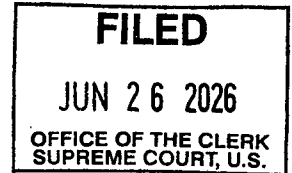


26-5515
No. _____



IN THE
SUPREME COURT OF THE UNITED STATES

BRADLEY HOLCOM,

Petitioner,

v.

**CANBY BUILDERS SUPPLY, an Oregon corporation; HOLLY RODWAY;
JAMES RODWAY; KRISTEN MARTIN; MICHAEL MAXWELL; DOUG
BISHOP; GARON RIGSBY; BRIAN SERVANT; and JAPHR PINE, LLC,
an Oregon limited liability company,**

Respondents.

**ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF OREGON**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

An Oregon trial court stated on the record that Petitioner could preserve all five claims by filing an amended complaint by a date certain. Petitioner timely complied. Respondents nevertheless submitted a proposed order stating the opposite and dismissing multiple claims with prejudice. Before entry, Petitioner filed the transcript and formally objected that the proposed order misstated the court's ruling. The order was nevertheless entered and remains uncorrected, although Respondents later acknowledged in a filed motion that it contradicted the ruling.

The question presented is:

Whether the Due Process Clause permits a State to leave in force—and require a litigant to proceed under—a facially preclusive order that contradicts the court's recorded ruling, after the litigant timely satisfied the court's express condition for preserving his causes of action and proved the contradiction before entry.

PARTIES TO THE PROCEEDING

Petitioner Bradley Holcom is the plaintiff in the Clackamas County Circuit Court, the plaintiff-appellant in the Oregon Court of Appeals, and the petitioner on discretionary review in the Oregon Supreme Court. Petitioner is an individual.

Respondents Canby Builders Supply, an Oregon corporation; Holly Rodway; James Rodway; Kristen Martin; Michael Maxwell; Doug Bishop; Garon Rigsby; Brian Servant; and Japhr Pine, LLC, an Oregon limited liability company, were defendants in the circuit court, respondents in the Court of Appeals, and respondents on review in the Oregon Supreme Court.

To Petitioner's knowledge, neither Canby Builders Supply nor Japhr Pine, LLC has a publicly traded stock ticker symbol; the individual Respondents have none.

CORPORATE DISCLOSURE STATEMENT

Petitioner is an individual. Supreme Court Rule 29.6 imposes no disclosure obligation on him.

DIRECTLY RELATED PROCEEDINGS

Pursuant to Rule 14.1(b)(iii), Petitioner identifies the following proceedings arising from the same trial-court action or directly related to the judgment at issue:

1. *Holcom v. Canby Builders Supply, et al.*, Clackamas County Circuit Court No. 24CV32086 - action filed July 3, 2024; challenged ORCP 21 order entered March 27, 2025; action remains pending.

2. *Holcom v. Canby Builders Supply, et al.*, Oregon Court of Appeals No. A187113 - appeal dismissed May 2, 2025; reconsideration denied June 3, 2025; appellate judgment effective March 10, 2026.
3. *Holcom v. Canby Builders Supply, et al.*, Oregon Supreme Court No. S072089 - petition for review denied December 4, 2025; petition for reconsideration denied January 29, 2026.
4. *Holcom v. Canby Builders Supply, et al.*, Supreme Court of the United States No. 25A1018 - application to extend time to file a petition for a writ of certiorari granted by Justice Kagan March 17, 2026, extending the time to and including June 28, 2026.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Bradley Holcom respectfully petitions for a writ of certiorari to review the appellate judgment of the Oregon Court of Appeals, which the Oregon Supreme Court declined to review.

OPINIONS AND ORDERS BELOW

The Oregon Court of Appeals' appellate judgment dismissing the appeal is unreported and reproduced at App. 1a. The May 2, 2025 order of dismissal is reproduced at App. 2a. The June 3, 2025 order denying reconsideration is reproduced at App. 3a. The Oregon Supreme Court's orders denying review and reconsideration are unreported and reproduced at App. 4a–5a. The Clackamas County Circuit Court's March 27, 2025 Order on Defendants' ORCP 21 Motions is unreported and reproduced at App. 6a–8a.

JURISDICTION

The Oregon Court of Appeals dismissed Petitioner's appeal on May 2, 2025, and denied timely reconsideration on June 3, 2025. App. 2a–3a. The Oregon Supreme Court denied discretionary review on December 4, 2025, and denied Petitioner's timely petition for reconsideration on January 29, 2026. App. 4a–5a. The Court of Appeals' appellate judgment became effective March 10, 2026. App. 1a.

