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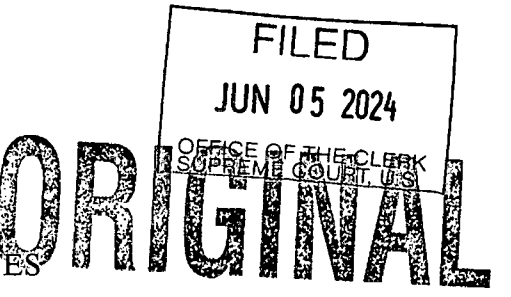

ORIGINAL

SUPREME COURT OF THE UNITED STATES

JAMES ARTHUR ROSS – PETITIONER

VS.

ERIN REYES, ET AL. - RESPONDENT(S)

ON PETITION FOR WRIT OF CERTIORARI TO

OREGON COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

JAMES ARTHUR ROSS S.I.D.#12599830
TWO RIVERS CORRECTIONAL INSTITUTION
82911 BEACH ACCESS RD.
UMATILLA, OR 97882

QUESTION(S) PRESENTED

1. Did the trial court error and/or abuse its discretion by not allowing petitioner to amend his complaint for the first time as a matter of right or course?

2. Does Or. Rev. Stat. § 138.590(8)(b) mitigate, trump or nullify the effects of Or. Rev. Stat. § 18.345(1)(o) (2011) and *Schlunt v. Nooth*, Multnomah County Cir. Court Case No. 06-03-31323 (2013) rev den (Or. App. 2014)?

3. Did the trial court error and/or abuse its discretion in concluding that Petitioner's claims under Or. Rev. Stat. § 18.345(1) (o) (2011) and *Schlunt v. Nooth*, 261 Or. App. 866, 326 P.3d 1289, *rev den* (Or. App. 2014), were barred?

4. What is the point of *Federalism*?

5. Do courts have inherent authority to appoint counsel regardless of the existence of any specific statute authorizing such?

LIST OF ALL PARTIES

*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:

*Erin Reyes, Superintendent of TRCI;
*B. Culp, Supervisor, ODOC Central Trust;
*D. Myers, TRCI Business Office;
*Collette Peters, ODOC Director; and
*State of Oregon.

(Please Note: That the titles listed above may have changed since the time of incident.)

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TABLE OF AUTHORITIES CITED

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

OTHER RULES AND POLICIES

OTHER

*There is more in-depth arguments and facts to this case, with Statutes, Rules, Constitutional and Statutory Provisions and Case Laws to cite, including evidence to such, however, petitioner believes all of that is for the briefing process and thus, petitioner was afraid as he does not know this process and is trying to do his best to just have this Honorable Court accept this case for further

proceedings. Some of such, goes to Petitioner's ability to successfully amend his complaint if he would have been afforded such an opportunity.

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

State Courts:

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

[x] reported at: *Ross v. Reyes*, 327 Or. App. 805, 534 P.3d 1128(Table) (Or. App. 2023).
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the Umatilla County Circuit Court appears at Appendix B to the petition and is:

[ ] reported at:
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished.

JURISDICTION

State Courts:

The date of which the Oregon Supreme Court denied review was March 07, 2024:

[x] No petition for rehearing was filed in this 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 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. § 1245(1).

STATEMENT OF THE CASE

On January 07, 2016, my Program Recognition Award System ("PRAS")/paycheck in the amount of $77.90, which I received for being enrolled in work programming in the Oregon Department of Corrections ("ODOC") at the Two Rivers Correctional Institution ("TRCI"), was posted to my Adult In Custody ("AIC") Trust Account/Bank Account.

Then, on January 11, 2016, which just happened to be my 37th Birthday, before I was able to go to the Institution's Commissary line (prison store), an amount of $49.65 was taken as a partial payment towards an Oregon State Post-Conviction Relief ("PCR") filing fee that was placed as a lien against my bank account. This action was performed by one D. Myers of the TRCI Business Office whom manages AICs' bank accounts at TRCI.

