State of Oregon.

Respondent City of Corvallis is a Municipal Corporation, duly organized under the laws of the State of Oregon.

## LIST OF PROCEEDINGS

In the Supreme Court of the State of Oregon
S069950

City of Corvallis, *Plaintiff-Respondent, Respondent on Review,* v. Ian A. McElroy, *Defendant-Appellant, Petitioner on Review.*

Denial of Review: February 9, 2023

Denial of Reconsideration: May 4, 2023

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Court of Appeals of the State of Oregon

City of Corvallis, *Plaintiff-Respondent,* v. Ian A. McElroy, *Defendant-Appellant.*

Court of Appeals Nos. A175847(Control), A175848, A175849

Order Dismissing Appeal: March 25, 2022

Order Denying Stay: May 5, 2023

Final Appellate Judgment: June 7, 2023

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Circuit Court of Oregon for Benton County

Nos. 21VI02146, 21VI02149 & 21VI02150

City of Corvallis v. Ian McElroy

General Judgment of Dismissal: March 29, 2021

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Municipal Court of the City of Corvallis, Oregon

Case No. CV9800008 CV9800010 CV9800011

City of Corvallis, *Plaintiff, v.* Ian McElroy, *Defendant*

Bench Ruling Denying Evidentiary Hearing:
October 28, 2020

Order Denying Motion to Set Aside Convictions:
November 18, 2020

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Circuit Court of Oregon for Benton County

Nos. 04-10179, 04-10180 & 04-10181

City of Corvallis v. Ian McElroy

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**JUDICIAL RULES**

## PETITION FOR A WRIT OF CERTIORARI

Petitioner Ian McElroy respectfully petitions for a writ of certiorari to review what are *void* Orders from Oregon's Supreme Court which failed to reverse *void* Orders from the Court of Appeals. Those orders dismissed petitioner's appeal in violation of Oregon's appellate statutes and rules prohibiting both the appellate commissioner—a non-judicial officer of the Court—and the Court's Chief Judge from ruling on motions that would result in the disposition of an appeal on the substantive merits of the case. What occurred resulted in the denial of petitioner's rights to due process and equal protection by denying his statutory "*right of appeal*" to the Court of Appeals under ORS 221.360.

## OPINIONS BELOW

The Oregon Supreme Court Order Denying Review, dated February 9, 2023, is included at App.1a. The Oregon Court of Appeals Order Dismissing Appeal, dated March 25, 2022, is included at App.7a. The Oregon Circuit Court Order of Dismissal, dated March 29, 2021, is included at App.28a. The Supreme Court Order Denying Supplemental Petition for Reconsideration, is included at App.5a.

This Petition for Certiorari involves an unusual case that compels review. An innocent person convicted with no trial, due process or his knowledge, by a court that lacked subject-matter jurisdiction, remains

convicted twenty-four years later because every judge in every judicial proceeding over the last 18 years swiftly dismissed every motion and appeal filed based on demonstrable false claims, bias, and unlawful judicial conduct, including orders denying every motion filed for an evidentiary hearing on which valid legal opinions and judicial orders are based.

Due to this anomalous record, the courts below have not issued a substantive written opinion—not from any trial, evidentiary hearing, or lacking three-judge appellate review that this Court can refer to. However, this Court has meaningfully reviewed several cases wherein the lower courts have abrogated the responsibility to write an opinion. Notably, this Court has reviewed cases from Florida where the appeals court issued a per curiam affirmed decision without explanation. *See, e.g., Hobbie v. Unemployment Appeals Commission of Florida*, 480 U.S. 136 (1987)

Petitioner seeks certiorari to perform a fair review that could result in the proper administration of justice: first the set-aside of four immediate void Supreme Court and Court of Appeals Orders, then the set-aside of three void convictions.

## JURISDICTION

On April 21, 2021, the Oregon Court of Appeals obtained jurisdiction over the *City of Corvallis v. Ian McElroy* appeal upon Petitioner's timely notice of appeal from the general judgment entered in Benton County Circuit Court below.

On March 25, 2022, before any appellate briefs had been filed, the appeal was dismissed by the appellate commissioner—without jurisdiction—on false claims made by opposing counsel with intent to deceive and mislead the Court to believe the Court of Appeals lacked jurisdiction under ORS 221.360 to consider and decide on errors of law in the judgment below. [App.7a]

On May 6, 2022, on petition for reconsideration of the commissioner's dismissal of the appeal, the Chief Judge of the Court of Appeals—*with* jurisdiction to Reverse the dismissal, but *without* jurisdiction to Affirm the dismissal by making findings and conclusions on substantive matters of law—issued a second void Order affirming the commissioner's wrongful dismissal of Petitioner's valid appeal. [App.9a]

On Oct. 10, 2022, on petition for reconsideration of the Chief Judge's (May 6) Order adhering to the commissioner's (March 25) Order dismissing the appeal, the entire Court of Appeals en banc issued an Order Denying Reconsideration. The Court en banc had jurisdiction to consider, decide, vote, and announce its majority decision whether to *Affirm* or *Reverse* the Chief Judge's May 6, 2022 Order Adhering to the official dispositional Order Dismissing Appeal but failed to do so in breach of ORS 2.570(5), a violation that denied petitioner his right of appeal under ORS 221.360. [App.18a]

On December 19, 2022, the Oregon Supreme Court secured jurisdiction over this case upon the timely filed Petition For Review.

The Oregon Supreme Court's jurisdiction of the cause ended May 4, 2023 upon the Court's Order

Denying Supplemental Petition For Reconsideration. [App.5a]

Ninety (90) days from May 4, 2023 in which to file for certiorari, fixed August 2, 2023 as the deadline. Upon petition for a writ of certiorari, this Court has jurisdiction under 28 U.S.C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

### UNITED STATES

**U.S. Const. amend. XIV**

The Fourteenth Amendment provides that, "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.

### STATE OF OREGON

**Oregon Const. Art. I, Sec. 10**

The Bill of Rights in the Constitution for The State of Oregon, titled *Administration of Justice*, provides that, "No court shall be secret, but justice shall be administered, openly and without purchase, completely and without delay, and every man shall have remedy by due course of law for injury done him in his person, property, or reputation." Oregon Const. Art. I, Sec. 10.