On March 17, 2026, Justice Kagan granted Petitioner's application in No. 25A1018 and extended the time to file this petition to and including June 28, 2026.

App. 45a. Because June 28, 2026 falls on a Sunday, this petition is timely if filed on Monday, June 29, 2026. Sup. Ct. R. 13.3, 30.1.

This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a). The Oregon Supreme Court was the highest state court in which a decision could be had, and the Oregon Court of Appeals' appellate judgment became effective March 10, 2026.

Petitioner invokes the third category recognized in Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, 481 (1975). The completed appellate proceeding conclusively denied present review of the due-process injury Petitioner asserted. The right is temporal: an accurate adjudicatory record before a litigant must proceed under a concededly contradictory, facially preclusive order. That order already generated renewed dismissal motions, sanctions and jurisdictional litigation, and continuance of the intertwined matters depending on the appeal. App. 38a–44a. Later review can alter future consequences, but it cannot supply the process at the meaningful time already lost.

Jefferson v. City of Tarrant, 522 U.S. 75 (1997), and the tort portion of Pierce County v. Guillen, 537 U.S. 129 (2003), do not control for the reasons explained in Section IV.D below (at Page 23).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment provides, in pertinent part: “No State shall ... deprive any person of life, liberty, or property, without due process of law.”

Oregon Revised Statutes § 19.205(2) provides: “An order that affects a substantial right, and that effectively determines the action so as to prevent a judgment in the action, may be appealed in the same manner as provided in this chapter for judgments.”

Oregon Revised Statutes § 19.270(5)(b) provides that, notwithstanding a notice of appeal, the trial court retains jurisdiction “[t]o enter an order or supplemental judgment under ORCP 71.” ORCP 71(A) permits correction, at any time, of “[c]lerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission.” ORAP 8.25(2) provides: “When a party has filed a motion for relief from judgment under ORCP 71(A) or ORCP 71(B) while the judgment is on appeal, the appellate court will decide whether to hold the appeal in abeyance pending disposition of the motion or to allow the appeal to go forward.”

Notice under Rule 29.4(c). To the extent this petition draws into question the constitutionality of ORS 19.205 as applied, Petitioner has served the Attorney General of Oregon pursuant to Sup. Court Rule 29.4(c) and 28 U.S.C. § 2403(b).

STATEMENT OF THE CASE

A. Petitioner expressly invoked due process, and the court supplied a precise path for preserving every claim.

This case is not about whether a civil plaintiff has a constitutional right to win, or even a constitutional right to survive a properly adjudicated motion to

dismiss. It is about whether a State may announce the condition for preserving claims, accept the litigant's timely performance, and then enter the opposite result through a written order that contradicts the recorded ruling—despite a pre-entry objection identifying the error and attaching the transcript.

Petitioner filed a civil action in the Clackamas County Circuit Court alleging defamation, vulnerable-person abuse, negligence and related relief. Respondents moved under Oregon Rule of Civil Procedure 21 against the initial complaint. In a December 20, 2024 sur-reply, Petitioner expressly invoked the Fourteenth Amendment and procedural due process, arguing that a procedural dismissal could not arbitrarily deprive him of access to adjudication. App. 17a–18a. Respondents addressed that due-process contention at the January 6, 2025 hearing. App. 9a.

At the recorded hearing, Judge William Knox rejected any immediate forfeiture of the action. He told Petitioner: *“You can amend any or all five claims.”* App. 14a. He set January 20, 2025 as the deadline. And when Respondents' counsel asked whether the dismissals would be “with prejudice,” Judge Knox answered: *“Yes, if the amended complaint is not filed.”* App. 15a–16a. The condition was unmistakable. Dismissal with prejudice would only be if Petitioner failed to amend by January 20, 2025.

That ruling supplied a clear and concrete state-created entitlement: Petitioner could preserve his causes of action by filing an amended complaint by the stated date. No discretion remained about what performance was required. No hidden step

was announced. The court identified the path, the deadline, and the consequence of nonperformance in open court.

B. Petitioner performed the condition and warned the court before entry.

Petitioner performed. On January 17, 2025 - three days before the deadline - he filed a verified amended complaint asserting five amended claims and substantial forms of legal and equitable relief. App. 19a. The amendment was not an empty placeholder. It repleaded defamation, vulnerable-person abuse, negligence and negligent infliction of emotional distress, declaratory and injunctive remedies, and veil-piercing allegations. Whether those claims would ultimately prevail was for the trial court to decide on the operative pleading. What matters here is that Petitioner did exactly what the judge required to avoid the threatened with-prejudice consequence.