On February 04, 2016, and pursuant to the rules and timelines of OAR 291-158-0065, I filed for an 'Administrative Review' of the stated deduction. I did this, because I had previously read an article in the Oregonian Newspaper concerning the case of *Schlunt v. Nooth*, Multnomah Cty. Cir. Court Case No. 06-03-31323 (2013) *rev den* (Or. App. 2014), Appendix D.

The Schlunt case involved a prisoner at the Snake River Correctional Institution ("SRCI") whom sought civil litigation over similar circumstances as previously stated above. The Oregon court ruled in the favor of the prisoner citing Oregon's Property Exemption Rules ORS 18.345 (1) (o) (2011) commonly referred to as the Oregon "Wildcard". That OPINION and ORDER was affirmed in both, the Oregon Court of Appeals and the Oregon Supreme Court with no Federal review, making it law of the land here in the State of Oregon.

Unfortunately, on February 10, 2016, I received the response dismissing my administrative review by one B. Culp, Supervisor, Central Trust Office. I then, subsequently filed a 'Notice of Tort' to preserve my State law claims, which was also denied to no avail on September 18, 2016.

On December 28, 2017, I filed a § 1983 in the Federal District Court claiming that my rights to be free from illegal search and seizure, cruel and unusual punishment, equal protections and reformation, due process of the law, Privileges or Immunities Clause, the Oregon Poverty Rules, O.D.O.C. Rules And Policies on their Mission, Code of Conduct, Code of Ethics, Rules 20.1, 20.2, 20.3 and to be free from forms of slavery as guaranteed to me by and through the Oregon Constitution Article 1 § 10, 16, 20 and the United States Constitution Amendments 5th, 8th, and 14th had been violated and that I have suffered prejudice as a result.

On December 26, 2018, the Honorable United States Magistrate Judge Youlee Yim You, dismissed that action. In her OPINION and ORDER, Judge Youlee Yim You, dismissed my State Law claims as not cognizable in the Federal Court.

More specifically, even if the federal courts wanted to rule on my State Law claims, they could not as they *would be acting in excess of their jurisdiction*. Thus, even if the court would have ruled on the claims, any resulting judgment would have been rendered void as such. It is up to the State of Oregon to first rule on Oregon State Law and Oregon State Constitutional claims as a matter of *first-things-first* and *federalism*.

On October 04, 2020, the 9th Circuit Court of Appeals dismissed my appeal.

On November 04, 2020, and pursuant to 28 U.S.C. §1367 (d), I filed my State Civil Complaint in the Umatilla County Court raising my State Law Claims under Oregon's Property Exemption Rules 18.345(1)(o) (2011).[1]

On April 02, 2021, the defendants filed a motion to dismiss my complaint.

On April 29, 2021, I filed my response to the defendant's motion to dismiss, which among other arguments, included *my first request to file an amended complaint*.

On August 24, 2021, the Honorable Judge Robert W. Collins Jr., dismissed my complaint in the

[1] This has been amended to ORS 18.345(1)(p) of Oregon Revised Statutes (2021 Edition). Yet, it still maintains the same definition, meaning and purpose.

Umatilla County Circuit Court "for the reason(s) set out in the defendant's motion to dismiss".

On September 17, 2021, I filed my Notice of Appeal with the Oregon Court of Appeals.

However, due to some confusion as to the imposition of the judgment, the appeal was stayed pending the entry of the final judgment in the trial court. After which, I was allowed to file an Amended Notice of Appeal on the 05th, day of November, 2021, to said final judgment.

On September 07, 2023, the Oregon Court of Appeals Affirmed without opinion.

On October 02, 2023, I filed a Petition for Review, which on November 22, 2023, I filed an Amended Petition for Review.

On March 07, 2024, the Oregon Supreme Court denied review.

This case should now be properly before this Honorable Supreme Court for Consideration.