## Oregon Revised Statutes (ORS); Appellate Rules of Procedure (ORAP)

**ORS 174.010**

ORS 174.010 General Rule. In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all.

**ORS 2.516**

ORS 2.516 Jurisdiction of All Appeals. Except where original jurisdiction is conferred on the Supreme Court, the Court of Appeals shall have exclusive jurisdiction of all appeals.

**ORS 221.359**

ORS 221.359 Appeals From Conviction In Municipal Court. (1) Whenever any person is convicted in the municipal court of any city of any offense defined and made punishable by any city charter or ordinance, such person shall have the same right of appeal to the circuit court within whose jurisdiction the city has its legal situs and maintains its seat of city government as now obtains from a conviction from justice courts. The appeal shall be taken and perfected in the manner provided by law for taking appeals from justice courts, except that in appeals taken under this section, ORS 221.360, 221.380 or 221.390:

(b) When the notice of appeal has been filed with the court from which the appeal is being

taken, the appellate court shall have jurisdiction of the cause.

(2) In a prosecution of any offense defined and made punishable by any city charter or ordinance, a plaintiff may appeal to the circuit court within whose jurisdiction the city has its legal situs.

**ORS 221.360**

ORS 221.360 Appeal on Issue of Constitutionality of City Ordinance. In all cases involving the constitutionality of the city ordinance under which the conviction was obtained as indicated in ORS 221.359, such person shall have the right of appeal to the circuit court in the manner provided in ORS 221.359, regardless of any ordinance prohibiting appeals from the municipal court because of the amount of the penalty or otherwise. An appeal may likewise be taken in such cases from the judgment or final order of the circuit court to the Court of Appeals in the same manner as other appeals are taken from the circuit court to the Court of Appeals in other criminal cases. Where the right of appeal in such cases depends upon there being involved an issue as to the constitutionality of the ordinance, the decision of the appellate court shall be upon such constitutional issue only.

**ORS 221.370**

ORS 221.370 Appeal on Issue of Constitutionality of City Ordinance. Whenever the validity of a city ordinance provision of any city comes in issue in a trial for violation of ordinance provision, the trial judge shall determine such issue of

validity and make a decision and order thereon before making any decision as to the facts in the particular case.

**ORAP 7.55(2)**

ORAP 7.55(2) Court of Appeals Appellate Commissioner. The appellate commissioner does not have authority to decide a motion that would result in the disposition of a case on its merits.

**ORS 2.570(5)**

ORS 2.570(5). The Chief Judge of the Court of Appeals may refer a cause to be considered en banc. When the court sits en banc, the concurrence of a majority of the judges participating is necessary to pronounce judgment, but if the judges participating are equally divided in their view as to the judgment to be given, the judgment appealed from shall be affirmed.

**ORS 2.570(6)**

ORS 2.570(6). The Chief Judge may rule on motions and issue orders in procedural matters in the Court of Appeals or may delegate the authority to rule on motions and issue orders in procedural matters to an appellate commissioner as provided for in the court's rules of appellate procedure.

**ORS 18.082**

ORS 18.082 Effect of entry of judgment. (1) Upon entry of a judgment, the judgment:

(a) Becomes the exclusive statement of the court's decision in the case and governs the rights and

obligations of the parties that are subject to the judgment; and

(e) May be set aside or modified only by the court rendering the judgment or by another court or tribunal with the same or greater authority than the court rendering the judgment.

**Laws Relevant to Building Code Enforcement**

**ORS 455.040**

State Building Code Preempts Local Ordinances. The state building code shall be applicable and uniform throughout this state and in all municipalities, and no municipality shall enact or enforce any ordinance relating to the same matters encompassed by the state building code but which provides different requirements.

**ORS 455.450**

Prohibited Acts. A person may not: (2) Engage in any conduct or activity for which a certificate is required by any specialty code without first having obtained such certificate.

**ORS 455.895**

Civil Penalties. The director of the Department of Consumer and Business Services may impose a civil penalty against any person who violates any provision of this chapter, in an amount of not more than $1,000 for each day of the offense. (2) Civil penalties under this section shall be imposed as provided in ORS 183.090.

**ORS 183.090**

> Civil Penalty Procedures. A person against whom a civil penalty is to be imposed shall be served with a notice as provided in ORS 183.415. (3) The person to whom a notice is served shall have 20 days in which to make written application for a hearing. (4) Any person who makes application for a hearing shall be entitled to a contested case hearing under the provisions of ORS 183.413 to 183.470.

**Corvallis Building Code Ordinance 9.02.010.010**

> Enforcement of State Code. The Oregon Structural Specialty Code [OSSC], as adopted by OAR 918-460-0010 through 918-460-0015, except as modified in this Chapter, is adopted as part of this Chapter.

**Oregon Structural Specialty Code, OSSC Sec. 103. (Oregon Uniform State Building Code)**

> § 103.1 Prohibited acts. Prohibited acts are described in ORS 455.450 and 455.895.
>
> § 103.2 Penalties. Penalties for violations are prescribed in ORS 455.895.

**OSSC § 109.1 Certificate of Occupancy.**

> No building shall be used until the building official has issued a certificate of occupancy therefore as provided herein.

**OSSC § 109.4 Temporary Certificate of Occupancy.**

> If the building official finds that no substantial hazard will result from occupancy of any building or portion thereof before the same is completed, a temporary certificate of occupancy *may* be issued

for the use of a portion or portions of a building prior to the completion of the entire building.

**Corvallis City Charter, Sec. 23**

Municipal Judge. The Municipal Judge shall exercise original and exclusive jurisdiction of all crimes and offenses defined and made punishable by ordinances of the City.

**Corvallis Land Development Code 2.19.30.07**

Effective Date of Decision. Approval of any development request shall become effective upon expiration of the appeal period, unless an appeal has been filed. Where the hearing authority it the City Council, the effective date for filing an appeal with the State Land Use Board of Appeals (LUBA) shall be 21 days after the notice of disposition of the Council's action has been mailed.

**Relevant Criminal Statute**
**(Re: Criminal acts responsible for July 1999 convictions)**

**ORS 162.295**

Tampering with Physical Evidence. (1) A person commits the crime of tampering with physical evidence if, with intent that it be used, introduced, rejected or unavailable in an official proceeding which is then pending or to the knowledge of such person is about to be instituted, the person:

(a) Destroys, mutilates, alters, conceals or removes physical evidence impairing its verity or availability; or

(b) Knowingly makes, produces or offers any false physical evidence; or

(c) Prevents the production of physical evidence by an act of force, intimidation or deception against any person.