Petitioner then acted repeatedly to prevent the record from being corrupted. On January 27, after the promised written order had not appeared, he moved for clarification, reminded the court that amendment had been granted through January 20, and stated that he had filed the amendment on January 17, 2025. App. 20a–21a.

On February 7, after the amendment was already on file, Petitioner objected to Respondents' proposed order bearing a February 6 date. The proposal did not memorialize the oral ruling. It declared several claims dismissed with prejudice immediately, treated other claims under a new deadline measured from the belated written order, and thereby rewrote a condition Petitioner had already satisfied. App.

22a–25a. Petitioner quoted the transcript, attached the relevant language, and asked the court to reject the proposal and confirm that the amended complaint controlled.

This is therefore not a case in which a litigant slept on an objection, allowed an inaccurate order to enter, and later complained. Before entry, Petitioner identified the exact language that was wrong, explained the legal consequence, proved the contradiction with a certified record, and asked the court not to sign it.

C. The written order imposed the opposite result, and Respondents later conceded the error.

Nevertheless, on March 27, 2025, the proposed order was signed by a judge who had not presided over the hearing. App. 6a–8a. The order expressly dismissed Petitioner’s defamation claim, financial elder-abuse theory, negligence claim, injunctive-relief claim, declaratory-relief claim, and veil-piercing theory with prejudice—notwithstanding the timely amended complaint already on file.

The order is not merely inelegant. “With prejudice” is facially preclusive language. It formally purports to foreclose repleading, even though the amended complaint had already been filed and had never been adjudicated. The order has already altered the litigation’s course, generating renewed dismissal motions, sanctions and jurisdictional litigation, and continuances tied to the appeal. App. 38a–44a. The constitutional injury alleged is not that preclusion has already been applied in a later judgment; it is present subjection to an operative state order that purports to impose an untriggered forfeiture.

The central factual premise is not disputed. In a May 14, 2025 amended ORCP 21 motion filed in the trial court, Respondents expressly stated that the filing had been revised to clarify “*that the Court’s ruling in January 2025 was ordering dismissal without prejudice.*” App. 41a. Respondents acknowledged that the March 27, 2025 order “*indicated that dismissal of several claims was with prejudice,*” that counsel reviewed the transcript, and that a conforming amendment had been proposed. App. 43a–44a. Thus the party that drafted the order ultimately admitted in a public court filing what Petitioner had told the court before entry: the written order did not state the ruling that was actually made.

No merits inference can bridge that gap. The trial court had not adjudicated the January 17 amended complaint when the March 27 order entered. Respondents were free to challenge the amended pleading through a new motion, and they did. But they were not entitled to convert the first hearing into a final adjudication that the presiding judge never made and whose stated condition Petitioner had satisfied.

D. The appeal suspended the intertwined proceedings but produced no correction.

Petitioner appealed the facially preclusive order. The Court of Appeals dismissed on May 2, 2025, concluding that the order was not appealable under ORS 19.205. App. 2a. Petitioner sought reconsideration and explained that the order’s practical effect was to place preclusive finality on claims that had never been adjudicated, creating a barrier to any later judgment. App. 26a–31a. The Court of

Appeals denied reconsideration on June 3, stating that the order “*does not prevent entry of a judgment in the action.*” App. 3a.

At the same time, the trial-court proceedings intertwined with the order were not moving normally. Petitioner moved to continue the renewed ORCP 21 and sanctions hearing because those matters depended upon the legal effect of the order then on appeal. App. 39a–40a. The circuit court’s official June 16, 2025 disposition records: “*Case pending appeal status continued to 7/21/25 or later depending on appeal.*” App. 38a. Subsequent continuances were agreed while appellate review remained pending.

The consequence was a procedural stalemate, not a completed merits adjudication. The trial court deferred the intertwined issues while appellate review was pursued; the Court of Appeals held the order nonappealable; and no conforming order entered during the completed appellate process.

E. The completed state appellate process left the acknowledged error intact.

Petitioner sought review in the Oregon Supreme Court, which denied review. App. 4a. Petitioner then sought reconsideration, again presenting the express permission to amend, his timely compliance, the contrary written order, its apparent preclusive consequences, and the resulting barrier to adjudication. He invoked “*fundamental principles of justice and due process*” and requested correction or remand. App. 32a–37a. Reconsideration was denied. App. 5a.