REASON(S) FOR GRANTING THE PETITION

This case calls into question a substantial denial of due process undermining the fundamental fairness in the proceedings of the lower courts. The Petitioner, an incarcerated and indigent litigant, accrued a substantial amount of debt in trying to bring his claims of Constitutional violations in the lower courts. In the bare minimum, Petitioner should have at least been entitled to a fair opportunity to do so.

More specifically, the lower courts were wrong in their dismissal of Petitioner's claims. This is especially so, going to the trial court's abuse of discretion in failing to allow him to *amend his civil complaint for the first time as a matter of right or course*, with an emphasis going to the trial court's *failure to even fairly address or make a record on that specific matter*,[2] *see* ORCP 23 A. This right is

[2] As explained in more detail below, lower courts seem to be having an overwhelming and fundamental failure in the aspects of making statutory and constitutional findings on the record in all types of cases across the board. A requirement that has been long-held in all courts, yet, repeatedly violated on a vast scale of proportion. This brings into serious questions as to why does this keep happening by trial and sentencing judges? Judges whom are the final word in the courtroom? Judges whom should be the first person in the courtroom to know its policies, procedures, practices, requirements and responsibilities to ensure a sound record? Especially, for all intents and purposes of fairness and appellate review.

codified from the Federal standard set out in Fed. R. Civ. P. 15(a) and *Cahill v. Liberty Mut. Ins. Co.*, 24 F.3d 245 (9th Cir. 1994).

This case also calls into question the intents and purposes of 28 U.S.C. § 1367(d) as well as the importance and meaning of *federalism*.

Additionally, the overall outcome of this case would substantially affect the way that the Oregon Department of Corrections ("ODOC") handles all of its Adults In Custody's ("AIC") finances, which is truly a continuation of Oregon's rulings in *Schlunt v. Nooth*, Multnomah Cty. Cir. Court Case No. 06-03-31323 (2013) *rev den* (Or. App. 2014), which also concerns *federalism*.

Thus, special and reasonable circumstances exist along with the need for this Honorable Supreme Court to once and for all, clarify the split amongst all courts as to what authority, inherent or not, any court has in its discretion in the realms of appointing one of its officers (counsel) to any party in any proceeding, which all should be enough to dictate that it would not be fair nor just to preclude the petitioner from obtaining relief from this Honorable Supreme Court.

In this case, it should be acknowledged for the sake of argument, factual background and as an "introduction" to this writ, that the respondents have already admitted that such actions in withdrawing funds from Petitioner's bank account without restrictions or limitations of any kind, continue to this very day. Actions of which in the manner of how they are carried out are in clear violation of clearly established Oregon statute and case law,[3] *see* Or. Rev. Stat. § 18.345(1)(o) (2011) and *Schlunt v. Nooth*, Multnomah County Cir. Court Case No. 06-03-31323 (2013) *rev den* (Or. App. 2014).

Also see, *In re Drescher* (Bankr. Or. 2013): Oregon's "*Wildcard*" Exemption:

ORS 18.345(1)(o) (2011), the so-called "wildcard" or "pourover" exemption, allows a debtor to exempt

[3] This case is not about a court's ability, right or authority to impose fees upon an incarcerated person. This case is about when a State has created statutory law to protect the funds in any person's bank account (incarcerated or not) as Oregon's "Wild Card" law does, how is it not a violation when prison officials fail to adhere to that law. Better said, this case is about the procedure, interests and rights of the incarcerated person that take effect *after* fees have been rightfully imposed upon an incarcerated person's prison bank account. Especially, when a State has created a statutory process and protection that has been held by the State's highest court to apply to its incarcerated population as this State has done so.

up to $400 in any personal property, so long as the exemption is not used to increase the amount of any other exemption. The "wildcard" applies, among other things, to cash or cash equivalents, *see In re Wilson*, 22 B.R. 146 (Bankr. D. Or. 1982).