(2) Tampering with physical evidence is a Class A misdemeanor.

## STATEMENT OF THE CASE

### A. Introduction

Ian McElroy was convicted July 26, 1999, under Oregon's Criminal Infractions Code by a municipal judge who lacked subject jurisdiction over an alleged administrative building code civil penalty violation dispute. Without probable cause, Corvallis City Attorneys filed three citations against McElroy for occupying new medical offices without a certificate while knowing McElroy was the general contractor completing the office park development and NOT the medical doctors (tenants) occupying their new offices without a certificate of occupancy.

For statewide preemption under ORS 455.040, the city attorneys knew the City Council never enacted a city ordinance to define and make punishable the act of occupying buildings without a certificate of occupancy as an offense. The city attorneys also knew that for such preemption, the City adopted the State Building Code [Oregon Structural Specialties Code, "OSSC")] as part of the City's building code ordinance.

For enforcement, the city attorneys understood OSSC §§ 103.1 and 103.2 were the two ordinances for

enforcing occupancies without certificates through Oregon's administrative civil penalty contested case hearing process before the State Building Code Agency.

For these and other legal issues in November 1998, the city attorneys knew that citing McElroy in municipal court on criminal infraction violation charges for what could only be a *Notice of Civil Penalty* before the State Building Codes Structures Board—and against only the property owner—for a contested case hearing on alleged violations of ORS 455.450 under OSSC §§ 103.1 and 103.2 for occupying offices in Building 'B' at Rivergreen Office Park (that *he* was not occupying), was without cause and in violation of due process legislated into the civil penalty process under ORS 455.895.

Notwithstanding constitutional and statutory provisions prohibiting the City from prosecuting McElroy through criminal actions in the City's municipal court, in July 1999 they resorted to tampering with physical evidence to defraud the court to secure fraudulent convictions, even though they already knew from before they issued citations in November 1998, that McElroy was the wrong person to cite and prosecute because he was neither the property owner nor the doctors occupying their new medical offices.

Five years later, in early 2004, a law firm discovered from the municipal court records that the City's 1998/1999 prosecution files showed that McElroy's July 1999 convictions were procured through knowing acts of fraud upon the court—unlawful acts committed by officers of the court, specifically: the city attorneys; McElroy's two defense lawyers; and the City's municipal judge.

As a consequence of the fraudulent convictions, Ian McElroy for the past eighteen years has been seeking relief from the three convictions entered by a court that lacked subject-matter jurisdiction.

Petitioner Ian McElroy was convicted in a court without jurisdiction, yet every trial court and appellate court proceeding in Oregon the past 18 years, and every Judge involved in those mass of empty proceedings, have repeatedly dismissed—or denied—every motion for justice, and have done so on the false pretense that "the court lacked jurisdiction" to grant or convene any evidentiary proceeding from which it would be possible to judge the validity of the 1999 convictions; and now Oregon's two Highest Courts failed to even acknowledge its own improper *in-house dismissal* of McElroy's valid appeal.

In the United States, and certainly under the Fourteenth Amendment to the U.S. Constitution, the Rule of Law affords due process and equal protection through the Courts. Nevertheless, Ian McElroy was convicted after being prevented from having his day in court to present his defense; then kept convicted by closing off all access to any fair judicial or appellate process.

Volumes of trial court and appellate court records in *City of Corvallis v. Ian McElroy* prove this to be true. Accordingly, Petitioner seeks the attention and commitment to the Rule of Law that is practiced at this Country's Highest Court.

### B. Factual History, October 1998 — July 1999

October 8, 1998: As president of his construction company and general contractor for property owner Rivergreen Office Park LLC (Rivergreen), Ian McElroy

was nearing completion of the second professional office building he was responsible for under contract. The Office Park was located near downtown Corvallis, Oregon. The first building (4,000 sq. ft.) was complete and occupied by a national insurance tenant earlier in March 1998, with the usual city-issued certificate of occupancy in hand. In September 1998, the second building (20,000 sq. ft) was complete, along with the second-floor tenant improvements for a national engineering firm. The city issued the next occupancy certificate for the second floor in the ordinary course, and the tenant began its occupancy.

Two weeks later, on October 8, 1998, McElroy completed medical office tenant improvements for a group of physicians in one section on the first-floor. As planned for months, phone, computer and data systems were switched from the [old] hospital offices to the new medical offices. The physicians began preparing the offices for hundreds of patients each month (residents in the community) who would rely on unhindered access to their doctors at the new offices beginning October 12, 1998.

For a continuing land use decision dispute with the City—a dispute rendered "ineffective" through the course of a land use appeal McElroy's attorney filed [LDC 2.19.30.70]—city officials directed by city attorneys changed course and refused to wait for resolution through the land use appeal process. On October 8, 1998, city officials, on advice and approval by their city attorneys, embarked upon an illegal plan to force McElroy to comply with what was an unenforceable land use decision over the Federal Americans with Disabilities Act (ADA) Access and

FEMA Drainage violations created by the city's land use decision.

The Plan: Extort from Ian McElroy a $12,000 cash bond or other liquid asset made accessible to the city; and coerce completion the city's land use decision despite required conditions were made ineffective on appeal. The city would use McElroy's cash funds to complete the land use conditions in the event McElroy failed to do so; and threatened McElroy with citations or other judicial action for failure to cooperate with city officials. Lastly, the city would coerce McElroy to sign an [illegal] written contract the city attorneys would prepare, including a waiver of all his *future rights of appeal* of any future city council land use decision regardless of whether such decision might negatively affect McElroy's development project or neighboring properties. All of this would be required in exchange for the certificate of occupancy McElroy was requesting to allow doctors to occupy their new offices pursuant to a lease agreement. [App.69a-72a]

McElroy's legal counsel advised that under no circumstance should he allow an immediate breach of the lease agreement between Rivergreen and Doctors and the resulting avalanche of law suits that would follow between multiple parties relying on needed occupancy of the new medical offices. McElroy therefore rejected the city's demands; the doctors completed their move; and, on October 12, doors to the new offices were opened for scheduled patient appointments.