The Court of Appeals' appellate judgment became effective March 10, 2026. App. 1a. The underlying case remains pending, and no later judgment has yet applied claim preclusion. But the March 27, 2025 order has not been corrected or superseded. The case must now resume with an operative order whose written terms all parties acknowledge do not state the ruling actually made.

REASONS FOR GRANTING THE PETITION

The premise of this case is not in dispute. The written order says the opposite of what the court ruled. Petitioner proved it before the order was signed; Respondents admitted it afterward in a filed motion; and Oregon's courts have left the order in force anyway. The only question is whether due process tolerates that result because the case has not yet reached final judgment. It does not.

That sequence implicates three settled principles. Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982), holds that a state-created cause of action is protected property and that a State may not terminate it through the malfunction of its own adjudicatory machinery after the claimant has done what the State required. Hicks v. Oklahoma, 447 U.S. 343 (1980), holds that a State may not arbitrarily disregard a substantial entitlement it created. And Armstrong v. Manzo, 380 U.S. 545 (1965), requires process at a meaningful time and in a meaningful manner; a later opportunity does not necessarily cure an earlier adjudicatory act that shifted the legal burden.

The case is institutionally important because state courts routinely rely on party-drafted orders, recorded hearings, electronic registers, and rules allocating authority between trial and appellate courts. Those systems require a constitutional answer when an operative order concededly states something the court did not decide, despite timely pre-entry proof of the error. Review is warranted under Supreme Court Rule 10(c).

I. THE DECISION BELOW CONFLICTS WITH *LOGAN* AND *ARMSTRONG*'S REQUIREMENT OF MEANINGFUL PROCESS.

A. Petitioner possessed protected state-created property.

Logan begins with the controlling proposition: “a cause of action is a species of property protected by the Fourteenth Amendment’s Due Process Clause.” 455 U.S. at 428. Illinois created an employment-discrimination claim and required a state commission to convene a factfinding conference within 120 days. The claimant timely filed, but the commission failed to act before the deadline. Illinois then treated the agency’s failure as extinguishing the claim. This Court held that the State could not terminate protected property because its own machinery failed to perform the procedure the claimant had properly invoked. Id. at 429–434.

The analogy is not exact: unlike *Logan*, no later Oregon judgment has yet held the amended claims finally barred. But the relevant property interest is already subject to an operative order purporting to dismiss claims with prejudice. Petitioner’s claim is therefore narrower: the State may not require him to litigate

under a facially preclusive instrument that its own record proves false after he did everything required to prevent the error.

Respondents may erroneously argue that the amended claims are weak, duplicative, or vulnerable to a renewed ORCP 21 motion. That misses the constitutional point. *Logan* did not guarantee the claimant success on the merits. It guaranteed that the State could not destroy the claim for a reason unrelated to the merits after the claimant had satisfied the State's requirements. 455 U.S. at 433–434. Likewise, Petitioner does not ask this Court to decide whether his defamation, vulnerable-person, negligence, or equitable theories ultimately survive Oregon law. He asks for the elementary constitutional separation between a properly adjudicated dismissal and a false written memorialization of one.

Peralta v. Heights Medical Center, Inc., 485 U.S. 80 (1988), reinforces that a procedural injury is not erased merely because the litigant may ultimately lose on the merits. Id. at 86–87. The March 27, 2025 instrument is an order rather than a general judgment, but it formally declares with-prejudice dismissals and alters the procedural posture before the amended pleading has been adjudicated. Petitioner need not prove that each claim would prevail to insist that the State accurately record what it decided.

Nor is the interest insubstantial because the underlying action remains pending. The property protected in *Logan* included the right to use state adjudicatory procedures to obtain a decision on a state-law claim. 455 U.S. at 429–430. Petitioner

does not ask this Court to assume that *res judicata* has already attached. He asks the Court to recognize the present burden of an operative order that formally says his claims were dismissed with prejudice when the recorded ruling says otherwise.

B. The present procedural burden was produced by the State, not Petitioner.

The defining feature of *Logan* was responsibility. The claimant had invoked the procedure and “was denied the opportunity to present the merits of his claim because of the Commission’s failure” to perform its statutory duty. 455 U.S. at 433. The State could not attribute its own breakdown to the claimant.

Petitioner’s record is stronger. He did not merely file on time. He also moved for clarification when the written order was delayed; filed a formal objection before entry; quoted and attached the transcript; identified the precise contradiction; explained the preclusive danger; and requested confirmation that the amended pleading controlled. App. 20a–25a. There was nothing more a litigant could reasonably do before the State transformed the proposed paper into an operative judicial order.