To be more specific, but not limited to, whenever Petitioner's bank account has $400 or less in it, funds are taken without limitations for "outside" (non-prison) debts (such as court filing fees) in clear violation of the statutory rules and case laws governing such as set out in the Oregon Property Exemption Rules ORS 18.345(1)(o) (2011) and ORS 18.375. This affects all of Oregon's prisoners.

More specifically, the main rule that petitioner is asserting, is ORS 18.345(1)(o) (2011), which is commonly referred to as the "Oregon Wildcard" or "Pourover" exemption. This exemption allows a debtor to exempt up to $400 in any personal property. The only exception being restitution as defined in the Oregon Constitution, *see Schlunt v. Nooth*, (2013) *rev den* (Or. App. 2014), which specifically extended this rule to persons incarcerated in ODOC.

There have also been at least three articles on this matter. Two of the articles are out of the Oregonian, one, dated March 02, 2013, rendered after that trial court's decision in the *Schlunt* case, Appendix D & E. The relevance of these two articles are that they encompass the potential effects of the trial Court's ruling as well as the State's (Respondent's) and Public's understanding on the scope of the *Schlunt* case.

The third Article is from the Federal Defense Attorneys dated 01-21-15, well after the trial Court's decision and its "Affirmance" in both, the Oregon Court of Appeals and the Oregon Supreme Court, Appendix F.

All of these articles, clearly establish the scope and any potential effects that the *Schlunt* decision would have on Oregon Prisoners' Trust (Bank) Accounts and its perceptions, well before the Respondents' actions and failures to adhere to these rules as applied to the Petitioner's Trust (Bank) Account on January 07th, 2016, and continuing. There can be no excuse and this Honorable Supreme

Court should not allow such actions and failures to continue.

First Proposed Rule of Law

In relevant part, ORCP 23 A provides that:

> "A pleading may be amended by a party once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires."

More directly stated, plaintiffs are allowed to amend their complaints for the first time as a matter of right and/or course under ORCP 23 A before a defendant's response, or even after a defendant's response with consent of defendant or with leave of the court before the court issued judgment, *see Taylor v. Peters*, 274 Or. App. 477, 480 n 5, 361 P.3d 54 (2015), *affd*, 360 Or. 460, 383 P.3d 279 (2016) (noting that had the defendant raised a certain argument below, the plaintiff "may have been able to amend the petition under ORCP 23 to make the necessary allegations"). This standard is identical, if not, codified off of the Federal standards as set out in Fed. R. Civ. P. 15(a) *Cahill v. Liberty Mut. Ins. Co.*, 24 F.3d 245 (9th Cir. 1994).

Furthermore, petitioner believes that there is also a huge issue where a trial court is completely silent in the face of a litigant's specific requests to amend his complaint, as the petitioner had done in this case. While this is a liberal standard of review, the district court must exercise its discretion. *Hurn v. Retirement Trust Fund of Plumbing, Etc.*, 648 F.2d 1252, 1254 (9th Cir.1981). Where the district court denies leave to amend without stating its reasons for doing so the district court has abused its discretion unless the reasons for doing so are readily apparent from the record, *DCD Programs*, 833 F.2d at 186; *Hurn*, 648 F.2d at 1254.

Therefore, the facts in this instant case are clear. The Defendants in this case filed a Motion to Dismiss in the trial court (not a responsive pleading), petitioner sought to amend his complaint for the

first time before any decision of the trial court was made. Thus, Petitioner's request should have been granted as a matter of right and/or course. However, the trial court and record are both completely silent on this matter, which is akin as to what happened in *Cahill v. Liberty Mut. Ins. Co.*, 24 F.3d 245 (9th Cir. 1994).