October 20, 1998: The City Council renewed its prior land use decision, which again included conditions that, if McElroy were forced to comply with them, would cause federal ADA access and FEMA flood zone

violations, as well as negative drainage onto adjacent properties. [App.73a]

October 27, 1998: McElroy's attorney filed an *amended* notice of appeal to Oregon's Land Use Board of Appeals (LUBA). Once again, the city's decision was made ineffective during the appeal. [App.75a]

November 9, 1998: The city made new demands on McElroy: Immediate compliance with its renewed [ineffective] land use conditions, or evict the [new] tenants, or be subject to citations into court for building code violations. [App.77a]

November 9 to 25, 1998: The city attorneys issued three Uniform Criminal Violation Citations, alleging violation of city ordinance 9.02.010.010, as further described by state building code, OSSC § 109.1, then instructed Corvallis police to serve them. [App.79a]

November 24, 1998: The city building official provided notice advising there were no building code violations associated with Building B (the office building with the new first-floor medical offices). [App.82a]

December 4, 1998: Just after McElroy's lawyer filed "not guilty" pleas and demanded a trial on McElroy's behalf, the lawyer filed a petition for a Declaratory Judgment declaring that "McElroy shall be freed from the city's criminal prosecution."

December 12, 1998: The city attorneys filed a Response to the circuit court stating the municipal court action "did not subject McElroy to criminal prosecution, as the state building code anticipates only administrative civil penalties." [App.83a, ¶ 8]

July 6, 1999: the municipal court set the trial date for 10:00 am, July 21, 1999.

July 15, 1999: Unbeknownst to McElroy, the city attorneys negotiated a settlement agreement with McElroy's defense lawyers and filed a corresponding Motion and Order to Amend Charging Instruments ("Motion to Amend") with the court the next day, July 16, 1999, thereby *amending* the citations from named-defendant Ian McElroy to Rivergreen Office Park LLC, the actual property owner/real-party-in-interest for prosecution of alleged certificate of occupancy violations. [App.85a]

July 19, 1999: For reasons unknown, McElroy's defense lawyers committed fraudulent concealment and deceptions, first by hiding the settlement agreement and the City's Motion to Amend from their client (the Motion intended to release him from the prosecution), then by misleading him to believe they had negotiated a *No-Contest Plea* with the city attorneys where the city attorneys had agreed to drop the charges in exchange for his forfeiting bail. His lawyers then fabricated a fraudulent letter to deceive the judge into believing a mutual agreement had been reached: "drop the charges in exchange for forfeiting bail." [App.87a-91a]

Under ORS 162.295(1)(b), fabricating the McElroy July 20, 1999 Letter with intent to defraud the judicial process was an act of tampering with physical evidence—a criminal act sanctioned as a Class A Misdemeanor.

July 20, 1999, 3:00pm: McElroy, having been defrauded by his lawyers from knowing he was set to be released from the prosecution, was coerced into

signing the letter they prepared and to submit it to the court clerk right away, with a $600 check, to ensure the court would take the trial [set to convene the next morning] off the docket. [App.92a-93a]

July 20, 1999, 5:00pm: The city attorneys had *never agreed* to "drop charges," as the occupancy violations were continuing violations each day, without certificates. They had in fact agreed to *remove* McElroy completely as the named-defendant and proceed to trial on amended citations against Rivergreen Office Park LLC, the proper-party-in-interest on the occupancy violations.

Realizing, however, that McElroy's bail forfeiture letter would lead the Judge to discover serious attorney fraud being committed in the proceedings by McElroy's lawyers that would also show fraud by the City Attorney's Office, the city attorneys engaged in what would become the most egregious fraud in the proceedings—disguised as a legitimate City Attorney Office Memorandum. The deception read:

> City Attorney's Memorandum — July 20, 1999
> To: Municipal Court
> From: David Shirley, City Attorney (w/ initials)
> Subject: Corvallis v. McElroy
> Citation Nos. 116168, 116172, 116173
>
> "Last week I sent a Motion to Amend the Charging Instruments in the above stated matter from the name of Ian McElroy to Rivergreen Office Park. The Defendant has requested that the citations be left unamended and the City has agreed. Therefore, please disregard or withdraw the City's Motion to Amend the Charging Instruments.

cc: Mr. Stephenson (defense counsel)
Ms. Kellington (defense counsel). [App.94a]

It was virtually impossible for Defendant McElroy to have requested that the citations be left unamended, as he never knew his lawyers and city attorneys had negotiated a settlement agreement five days earlier providing for the citations TO BE AMENDED and to release him from the prosecution—and all of it with no requirement for a no-contest plea to be made as a condition for his full release.

Under ORS 162.295(1)(b), that fabrication of the City Attorney's fraudulent July 20, 1999 Memorandum, with intent to deceive the Municipal Judge to believe it was McElroy who wanted to quash the Motion to Amend and settle for three convictions on no-contest pleas, was a serious act of tampering with physical evidence—a criminal act sanctioned as a Class A Misdemeanor.

July 21, 1999: To ensure the Municipal Judge canceled the trial and would not "inquire" into the unlawful/suspicious nature of the events occurring at the eve of trial, the city attorneys manufactured a second set of deceptions to mislead and to improperly influence the Judge to quickly enter three convictions against defendant McElroy and close the case files with no questions or fanfare. To this end, a second Memo from the City Attorney's office was prepared and delivered to both the Municipal Judge and the defense lawyers. [App.95a-96a]. This Memo was now the third criminal act in mid-July 1999 by the lawyers in this case—produced with intent to prevent Ian McElroy from "having his day in court" in which to present his defense to the criminal charges of occupying medical offices he never occupied.

On July 26, 1999, the Judge returned to the court to conclude the McElroy case paperwork and close the files. Only then did the Judge begin to examine the three court documents filed by the city attorneys and the one filed by McElroy (as instructed by his lawyers) in the few days just before trial. Upon review of the four documents, the Judge became confused. When considered together, there was no way to discern McElroy's intent for submitting the July 20, 1999 bail forfeiture letter and a $600 check, especially not when the Court was already set to sign the Order prepared by the city attorneys for granting the motion to release McElroy from the case and amend the charging instruments before the start of trial.