The State nevertheless acted. A state judge signed the order and a state court entered it in the register. Private counsel drafted the language, but only the State gave it official legal status. Once entered, it became part of Oregon’s adjudicatory record, not a private mistake.

That conclusion does not require an extension of doctrine concerning private conduct. The challenged act is the court’s own entry and continued maintenance of

its order. Respondents proposed the language, but the alleged deprivation arises from the legal force Oregon gives the resulting judicial instrument.

The petition does not rest on negligence as such. See Daniels v. Williams, 474 U.S. 327 (1986). It rests on the objective adequacy of a procedure after actual notice: a formal objection and transcript preceded entry; the order remained in place during the appeal; and Respondents later acknowledged the discrepancy. The constitutional question is whether that process was meaningful, not whether any judge acted with improper intent.

C. An eventual merits ruling does not necessarily cure a timing injury.

Due process requires an opportunity to be heard 'at a meaningful time and in a meaningful manner.' Armstrong v. Manzo, 380 U.S. 545, 552 (1965). *Armstrong* held that a later hearing did not cure an earlier decree entered without adequate process because the decree shifted the burden; only setting it aside and considering the matter anew could 'wipe the slate clean.' Id. at 551–552. Here the formal order altered the procedural posture before the amended complaint was adjudicated and forced the parties to litigate what the prior ruling meant, which court could act, and whether the order controlled.

A post hoc assurance that the error might someday prove harmless is inadequate. Respondents' renewed motion conceded that the January ruling was without prejudice, yet the signed order still said otherwise. App. 41a–44a. The order has already shaped the litigation's course: the parties filed renewed dismissal,

sanctions, and strike motions addressing the effect of the prior disposition and the trial court's authority to proceed; the circuit court then continued the intertwined hearing depending on the appeal. App. 38a–40a. The litigation was diverted from adjudicating the amended complaint to litigating the meaning and procedural force of an order everyone now agrees is inaccurate.

Hicks is instructive. Oklahoma argued that a defendant suffered no prejudice from an invalid mandatory sentence because the sentence fell within the range a jury could have selected under a valid statute. This Court rejected that speculation. The defendant had a substantial state-created entitlement to have the jury exercise discretion, and the arbitrary denial of that entitlement violated due process even though the ultimate outcome might have been the same. 447 U.S. at 346. Here, Petitioner had a state-created entitlement to preserve his claims by timely amendment. The possibility that a court might later dismiss some or all of them on valid grounds does not excuse Oregon from honoring the procedure it actually promised.

The same institutional point follows from *Boddie v. Connecticut*, 401 U.S. 371, 377 (1971): where the State monopolizes the means of authoritatively resolving legal rights, access to a functioning adjudicatory process is constitutionally significant. *Boddie* does not create a federal right to interlocutory appeal. It underscores that only the State can alter its official adjudicatory record, making the timing and adequacy of correction relevant.

II. OREGON COULD NOT ANNOUNCE A PRECISE CONDITION, ACCEPT PERFORMANCE, AND THEN FORMALLY RECORD THE OPPOSITE.

A second line of this Court’s decisions reinforces the same anti-arbitrariness principle. Once a State identifies a precise procedural path for protecting property and the citizen timely relies upon it, the State may not formally deny the legal effect of that performance without meaningful process.

In *Reich v. Collins*, Georgia represented that taxpayers could pay first and obtain a refund if the tax proved unconstitutional. After *Reich* paid, the state court declared that the refund remedy had never been available. This Court held that the State could not “*hold out what plainly appears to be a clear and certain post-deprivation remedy and then declare, only after the disputed taxes have been paid, that no such remedy exists.*” 513 U.S. at 108. The Due Process Clause forbids that bait and switch. *Id.* at 111–112.

The promise here was even more concrete. It was not buried in a statute or inferred from precedent. The judge stated it in open court: amend by January 20, 2025; dismissal with prejudice follows only if no amendment is filed. Petitioner relied and performed. The March 27, 2025 order then retrospectively treated performance as if it had never occurred.

Brinkerhoff-Faris applies the same principle to state judicial action. There, a taxpayer relied on the only remedy state law had recognized, only to have the state supreme court abolish that remedy in the very case in which it was invoked. This

Court held that the State had denied due process by depriving the taxpayer of any adequate means to protect its property. 281 U.S. at 678–682. The constitutional guaranty extends to state judicial acts; a State cannot avoid federal limits by accomplishing through adjudication what legislation could not do. *Id.* at 680.