However, these failures of trial courts appear to be happening all over the place. For example, *see State v. Glasby*, 301 Or App 479, 456 P.3d 305 (Or. App. 2019), where the trial court failed to conduct a hearing of the proper scope and failed to make a record for appellate purposes. More specifically, the Oregon Court of Appeals held:

> "A trial court's ruling on a defendant's request to represent him or herself "is subject to appellate review for an abuse of discretion, in light of all other relevant interests that come into play at the commencement of trial." *State v. Hightower*, 361 Or. 412, 418, 393 P.3d 224 (2017). "[T]he record must include some indication of how the trial court actually weighed the relevant competing interests involved for an appellate court to be able to determine whether the trial court abused its discretion in ruling on a request to waive the right to counsel and proceed pro se." Id. at 421, 393 P.3d 224. If, however, "the trial court's decision is predicated [456 P.3d 307] on a subsidiary conclusion of law—for example, a legal conclusion about the scope of the right—we review that determination for legal error." *State v. Nyquist*, 293 Or. App. 502, 503, 427 P.3d 1137 (2018)."
>
> AND,
>
> "In order for the court to deny a request for self-representation, however, "the record must include some indication of how the trial court actually weighed the relevant competing interests involved." *Hightower*, 361 Or. at 421, 393 P.3d 224. That is, the record must demonstrate, either "expressly or implicitly, that the trial court engaged in the required balancing of defendant's right to self-representation against" the court's potential basis for denying the request. *Williams*, 288 Or. App. at 718, 407 P.3d 898. Thus, regardless of a trial court's reasoning—whether it be that the request was unknowing, equivocal, or would be disruptive to the proceeding—the trial court's record should "reflect an appropriate exercise of discretion." *See State v. Chambery*, 260 Or. App. 687, 688, 320 P.3d 640 (2014) (accepting the state's concession that the trial court erred by summarily denying defendant's request and "fail[ing] to make a record)."

The *Glasby* case is akin as to the issue(s) presented here. Here, the petitioner has a right to amend his complaint for the first time as a matter of right and/or course. Similarly, as stated above, a trial court's decision to deny a request to amend is not only reviewed for abuse of discretion, but also "legal questions underlying that ultimate discretionary choice for legal error", *Id.* Petitioner in this case

made a clear request on the record and before the trial court ever rendered a decision in this case. Yet, the trial court was completely silent on the matter. A clear error and abuse of the trial court's discretion causing prejudice to the petitioner and warranting remand by this Honorable Supreme Court.

Second Proposed Rule of Law

Or. Rev. Stat. § 138.590(8)(b) does not mitigate, trump or nullify the effects of Or. Rev. Stat. § 18.345(1)(o) (2011) and *Schlunt v. Nooth*, Multnomah County Cir. Court Case No. 06-03-31323 (2013) rev den (Or. App. 2014) in any way, shape or form as applied to an AIC's bank account, in this case, Petitioner's bank account.

Instead, petitioner contends that the two (2) separate statutes and case law, work hand-in-hand similarly as does ORCP 23 A and ORCP 25 A, *see Alfieri v. Solomon* (Or. 2015). While Or. Rev. Stat. § 138.590(8)(b) creates a process and gives authority to apply court filings fees as a lien against an AIC's bank account, "it is ambiguous as to when and to what extent Respondents may collect post-conviction filing fees from an AIC's bank account", quoting US District Judge Marco A. Hernandez in *Ross v. Myrick* (D. Or. April 18, 2019).

Whereas, Or. Rev. Stat. § 18.345(1)(o) (2011) controls when, how often and how much at any given time, monies in a bank account, may or may not be, deducted for debts, garnishments and liens.

In this instance, that would be a $400 account balance. Hence, the substantial need for this Honorable Supreme Court's intervention in this case. **P**etitioner also believes that ORS 138.590(8)(b) was created for ill-intents and is unconstitutional, especially, due to its ambiguity.

Thus, while AICs in ODOC may get $25, $50, $75 or even $100 a month working 40+ hours a week, 4.2 weeks a month, without any checks and balances as to what extent ODOC officials may attack an AIC's bank account, it can take several months, if not years, to pay these fees off and that is, which usually leaves the AIC with literally nothing, except the State and ODOC getting their share

(unjust enrichment?). The AIC has no incentive to work for free labor. Just because AICs may have some money in their bank account, should not be an excuse to take it without any regard or restraint.