Confused as to how to close the prosecution cases based on conflicting documents, the Judge penned instructions to his clerk on the face of McElroy's July 20 letter. He wrote: "July 26, 1999—Call Mr. Stephenson, confirm his client intends this as bail forfeiture." [App.97a-98a]

For reasons unknown, the Judge never waited to learn the reasons for sudden convoluted papers or of McElroy's intent behind his request for leaving the citations unamended. Instead, the Judge waived all constitutional and statutory provisions McElroy was entitled to and elected to "*Receive*" the July 20 bail forfeiture letter *against* McElroy, while treating it as a No-Contest Plea from a fully advised defendant while still being represented by defense attorneys.

Having *received* the No-Contest Plea as intelligent and voluntary without any genuine inquiry as to its validity, the Judge signed the Judgment (back side of the Citation Forms) and circled "BF," thus indicating McElroy had paid the $200 scheduled bail for each of

the three Citations issued. In this manner, the Judge entered three convictions against Ian McElroy on City Building Code Ordinance violations in the Municipal Court Records without a trial, evidentiary hearing, or proper inquiry into conflicting court papers, all without due process and without his knowledge. [App.97a-101a]

These final judicial events that occurred July 26, 1999 after an eight-month prosecution, ended the Municipal Court criminal proceedings against Ian McElroy and the cases were closed. No official "Notice" of the Court's actions or the entry of convictions was ever issued to McElroy or to his defense lawyers.

Aside from the fact the Municipal Court lacked subject-matter jurisdiction over this case from the start, the additional failure of the Municipal Judge to perform the impartial functions of the court when deciding and entering the final judgments of conviction against an innocent Defendant under truly questionable circumstances, resulted in three void convictions that must still be set aside as a matter of law.

November 3, 1999: Four months after three convictions were entered, the Oregon Building Codes Structures Board convened a hearing on the ADA violations caused by the City's land use decision. The Board found in McElroy's favor regarding the City violations. [App.102a-104a]

### C. Three Distinct Criminal Acts Committed by Municipal Judge to Enter Convictions

On July 20, 1999, Ian McElroy was falsely made to believe that he had forfeited bail, that the city attorneys were dropping the charges, and that the nine-month prosecution was over. Except there was

no truth to any of it—save for paying a fraudulent $600 transaction to the city.

The Municipal Judge accepted McElroy's $600, receive bail forfeiture as a No-Contest Plea, entered three convictions, and closed the case files, apparently in the belief that Ian McElroy would not discover this abuse of the judicial criminal process.

The Judge, on July 26, first examined the four court documents filed mid-July setting before him (as listed here): [Apps.85a, 92a, 94a, 95a]

1. City's Motion to Amend (to release McElroy from the prosecution case, July 16)
2. McElroy's Bail Forfeiture Letter (in exchange for city attorneys dropping the charges, July 20)
3. City Attorney's Memorandum (asserts McElroy requested to leave citations unamended, July 20)
4. City Attorney Memo (claims they never agreed to drop charges against McElroy, July 21)

From these four documents and the charges filed in November 1998, the Judge, as the judicial officer of the Court charged with the duty to determine how to conclude this prosecution, instead of waiting for a complete answer to his inquiry from McElroy's defense counsel, chose to "*remove*" from his judicial consideration documents 1 and 3 (Motion to Amend, and City Attorney Memorandum).

Now there were only two court documents to weigh: McElroy's letter to forfeit bail (document 2,

July 20), treating it as a valid No-Contest Plea that had been *approved* by the prosecuting attorneys as required under Oregon criminal infraction code; and the city attorneys' second memo (document 4, July 21), while ignoring statements made therein that nullified the very terms under which Ian McElroy agreed to forfeit bail with a $600 check.

The Municipal Court Judge, by removing physical evidence (court documents 1 and 3) from judicial consideration, was tampering with physical evidence as his only means to justify entering convictions without a trial, evidentiary hearing, or judicial inquiry into the evidence of attorney fraud, and close the case files before defendant McElroy, or anyone, discovered what had been done.

The evidence proving these statements of fact made, are found in the writings from the Municipal Judge himself years later: in March 2004 [App.36a], in April 2004 [App.38a]; and again in March 2008, but with greater detail and disclosure. [App.41a-51a]

### D. Four Municipal Court Motions Filed to Set Aside Void Convictions: 2004-2020

In January 2004, Ian McElroy learned for the first time about events that occurred in mid-July 1999 that were directly responsible for the business and financial demise he suffered after agreeing to forfeit bail in July 1999, while still believing the city attorneys had dropped the charges. This news came from a Portland law firm looking into possible remedies for damages he suffered to his person, company, and reputation.

With just these facts, McElroy filed a Motion in Municipal Court to set aside the perceived no-contest

plea letter he filed July 20, 1999, as instructed by his defense lawyers. McElroy also moved to subpoena the city attorneys for testimony about July 1999 conversations with McElroy's lawyers having anything to do with the "agreement" that, in exchange for bail forfeiture the city attorneys had agreed to "drop the charges."

March 8, 2004: In a non-evidentiary hearing, the Judge denied the motion to require testimony from the city attorneys. Then, after only brief argument from McElroy, the Judge, adding nothing to the short hearing, issued a written Order Denying the Motion to Set Aside the No-Contest Pleas. [App.36a].

April 14, 2004: On appeal, the Municipal Judge penned a *sua sponte* letter to the circuit court judge, advising that the 1999 prosecution against McElroy resulted in criminal convictions and that the circuit court may lack jurisdiction over the Order entered. [App.38a]. It was only then that McElroy learned for the first time that criminal convictions had been entered against him in July 1999. Still, McElroy thought the convictions resulted from fraudulent concealment, deceptions, and coercions committed by his attorneys and that the city attorneys merely filed the Motion to Amend for reasons Rivergreen LLC was liable for the alleged violations—not McElroy.

January 18, 2005: The circuit court dismissed the appeal filed from the municipal court proceedings below for "lack of jurisdiction," as the ruling entered March 8, 2004 was an unappealable Order, not a judgment. [App.32a-35a].

March 2008: After yet a second non-evidentiary motion hearing four years later, again to set aside

the 1999 convictions, the municipal judge again allowed only for legal argument, and once again stayed silent. It is now clear the Judge's silence was intended to conceal the fact that it was he who was responsible for McElroy's convictions—by his removal of physical evidence from his own judicial considerations on July 26, 1999.