Oregon did precisely what those decisions forbid. The trial judge identified the route. Petitioner took it. The written order formally denied the effect of that performance. The later availability of a correction motion does not alter the fact that the official record said the opposite while the intertwined proceedings and appeal unfolded.

Oregon supplied a potential correction route. ORCP 71(A) authorizes correction of clerical mistakes and errors arising from oversight or omission; ORS 19.270(5)(b) preserves trial-court jurisdiction to enter an ORCP 71 order during an appeal; and ORAP 8.25 governs such a motion. Petitioner did not file a separately captioned ORCP 71 motion after entry. But the contradiction here is clerical in origin and substantive in consequence: the written instrument failed to memorialize the ruling actually made, yet the entered order purports to dismiss claims with prejudice. Before entry, Petitioner had already invoked the court's corrective function through a clarification motion and a formal objection attaching the transcript. The availability of a later discretionary motion is relevant; it does not by itself establish that the process actually supplied was meaningful and timely.

The rule Petitioner seeks is narrow: when a court expressly conditions a with-prejudice dismissal on failure to amend, the litigant then timely amends, and the record proves that performance before entry, due process requires a meaningful procedure for preventing or promptly neutralizing an order that formally declares the opposite. That rule does not constitutionalize state pleading law or guarantee success on the amended claims.

III. ORCP 71'S CORRECTIVE AUTHORITY DOES NOT, BY ITSELF, ESTABLISH MEANINGFUL PROCESS.

Respondents may invoke Parratt v. Taylor, 451 U.S. 527 (1981), and related decisions for the proposition that a random and unauthorized deprivation may be cured by adequate post-deprivation remedies. That doctrine does not fit this case.

First, the deprivation was foreseeable and preventable before entry. Petitioner supplied the transcript and objection seven (7) weeks before the order was signed. There was no practical obstacle to comparing the proposed order against the recorded ruling. Pre-deprivation process was not merely feasible; Petitioner invoked it.

Second, the actors who caused and perpetuated the deprivation operated through delegated state procedures. Judges possessed authority to enter orders; clerks possessed authority to register them; appellate courts possessed authority to determine reviewability; and the Oregon Supreme Court possessed authority to review or remand. Zinermon v. Burch explains that *Parratt* does not control when

the deprivation is predictable, the State can provide pre-deprivation safeguards, and the challenged conduct occurs through broadly delegated state authority. 494 U.S. at 136–139.

Third, ORCP 71 confirms that correction was institutionally feasible; it does not make correction automatic. The rule authorizes the trial court to act on its own motion or on a party's motion, but it sets no automatic suspension, mandatory timetable, or self-executing correction. Here the court had the decisive transcript, a clarification motion, and a formal objection before entry. Respondents later filed their own acknowledgment that the order did not state the ruling. App. 41a–44a. Yet no conforming order entered during the completed appellate proceeding.

Fourth, Petitioner's failure to file a separately captioned post-entry ORCP 71 motion is a serious vehicle objection, but it is not dispositive of a claim attacking a foreseeable deprivation for which pre-deprivation safeguards were both feasible and invoked. *Zinerman* distinguishes a random loss that the State could not anticipate from a deprivation produced through delegated procedures where advance safeguards were practicable. 494 U.S. at 136–139. Petitioner does not ask this Court to excuse ordinary litigation choices; he asks whether the State may enter and maintain a rights-affecting order after receiving conclusive proof, before entry, that the proposed instrument states the opposite of the ruling.

Fifth, the injury is not simply the temporary existence of erroneous words. It is the requirement that Petitioner proceed while those words retain judicial force. A

remedy supplied only after renewed dismissal litigation, possible discovery and trial, and eventual final judgment would arrive after the asserted procedural right has been consumed. Due process at the wrong time is no process for the right asserted. *Armstrong*, 380 U.S. at 552. ORCP 71 may bear on the ultimate merits, but its mere existence does not answer whether the State supplied a meaningful procedure at a meaningful time on this record.

Nor does *Johnson v. Fankell*, 520 U.S. 911 (1997), answer the petition. Petitioner does not claim a freestanding federal right to an interlocutory appeal or ask this Court to reinterpret ORS 19.205. States ordinarily control the timing of their appellate review. But they may not use that timing rule, together with the trial court's deferral, to deny every meaningful forum for correcting an acknowledged order that impairs protected property. The source of the right is the Fourteenth Amendment; ORS 19.205 is relevant because Oregon used it to close the appellate door while the trial door remained functionally closed by the same appeal.