Hence, the substantial need for this Honorable Supreme Court to intervene and make clear, once and for all, that ODOC officials have to follow all of Oregon's laws. Not just the ones that benefit them or their pocket books. Prisoner's should be allowed to save money, call home, send their children a birthday present, save money for a special need and manage their own debts. Especially since, AICs are the main work force behind all of ODOC's 14 facilities across this state. Not to mention, that a non-incarcerated citizen in Oregon, goes in front of a court and says "Your honor, here is my income, I can afford to pay $25 a month" and the court honors that payment plan. ORS 138.590(8)(b) is silent on this aspect! Even the Federal statute sets a clear mandate in these respects. This Honorable Supreme Court should take this opportunity to address these matters for the sake of justice and fairness, *see Watkins v. Ackley*, 370 Or. 604, 523 P.3d 86 (Or. 2022), Senior Judge Baldwin concurring:

> "For us to protect and preserve that constitutional heritage, we must always be on our guard against such mischief. With that understanding—and with a measure of courage—we can learn from our history and avoid such grievous injury in the future to our civic health."

Third Proposed Rule of Law

The trial court erred and abused its discretion, because petitioner never specifically raised Or. Rev. Stat. § 18.345(1)(o) (2011) or cited *Schlunt v. Nooth*, 261 Or. App. 866, 326 P.3d 1289, *rev den* (Or. App. 2014) in support of any of his claims in any other court, nor their operating mechanisms. As such, Petitioner's claims could not be barred by claim preclusion. The Respondents' assertions and the trial court's acceptance that these claims have already been fully raised and addressed in a prior federal court proceeding, referring to Petitioner's § 1983 Civil Complaint *Ross v. Myrick*, Case No. 2:18-cv-00046-YY, are in complete error and an abuse of the trial court's discretion. This Honorable Supreme Court need look no further than the operating mechanism of that federal case. Nowhere does it refer to,

let alone, cite, Or. Rev. Stat. § 18.345(1)(o) (2011) nor *Schlunt v. Nooth*, 261 Or. App. 866, 326 P.3d 1289, *rev den* (Or. App. 2014). In fact, when petitioner was addressing the federal court on these matters, he mistakenly referred to Oregon's Property Exemptions Rules as Oregon's Poverty Rules. In response, both, the Defendants and the federal magistrate judge, Youlee Yim You, in her December 26, 2018, F&R, specifically Stated:

> "Ross asks this court to invoke the Oregon Poverty Law, but neither defendants nor this court could identify any such law. To the extent Ross is attempting to reference the exemptions codified in ORS 423.105, those exemptions do not apply to deductions from inmate trust accounts for court fees, as discussed in subsection III.D."

Hence, the issue that was addressed, was the implications of ORS 138.590(8)(b), which United States District Court Judge Marco A. Hernandez specifically addressed in his final opinion Adopting in Part Magistrate Judge You's F&R [38] *Ross v. Myrick*, No. 2:18-cv-00046-YY (D. Or. Apr 18, 2019):

> "It is clearly established that "[a]n agency, such as the [Oregon Department of Corrections] violates the Due Process Clause of the Fourteenth Amendment when it prescribes and enforces forfeitures of property without '[w]ithout underlying [statutory] authority and competent procedural protections.'" *Nevada Dept. of Corrections v. Greene*, 648 F.3d 1014 (9th Cir. 2011)"
>
> AND,
>
> "Here, however, the underlying statutory authority is ambiguous as to when and to what extent Defendants may collect post-conviction filing fees from prisoner trust accounts. Because of this ambiguity—and a complete lack of precedent—Defendants' conduct did not violate a clearly established right, and they are therefore entitled to qualified immunity on Plaintiff's due process claim."