On March 26, 2008, the Judge issued a five-page Order dismissing the motion to set aside, claiming that McElroy failed to provide any procedural underpinning under which the court could exercise jurisdiction, and that the court could not find any such legal authority, despite looking. [App.41a-51a]

On its face, the five-page Order appears as a mere chronological recitation of facts supporting a denial of an unavailable motion for relief from three valid convictions. Eventually, however, Ian McElroy would discover more facts, begin to understand controlling laws the lawyers and judges had misrepresented, and as a result, recognize the deceptions within the March 26, 2008 Order. To state the situation in the clearest terms, the Municipal Judge, in March 2008, manufactured a false timeline of events to conceal the perversions of justice employed to convict McElroy in 1999.

January 28, 2009 and February 23, 2009: From a third motion to set aside the 1999 convictions, this time by filed by a prominent Portland defense attorney, an Oregon Senior State Judge, sitting *pro tempore* for the presiding Municipal Judge who finally recused himself for conflicts of personal interest for his past conduct, received non-evidentiary hearing arguments on whether statewide Preemption Statute 455.040 nullified municipal court jurisdiction over governing

state administrative certificate of occupancy violations. Based on a multitude of false statements and misrepresentations made by the city attorneys to the court, and despite the Judge's expertise in state preemption/ city ordinance laws, the Judge issued a ruling denying the motion in a manner that clearly interfered with the administration of justice. This not only kept defendant McElroy convicted, it also shielded city attorneys and the recused municipal judge from accountability for their conduct responsible for the July 1999 convictions. [App.52a-63a]

The Judge's written Order was in conflict with not only the plain text of ORS 455.450 as enacted by the Legislature, but of his own written findings, analysis, conclusions, and final judgment in a highly contested Corvallis smoking ban ordinance preemption case he presided over ten years earlier, in 1998.

September 2020: Settled law in much or all of the United States, including Oregon, provides that a void judgment is forever void and that a challenge to a void judgment is not subject to statute of limitations. It remains a legal nullity that cannot be affirmed on appeal or enforced in any manner or to any degree. Upon an evidentiary determination that a judgment is void *ab initio*, the court must set it aside, and it is an abuse of judicial discretion for any court of competent jurisdiction to fail to set aside a judgment deemed void as a matter of law. Accordingly, Ian McElroy filed yet a fourth motion in the Municipal Court on September 18, 2020 for an evidentiary hearing and to set aside his July 1999 void judgments of conviction.

October 2020: The Municipal Judge once again exercised the court's jurisdiction and took up the matter of McElroy's motion to vacate the 1999 con-

victions by convening a limited omnibus pre-trial hearing October 28, 2020. Notwithstanding the court's authority to hear evidence and testimony in order to make a judicial determination as to the validity, or voidness, of convictions—and to then set them aside under ORS 18.082(1)(e)—the municipal judge refused to allow any evidentiary process in any form, instead instructing that argument was limited to only issues of law.

As to McElroy's right to be freed from void convictions from a court lacking jurisdiction over administrative building code disputes, the judge made the following statements (cited in pertinent part from the Judicial Dialogue Transcript filed in the court record):

> October 28, 2020
> Before the Corvallis Municipal Court.
>
> [*Transcript* page 37, line 12, thru page 38, line 25]
>
> MR. McELROY: [continuing] . . . a void judgment cannot obtain validity, even for laches. So, there is no way the void judgments can be deemed valid. The Court must through an evidentiary process make a factual determination whether the Court had jurisdiction. That's never happened.
>
> THE COURT: Mr. McElroy. Absolutely not. I'll make it very clear here. I don't want to waste time on this part of your contentions. This Court is not going to hold an evidentiary hearing on these pleas that were entered back in 1999. Absolutely not. There's no basis for it. The motion [for evidentiary hearing] is denied. There is no basis for it. It's not going

to happen. And whatever my ruling is on this, you are certainly not going to be having an evidentiary hearing in this court over whether or not those pleas of no-contest were correct. Whatever happened, happened. And just so you understand, there is no authority of this Court to do that. And even if I had the authority I would certainly not exercise it 22 years after the fact. Not gonna happen. That is denied. So, you can move on to some other point if you like. But don't look for an evidentiary hearing in this court, because that's not going to happen.

[*Transcript* page 84, lines 8-25]

AUDIENCE MEMBER: Your Honor, would it be permissible for me to address the Court?

THE COURT: No. Well, I don't think so. Who are you and why would that be allowed?

AUDIENCE MEMBER: I am Frank Morse. I was [Oregon State] Senator representing Linn and Benton Counties. And I have information that might be valuable to the Court.

THE COURT: No. No, that is not going to be allowed. Look, this is not an evidentiary hearing. And unless you are here as Mr. McElroy's legal representative—if you are admitted to the Bar and he wants you to be his advocate, that's fine. But no. This is not a—[evidentiary hearing]—this is a hearing on legal issues.

—End of relevant portion of Transcript. [App.64a-66a]

In the history of American Jurisprudence, there cannot have been many statements on the record by a judge more directly offensive to the concept of justice, as "Whatever happened, happened." Surely, it is in the best tradition of the justice system and the duty of the courts to rectify such a flagrant rejection of fairness and empathy for the wrongly convicted.

Despite refusing to allow any evidentiary process, the Judge, when issuing the Order Denying all Motions from Chambers November 18, 2020, made up his own findings of fact, including that McElroy's convictions "*were of his own doing*," because he voluntarily signed his own no-contest plea and forfeited bail in July 1999. Further, the judge also added a new criminal sentencing never imposed in 1999: Without affording McElroy any due process chance to defend against a distinctly unlawful permanent injunction against him—no notice, no show cause hearing, no evidence to support any justification—the Judge *forever* prohibited McElroy, on pain of contempt, from ever challenging the [void] convictions again in municipal court. [App.67a].

This alone was reason for McElroy to seek justice through the statutory *de novo* trial/appeal process he was entitled to as a matter of right under ORS 221.360. In fact, McElroy sought review and remedy for that illegal injunction imposed on him in his notice of appeal to the circuit court.

December 11, 2020: The municipal court's actions were, as a matter of settled law, an abuse of discretion for the Judge's knowing failure to set aside void convictions. Still convicted, McElroy filed a timely notice of appeal to Benton County Circuit Court for an appeal under ORS 221.360 to decide the issues of constitu-

tionality of the city ordinance under McElroy was convicted.