IV. THE QUESTION IS IMPORTANT, RECURRING, AND PRESENTED ON AN UNUSUALLY STARK RECORD.

A. The problem reaches beyond this case.

Party-drafted orders, recorded hearings, and electronic court registers are ubiquitous. The recurring question is narrow: what process is due when the recorded ruling and the operative order conflict, the affected litigant proves the discrepancy

before entry, and correction does not occur before the order governs further proceedings?

The answer matters to the integrity of adjudication itself. A judicial order is the State's authoritative statement of what it decided. Litigants and later courts organize discovery, motions, settlement, and judgment around that formal record. An acknowledged contradiction between the ruling and the operative order is therefore not merely typographical.

The danger is especially acute for self-represented or resource-limited litigants. A party represented by a large legal team may be able to pursue repeated motions, mandamus, settlement negotiations, and parallel protective filings. A pro se litigant may have only the transcript, a timely objection, and the ordinary appellate path. The Fourteenth Amendment should not make accuracy of judicial records depend on bargaining power.

The Court need not supervise every drafting discrepancy. The elements here sharply limit the issue: a protected cause of action; an express condition for preservation; undisputed timely performance; a pre-entry objection supplying the transcript; an order imposing the untriggered forfeiture; and the opposing party's later formal concession. Few cases will present that sequence.

B. The record is undisputed and includes Respondents' formal concession.

The decisive facts require no discovery and no credibility determination. The hearing was recorded. The transcript states the condition. App. 14a–16a. The file-

stamped amended complaint establishes the January 17, 2025 filing. App. 19a. The February 7, 2025 objection establishes pre-entry notice. App. 22a–25a. The signed order states “with prejudice.” App. 6a–8a. Respondents’ filed motion states that the January ruling was without prejudice and that the written order said otherwise. App. 41a–44a. The June 16, 2025 disposition documents the continuance depending on the appeal. App. 38a. The appellate orders document the refusal of jurisdiction. App. 1a–5a.

That record eliminates the factual uncertainty that often makes a due-process petition a poor vehicle. This Court need not determine what the trial judge intended; the transcript answers. It need not infer whether Petitioner complied; the file stamp answers. It need not decide whether the order conflicts with the ruling; Respondents’ filed motion answers. The remaining questions are legal: whether the present procedural burden amounts to a deprivation, whether the potential ORCP 71 route was adequate, and whether § 1257 permits review now.

C. The federal claim was fairly presented.

Rule 14.1(g)(i) requires a petition from a state court to identify where the federal question was raised and how it was passed upon. Petitioner satisfies that requirement.

Before the challenged order, Petitioner’s December 20, 2024 sur-reply stated that the “Fourteenth Amendment’s Due Process Clause requires that state procedural rules” avoid “arbitrary or overly stringent standards,” and warned that

the procedure advocated by Respondents would “den[y] Plaintiff his constitutional right to be heard.” App. 17a–18a. Respondents answered at the January 6 hearing that uniform application of Oregon procedure did not violate due process. App. 9a.

The March 27, 2025 order made the later injury concrete. Petitioner’s Court of Appeals reconsideration filing argued that the order created a “*procedural and legal barrier*,” imposed “*preclusive consequences*,” and threatened to extinguish claims despite timely amendment. App. 26a–31a. His Oregon Supreme Court reconsideration petition invoked “*fundamental principles of justice and due process*” and asked the court to remove the barrier to adjudication. App. 32a–37a.

The petition does not resurrect the sur-reply’s mistaken suggestion that federal pleading cases constitutionalize Federal Rule 8 in state court. The stronger bridge is temporal: the March 27 order did not exist when the sur-reply was filed, and Petitioner raised the resulting injury at the first practicable opportunities. Brinkerhoff-Faris Trust & Savings Co. v. Hill, 281 U.S. 673, 678 (1930). Yee v. City of Escondido, 503 U.S. 519, 534–535 (1992), permits additional arguments supporting a preserved federal claim, but Petitioner does not rely on *Yee* to transform a distinct state-law objection into a new federal claim.

This case is unlike Adams v. Robertson, 520 U.S. 83 (1997), and Howell v. Mississippi, 543 U.S. 440 (2005), where the petitioners failed to demonstrate that the state courts were fairly alerted to the federal issue. The trial filing expressly named the Fourteenth Amendment and the right to be heard; the precise later injury

was then presented in the appellate filings; and due process was invoked again in the court of last resort. The appellate filings' reliance on Oregon's appealability statute does not erase the constitutional substance: ORS 19.205 was the procedural vehicle through which Petitioner sought timely relief from the federal injury, not the source of the right asserted.