The problem here is that there was statutory and Oregon case law and they were not ambiguous in these regards, *see* Or. Rev. Stat. § 18.345(1)(o) (2011) nor *Schlunt v. Nooth*, 261 Or. App. 866, 326 P.3d 1289, *rev den* (Or. App. 2014). Thus, while petitioner may have known in his mind what he was trying to address in the federal court, is irrelevant. The facts remain, that these specific Oregon statutes and case law, were never considered, nor properly before the District court to be fairly and adequately ruled upon. The importance here is that, Petitioner's claims are not barred by claim preclusion. The trial

court was in error as to this issue, abused its discretion and this Honorable Supreme Court should remand this case for all of these reasons.

Fourth Proposed Rule of Law

States are free to create their own rules of law and Constitutions so long as they do not clearly conflict with the laws and Constitution of the United States.

Likewise, citizens, companies, contactors, political officials and offices, including ODOC, must all adhere to Oregon State Law and Constitution first as long as doing so does not clearly conflict with the laws and Constitution of the United States.

Likewise, Oregon trial courts and judges are required to first look to Oregon Law and Constitution to determine if a violation has occurred before looking to the laws and Constitution of the United States, because if a violation at the State level has occurred and it is not directly or clearly in conflict with the laws and Constitution of the United States, then, the Oregon courts must uphold its own laws and Constitution first. And, adversely, Federal Courts are precluded from deciding issues of State law and Constitution that have not been first presented to the State's highest court. That is the definition and practice of *Federalism*.

Furthermore, just because a State created statutory right is not specifically codified off of a federal right or the US Constitution, does not mean that it is no right at all. Often States have created rights in order to protect its citizens in regards to what the US Constitution does not, *see State v. Caraher, supra*, which reaffirmed the responsibility of Oregon courts to enforce Oregon law, before turning to claims under the federal constitution. 293 Or. at 752, 653 P.2d 942. The evolution of those rules is reviewed in more detail in *State v. Davis, supra*, 295 Or. at 231-37, 666 P.2d 802. As this court has repeatedly stated, the proper sequence begins with an examination of ordinary rules of law and the scope and limits of legal authorization before reaching any constitutional issue, because when some

challenged practice is not authorized by law, the court acts prematurely if it decides whether the practice could be authorized without violating the constitution.

Also, *see* Professor Donald E. Wilkes, Jr., whom wrote some prophetic words in his article entitled Federalism in Criminal Procedure: State Court Evasion of the *Burger* Court, 62 Ky.L.J. 421 (1974). After commenting that the United States Supreme Court has transformed from a tribunal of unprecedented legal daring to one of modest aims and self-limiting accomplishments, he predicted that "[s]tate courts may be on the verge of gaining new importance, if, in anticipation of the Supreme Court's retrenchment, state constitutions become a more important source of limits on state power." He continued:

" * * * In fact, state constitutions may provide the only outlet for judges * * * who disagree with the more deferential approach the Supreme Court may take toward legislation and other state action."

He continued:

"The [United States Supreme] Court's shift in attitude has made conditions ripe for an astonishing development in criminal procedure--evasion of the Supreme Court by state courts willing to protect rights of criminal defendants that are no longer guaranteed under the Federal Constitution as interpreted by the [United States Supreme] Court."

And upholding these rights ensure every bit of a constitutional magnitude. In fact, "federalism interest[s] may be decisive" in the due process analysis. *Bristol-Myers Squibb Co. v. Superior Court of Cal., San Francisco Cty.*, 582 U.S. 255, 263, 137 S. Ct. 1773, 198 L.Ed.2d 395 (2017).

Thus, as laid out above and throughout this writ, Petitioner's State Law claims for violations of its Property Exemption Rules under ORS 18.345(1)(o) (2011) and *Schlunt v. Nooth*, Multnomah County Cir. Court Case No. 06-03-31323 (2013) *rev den* (Or. App. 2014) as applied to the withdrawal and confiscation of monies in his prison bank account, were never before any court and, thus, not barred by "claim preclusion".

Petitioner should have been allowed to amend his complaint for the first time and the trial court should have allowed his claims to proceed.