March 2021: The circuit court had obtained jurisdiction on McElroy's timely notice of appeal. On yet another city attorney motion to dismiss, the court refused an evidentiary proceeding necessary to comply with ORS 221.370 to first determine the constitutionality of the city ordinance under which McElroy was convicted. In a motion hearing for dismissal, the circuit court granted the motion and dismissed the appeal asserting that "it *lacked subject-matter jurisdiction* to entertain a *de novo* trial under ORS 221.360." The court entered a General Judgment of Dismissal March 29, 2021. [App.28a]

### E. Oregon Court of Appeals, 2021 — 2022

April 21, 2021: Ian McElroy timely filed a notice of appeal to the Oregon Court of Appeals pursuant to ORS 221.360—the *Legislative Intent* enacted to grant expressed jurisdiction to the Court of Appeals for review of a general judgment from a circuit court concerning the "right of appeal" *in all cases* involving the constitutionality of a city ordinance under which a person was convicted in a municipal court. Upon timely notice, the Court of Appeals gained jurisdiction of the cause over Ian McElroy's appeal.

#### 1. From the Record Before the Court of Appeals

Prior to considering whether to grant Respondent City's motion to dismiss the appeal on grounds the Court's jurisdiction had evaporated, the Appellate Commissioner and thirteen Judges on the Court had

become aware of the long, convoluted, hotly contested history of events in *City of Corvallis v. Ian McElroy.*

This *knowledge* included the years of repeated motions and filings by McElroy, and the consistent rulings against him by a multitude of courts. Then throughout the arduous process, the court failed to consider facts in the record showing that McElroy was not only convicted with no trial, due process or his knowledge, but that during two decades of seeking justice, not one judge had ever allowed one day in an evidentiary proceeding where truths about material facts are impartially examined before boilerplate dismissals and denials of motions were issued.

March 25, 2022: On a frivolous motion to dismiss appeal, based not on procedural defects but on unsupported legal argument that jurisdictional authority granted the Court of Appeals under ORS 221.360 had somehow dissolved (but without telling what statute or case law distinctly nullified the Court's authority under ORS 221.360 that expressly *grant*ed jurisdiction), the city attorneys argued that the Court must simply dismiss the appeal for want of jurisdiction.

Importantly, the City's unsupported motion, and the Court's consideration to grant the motion and dismiss the appeal, was *prior to* the statutory briefing process. Thus, no adequate, formal means on which to defend against such a premature dismissal on the merits of the case before a three-judge appellate panel was afforded; let alone before a non-judicial officer.

In direct violation of ORS 2.570(6) and Appellate Rule 7.55(2), Oregon's Appellate Commissioner—a non-judicial court officer with no statutory authority to do

so, and in fact *prohibited* by appellate rule from doing so—ruled on and granted Respondent's motion to dismiss, then issued the Dispositional *Order Dismissing Appeal,* based solely on substantive merits that the court "had no jurisdiction under ORS 221.360." For both want of, and in violation of, statutory authority, the dismissal order was void *ab initio.* [App.7a]

Authority to dismiss an appeal on substantive merits of a case is reserved only to a three-judge appellate review panel; and only after consideration, deliberation, and conclusion of arguments on submitted Briefs have concluded. Only then can an fair and reportable decision be reached based on the application of statute 221.360 and case law relevant to McElroy's right of appeal.

May 6, 2022: On petition to the Chief Judge for reconsideration of the Commissioner's impermissible *Ruling* and *Order Dismissing Appeal* on the merits of the case, McElroy claimed the Dismissal Order was void for the Commissioner's lack of authority.

The foundation of McElroy's petition was based on controlling appellate law ORS 2.570(6) and ORAP Rule 7.55(2), and on governing precedent: *Bova v. City of Medford,* 236 Or App 257, 236 P.3d 760 (2010).

Unbeknownst to McElroy throughout 2022, but certainly fresh on the minds of each jurist on Oregon's Court of Appeals through the entire year while judging this highly contested yet fundamental issue of law, was *Westhaven LLC v. City of Dayton,* 316 Or App 641, 504 P.3d 1279 (2021), an immediate, recent case just decided December 29, 2021.

A diligent reading of *Westhaven LLC v. City of Dayton, Id.*, verifies a conclusion why the entire Court of Appeals in 2022—from the Commissioner's Order Dismissing Appeal (March 25), to the Chief Judge's Order Affirming Dismissal (May 6), to the Court en banc's Order Denying Reconsideration (October 10)—strayed so far outside the bounds of law to keep Ian McElroy from having a fair, impartial three-judge appellate review of the circuit court judgment involving the constitutionality of Corvallis city ordinance 9.02.010.010.

That conclusion: the Court of Appeals' brand-new decision in *Westhaven, Id.*, affirmed the legal basis supporting Ian McElroy's appeal in every respect, while quashing all baseless claims for dismissal as moved for by Respondent City of Corvallis.

In spite of the legal understandings of the Judges involved in 2022 on the subject of jurisdiction under ORS 221.360, the Chief Judge, in direct violation of ORS 2.570(6), failed to resolve the legal nullity of the Dismissal Order, then exceeded its authority by "*affirming*" the dismissal in a 3-page Order rather than "*reversing*" the Order as a matter of law. [App.9a]. For acting outside statutory authority, the Chief Judge's May 6, 2022 Order was another legal nullity.

### 2. ORS 2.570(6) Limits Statutory Authorities of the Chief Judge and Appellate Commissioner

In *Bova v. City of Medford*, 236 Or App 257, 236 P.3d 760 (2010), the Court of Appeals established a florescent bright line between statutory authorities of the Chief Judge and Appellate Commissioner when ruling on procedural *versus* substantive motions.

Both Chief Judge and Commissioner are prohibited from ruling on motions that would result in the disposition (dismissal) of an appeal on the merits of the case, or adherence to such dismissal. On procedural matters [*e.g.*, fail to timely file or pay fees], yes. On substantive issues as jurisdictional disputes [*e.g.*, ORS 2.516, ORS 19.205, ORS 221.360], absolutely not. In this McElroy appeal, while acting alone, it was a clear violation of law for the Commissioner to Order dismissal—and the Chief Judge to adhere to it—based on statutory merits of ORS 221.360. Doing so violated McElroy's statutory right to due process under the statute.