D. The third Cox category applies because the asserted federal right is temporal and present relief was conclusively denied.

Section 1257 establishes a firm final-judgment rule. See Jefferson v. City of Tarrant, 522 U.S. 75, 81 (1997). Petitioner acknowledges that the underlying merits action remains pending and does not contend that completion of a separate appellate proceeding is, by itself, enough.

Cox's third category requires a federal issue to be finally decided and later review to be unavailable whatever the ultimate outcome. 420 U.S. at 481. The Oregon appellate courts did not issue a merits opinion under the Fourteenth Amendment. But their final jurisdictional disposition conclusively denied the only relief the federal claim sought at that stage: review and correction before Petitioner was required to proceed under the disputed order. For a right defined by timing, that refusal is the effective state-court disposition of present relief; no further Oregon appellate tribunal remains available to decide whether the acknowledged contradiction could govern at that meaningful time.

Pierce County v. Guillen denied third-category finality for an interlocutory discovery ruling because the ruling did not foreordain the outcome, a merits victory

would moot the discovery issue, and a merits loss would leave the petitioner free to raise that issue after final judgment. 537 U.S. at 140 n.5. The first consideration is not dispositive here because Petitioner does not claim that the March 27 order foreordains the pleading merits. The other two differ in kind. A favorable merits result would not erase the period already spent defending renewed dismissal motions, litigating sanctions and jurisdiction, and proceeding under continuances tied to the appeal while a concededly inaccurate order carried official force. App. 38a–44a. Nor could a later appeal after an adverse judgment supply an accurate record at the meaningful time already lost; it could address future consequences only. The asserted injury is therefore not an evidentiary ruling whose review can wait. It is the State’s maintenance of a false preclusive instrument during the litigation itself, a temporal injury that later review cannot remedy whatever the ultimate outcome below.

This petition also differs from a routine effort to obtain piecemeal review of the merits. Petitioner does not ask this Court to decide the ORCP 21 motion or which claims ultimately survive. He asks whether the Fourteenth Amendment requires meaningful and timely correction when an operative state order concededly says the opposite of the recorded ruling after the affected party proved the error before entry.

This is a sound, if exceptional, application of *Cox*. The trial court’s official disposition confirms that the timing question had present effect: the intertwined matters were continued depending on the appeal, and the appeal was then dismissed.

App. 2a–3a, 38a. The petition does not seek piecemeal review of pleading merits. It seeks review of a completed state appellate refusal that left an acknowledged contradiction operative during the period when timely correction mattered.

**V. AT MINIMUM, THE COURT SHOULD VACATE AND REMAND
FOR APPLICATION OF THE CORRECT FEDERAL
FRAMEWORK.**

The orders below contain no analysis of *Logan*, *Hicks*, *Armstrong*, or the constitutional adequacy of the potential ORCP 71 route. The Court of Appeals resolved only Oregon appealability and stated that the order did not prevent entry of a later judgment. App. 3a. That observation does not answer whether requiring Petitioner to proceed under a concededly inaccurate order supplied process at a meaningful time and in a meaningful manner.

A grant, vacatur, and remand would permit the Oregon courts to address the federal issue under the correct framework, including the significance of ORCP 71 and whether the March 27 order imposes any present preclusive or procedural effect.

Summary action is appropriate because Respondents’ formal concession eliminates any factual dispute about what occurred. The transcript and Respondents agree that the March 27 order does not match the January ruling; the remaining questions concern the timing and adequacy of process.

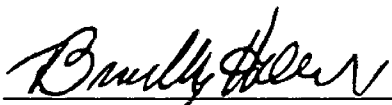
On remand, Oregon could vacate or correct the March 27, 2025 order, declare the amended complaint operative, or provide another timely and constitutionally

adequate procedure—preserving state authority over pleading merits while enforcing federal due process.

CONCLUSION

A State should not be permitted to bind a litigant to an order its own record proves false. The petition for a writ of certiorari should be granted. In the alternative, the petition should be granted, the judgment below vacated, and the case remanded for application of *Logan v. Zimmerman Brush Co.*, *Hicks v. Oklahoma*, *Armstrong v. Manzo*, and the other due-process authorities discussed above.

Respectfully submitted this 26th day of June 2026.

A handwritten signature in black ink, appearing to read "Bradley Holcom", written over a horizontal line.

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