Fifth Proposed Rule of Law

Finally, federal circuits are split on this matter, which Petitioner believes that all courts by their very creation have inherent authority to appoint counsel regardless of the existence of any specific statute authorizing such. That every court of general jurisdiction upon being created has incidental powers in substantially the same way as a person who has been appointed agent for another. It is customary in the instance of courts to speak of the incidental powers as inherent. They enable a court to appoint a clerk to maintain records and a bailiff to maintain order. An attorney is an officer of the court and it would be a novelty to hold that a court could not appoint one of its officers to assist it in doing justice. They are literally "tools" of the court, which courts have clear authority to use at their discretion and without "specific" statutory law against such, all courts retain such inherent authority, *see Naranjo v. Thompson*, 809 F.3d 793 (5th Cir. 2015).

More specifically, simply by virtue of having been created, every court is vested with inherent power to take action "essential to the administration of justice." *Michaelson v. United States*, 266 U.S. 42, 65-66, 45 S. Ct. 18, 69 L. Ed. 162 (1924). Accordingly, "[c]ourts have (at least in the absence of legislation to the contrary) inherent power to provide themselves with appropriate instruments required for the performance of their duties." *In re Peterson*, 253 U.S. 300, 312, 40 S. Ct. 543, 64 L. Ed. 919 (1920). A Court's power to appoint counsel for a criminal defendant, "even in the absence of a statute, cannot be questioned." *Powell v. Alabama*, 287 U.S. 45, 73, 53 S. Ct. 55, 77 L. Ed. 158 (1932). This power is rooted in the Sixth Amendment, but courts have also characterized it as an exercise of inherent power. *See, e.g., United States v. Accetturo*, 842 F. 2d 1408, 1412 (3d Cir.1988). Attorneys are officers of the court, and are bound to render service when required" to do so by an appointment issued under a

court's extra-statutory powers. Powell, 287 U.S. at 73, 53 S. Ct. 55; *see also FTC v. Super. Ct. Trial Lawyers Ass'n*, 493 U.S. 411, 453, 110 S. Ct. 768, 107 L.Ed.2d 851 (1990) (Blackmun, J., concurring in part [809 F.3d 803] and dissenting in part) (suggesting that boycott by criminal defense attorneys wielded no market power because courts "had the power to terminate the boycott at any time by requiring any or all members of the District Bar ... to represent indigent defendants pro bono ... on pain of contempt"). The inherent power to compel counsel to represent criminal defendants is grounded in necessity; without it, "[t]he court's responsibility for the administration of justice would be frustrated." *Accetturo*, 842 F.2d at 1413. So too with the power to compel attorneys to represent indigent civil rights plaintiffs.

Therefore, where a pro se litigant has requested to be appointed pro bono counsel, to amend his complaint and the trial court has denied such requests, especially on the grounds that it does not have authority to do so, while at the same time, granting motion for summary judgment, that trial court should be in error and concluded to have abused its discretion.

If you compile this with other issues listed above, especially pertaining to the appointment of counsel, I would pray that there is enough here in this instant case for this Honorable and Highest Court of our nation to take interest in considerations for some of its lowest citizens, America's Prisoners and at least find one issue to address to bring some light and justice to us.

As such, I pray that this Honorable Court will find merit in hearing this case. Even if the ruling turns out to not be in the Petitioner's favor, it would still be valuable to the United States as a whole to know this Court's opinions on some of these matters. Especially, when concerning the actions, failures and unfairness of the lower court proceedings and in determining that they lack authority to appoint counsel, which would have undoubtedly been of significance on many of these issues.

Finally, I pray for this Honorable Courts' understandings as to any errors that I have made in trying to present these Constitutional issues to this Court.

CONCLUSION

The petition for a writ of certiorari should be granted.

DATED this 05th day of June, 2024.

Respectfully Submitted By:

James Arthur Ross, Pro Se'
S.I.D.#12599830
Two Rivers Correctional Institution
82911 Beach Access Rd.
Umatilla, OR 97882