Equally damaging to the Rule of Law and to the integrity and reputation of the Court, is the fact that every Judge on the Court of Appeals throughout 2022 had full, constructive knowledge of its own recent, exhaustive review, analysis, and determination on the matter of a person's *right of appeal* under ORS 221.360 in all cases involving the constitutionality of a city ordinance under which the person was convicted in a municipal court. As the Legislature intended [221.360], "*in all cases*" neither excludes nor precludes Ian McElroy's timely appeal to the Oregon Court of Appeals.

The Court's legal reasoning and decision in *Westhaven LLC v. City of Dayton*, *Supra*, cannot be reconciled with the May 6, 2022 Order Adhering to Dismissal in *City of Corvallis v. McElroy*. [App.9a]

**F. Oregon Supreme Court, 2023**

The Chief Judge and full Court of Appeals en banc refused to acknowledge and reverse the void Order Dismissing Appeal issued by the Commissioner

without authority. This was a clear abuse of judicial discretion under Oregon law.

Despite having considered evidence and argument showing that the McElroy dismissal should be regarded as a legal nullity that must be reversed, and that the Court must reinstate the appeal, Oregon's Supreme Court refused, though the dismissal was in violation of Oregon law and continued the unjust breach of Mr. McElroy's right of appeal under Statute 221.360. The Court's refusal to rectify the void Orders from the Court is reflected by its Order Denying Review, February 9, 2023. [App.1a]

Further, the Supreme Court erred when it ignored Oregon's mandatory rule for taking judicial notice. ORS 40.070 "A court shall take judicial notice if requested by a party and supplied with necessary information." ORS 40.080 "Judicial notice may be taken at any stage of the proceeding."

Petitioner McElroy timely requested the Supreme Court take judicial notice of the fact, from detailed research supplied [App.128a-153a], that in the fifty-four-year history of the Oregon Court of Appeals, when sitting en banc, the court had never issued an "Order Denying Reconsideration." Nevertheless, it did so October 10, 2022, but only for Ian McElroy in defiance of all previous precedent. [App.18a]

The Court's failure to acknowledge the prejudicial en banc ruling at the Court of Appeals against Mr. McElroy is exacerbated by the fact the Supreme Court, *sua sponte*, changed the "Motion To Take Judicial Notice" to, instead, a "Supplemental Petition For Reconsideration," then immediately issued the Court's "Order Denying Supplemental Petition For Reconsid-

eration" and entered it May 4, 2023 as the Supreme Court's final decision. [App.5a] McElroy's request to take judicial notice was by no means a petition for reconsideration.

The information supplied to the Supreme Court demonstrates both the Oregon Court of Appeals and the Oregon Supreme Court distinctly treated Appellant Ian McElroy differently than both Courts have ever treated any other Oregon citizen similarly situated in a case involving issues of constitutionality of a city ordinance under which the person, in this case Ian McElroy, was wrongly (intentionally) convicted in a municipal court.

## REASONS FOR GRANTING THE PETITION

The First Reason is because inherent rights to due process of law and equal protection under the law for all Americans across this Country are still important, and because the Fourteenth Amendment to the U.S. Constitution intended to secure those rights indeed still matters. Moreover, from this unprecedented first impression case, it seems that lacking principles of judicial honor, ethics, trustworthiness, and accountability across our Country are in great need of shoring-up by our Highest Court in the land if the Rule of Law and the reputation of our Judicial System in this Nation are to remain a trusted, strong foundation of our Republic and our freedoms. Accordingly, *this* Court must act.

In Oregon, however, where the State's two High Appellate Courts failed to perform the impartial

functions of the office, Appellant Ian McElroy's rights to due process and equal protection were unjustly denied and the Rule of Law distorted. This happened by an entire appellate judiciary that, as the appellate record demonstrates, prevented McElroy from filing his opening brief and thus denied him access to an impartial three-judge appellate review panel. By summarily dismissing McElroy's appeal [then affirming, then acquiescing to that dismissal], the Courts denied what ought to have been the clear legal remedy regarding three void convictions that were sustained by the failure of two trial courts below to set them aside as a matter of law and judicial obligation. This is to say, the Court of Appeals and Supreme Court owed it to the citizens of Oregon, and to Ian McElroy, to uphold the law by and through a simple, full and fair appellate review under ORS 221.360—as was recently afforded and affirmed in *Westhaven LLC v. City of Dayton*, 316 Or App 641, 504 P.3d 1279 (2021).

Second Reason: Because it is vital to the reputation of this Country's entire Judicial System, including *this* Court's reputation, that officers of the court—lawyers and judges alike—are held to account and cannot be free to arbitrarily defraud the judicial process. This Court should acknowledge that in the twenty-four years since Ian McElroy was cited into court, not one Legal Opinion from any fair and complete trial has been issued: no judicial examination of evidence or fact witness has occurred; no evidentiary determination of the validity of the convictions has happened; and McElroy's statutory right of appeal has been denied him. Yet, Ian McElroy remains convicted today, with no remedy, save by this Court.

For the injustices that occurred in this case before the Court of Appeals and Oregon's Supreme Court that prevented justice from being administered as the Oregon Legislature intended under ORS 221.360, Petitioner trusts *this* Supreme Court will afford genuine attention to key fundamental factors before it, especially: preemption under ORS 455.040; civil penalties under ORS 455.450, 455.895; the unjustifiable legal analysis by the judge pro tem as memorialized in App.52a thru App.63, particularly the court's failure to address the fact that ORS 455.040 was controlling and not arbitrary; the municipal court's want of jurisdiction for lack of any ordinance to define and punish occupancies without certificates; and the four July 1999 trial court documents used and misused to knowingly convict an innocent person, three of which were fabricated (tampered with) to defraud the judicial process. And as to the McElroy appeal in 2022, acknowledge the controlling case law *Bova v. City of Medford, supra*, and *Westhaven v. City of Dayton, supra*; and review Petitioner's Corrected Petition for Reconsideration [App.105a-127a] and Motion to Take Judicial Notice refuting the prior en banc Court ruling [App.128a-153a].

Returning *City of Corvallis v. Ian McElroy* back to Oregon with instructions to afford Petitioner a valid appeal or *de novo* trial would be an appropriate resolution. Setting aside Petitioner's twenty-four-years-long void convictions is certainly within this Court's inherent power to administer justice as yet another remedy to grant.

## CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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