No. 17-1225

IN THE

Supreme Court of the United States

AMY P. CAMPANELLI,

Petitioner,

v.

STATE OF ILLINOIS,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Illinois

REPLY BRIEF

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The Petition raises a Sixth Amendment question at the heart of our criminal justice system—whether an indigent defendant represented by a public defender enjoys the same right to conflict-free counsel as a defendant with means to pay for representation. That question has divided lower courts, making access to conflict-free counsel turn on where one is tried. Such uneven treatment of a core constitutional right must not stand.

The State cannot muster a single valid reason not to resolve the conflict now and in this case. Rather, it depicts the Illinois Supreme Court as if it sidestepped the Sixth Amendment question (something that court plainly did not do) and relied on state ethics rules to lessen federal constitutional protections (something that court plainly cannot do). Nor is there anything to the State's theory that Petitioner's case is moot, given the holding below that the contempt finding was "valid." And the State's related contention that Petitioner lacks standing to challenge the reasoning of an order holding her in contempt of court is unsupportable.

The State tries to pick apart the lower-court split, but this effort is doomed from the start. Lower courts construe the same Sixth Amendment protection and reach opposite results. The State skips over those holdings, trying instead to draw attention to cases cited *within* those decisions that it claims can be reconciled with the decision below. But that effort fails, as does the State's halfhearted attempt to reconcile the decision below with this Court's precedent, in particular *Holloway v. Arkansas*, 435 U.S. 475 (1978).

In the end, the State advocates for a regime in which a representation violates the Sixth Amendment right to conflict-free counsel only when applicable state ethics rules prohibit that representation. But the scope of such a fundamental constitutional right cannot turn on geography. The Court should grant the petition and hold that, regardless of the state, criminal defendants with appointed counsel enjoy the same right to conflict-free representation as their paying counterparts.

I. This Case Presents An Appropriate Vehicle For Addressing The Question Presented.

A. The Decision Below Raises A Sixth Amendment Issue.

The State tries to bury the constitutional question by insisting that the Illinois Supreme Court merely interpreted the Illinois Rules of Professional Conduct. Opp. 9-11.[1] But Petitioner vigorously argued to the Illinois Supreme Court that the "Sixth Amendment right to counsel under the Federal Constitution. . . . includes a 'correlative right to representation that is free from conflicts of interest'" and that the trial court had "disregarded these constitutional interests" by appointing Petitioner to represent Ms. Cole. Campanelli Br. 32-33, 35, *People* v. *Cole*, No. 120997 (Ill. Jan. 31, 2017) (quoting *Wood* v. *Georgia*, 450 U.S. 261, 271 (1981)). Petitioner also argued that the similarities

[1] Citations to "Opp. _" are to the Brief in Opposition. Citations to "Pet. _" and "Pet. App._" are to Campanelli's petition for a writ of certiorari and its attached appendix. Citations to "_ R_" are to the date and page of the Report of Proceedings included in the record on appeal.

between this case and *Holloway* were "dispositive" in demonstrating that "the circuit court violated the Sixth Amendment." Campanelli Reply Br. 16-18, *People* v. *Cole*, No. 120997 (Ill. Aug. 9, 2017).

In other words, Petitioner cited both "'the federal source of law on which [she] relies'" and "'a case deciding such a claim on federal grounds.'" *Nitro-Lift Techs., L.L.C.* v. *Howard*, 568 U.S. 17, 20 (2012) (per curiam) (citations and emphasis omitted). That preserves the issue. *Id.* at 19-21. Additionally, Petitioner carefully separated her constitutional claim from her state-law claims. State ethics rules and related state statutes are mentioned nowhere in the discussion of the Sixth Amendment in either Petitioner's opening brief, *supra*, at 32-36, or reply, *supra*, at 13-20. This makes sense because Petitioner's Sixth Amendment claim could not turn on the interpretation of state ethics rules or state law. *Mickens* v. *Taylor*, 535 U.S. 162, 176 (2002).

Further, the opinion below acknowledges that Petitioner squarely raised her federal constitutional challenge and that she framed her analysis around the "sixth amendment right to the effective assistance of counsel." Pet. App. 10a-11a. It also quotes *Holloway* at length, including in describing a "question in this case," before concluding its analysis of the claimed conflicts by mentioning this Court's Sixth Amendment decisions in *Holloway* and *Cuyler* v. *Sullivan*, 446 U.S. 335 (1980). Pet. App. 25a-28a. Finally, the court squarely held that the trial court did not violate *Holloway*. *See* Pet. App. 29a. If, as the State suggests, the court passed only on questions of state law, then this Sixth Amendment analysis would have been superfluous.

More fundamentally, the federal constitutional question is unavoidable. If the Sixth Amendment demands conflict imputation, then Illinois's ethics rules cannot authorize anything less.

B. Petitioner Has Standing To Raise The Question Presented.

The State strains to depict this case as "an especially poor vehicle for deciding the question presented" by impugning Petitioner's standing. Opp. 15-17. But Petitioner was held in contempt because the trial court rejected her Sixth Amendment arguments, and that holding was affirmed in part by the Illinois Supreme Court. Accordingly, Petitioner has had, and continues to have, a stake in the favorable resolution of the question presented.

1. The State contends that Petitioner lacks standing to assert the Sixth Amendment rights of Ms. Cole, who Petitioner does not represent. Opp. 17. But Petitioner has always had standing to challenge the judgment finding her in contempt. *U.S. Catholic Conference* v. *Abortion Rights Mobilization, Inc.*, 487 U.S. 72, 76 (1988). And behind the contempt finding, as well as its affirmance by the Illinois Supreme Court, are conclusions that appointing Petitioner to represent Ms. Cole would not violate the Sixth Amendment. Pet. App. 29a. Petitioner is the *only* person with standing to challenge the contempt judgment and its reasoning.

Moreover, even if Petitioner were not appealing a judgment that she was in contempt, she still would have standing because, although the State argues that Petitioner cannot assert Ms. Cole's constitutional rights,

it ignores that Petitioner raised the Sixth Amendment rights of her existing client, Ms. Washington. Courts have long recognized that "a lawyer has standing to challenge any act which interferes with his professional obligation to his client and thereby, through the lawyer, invades the client's constitutional right to counsel." *Wounded Knee Legal Def./Offense Comm.* v. *Fed. Bureau of Investigation*, 507 F.2d 1281, 1284 (8th Cir. 1974); *see Caplin & Drysdale, Chartered* v. *United States*, 491 U.S. 617, 623 n.3 (1989); *cf. Kowalski* v. *Tesmer*, 543 U.S. 125, 130-31 (2004).

This Court's decision in *United States Department of Labor* v. *Triplett*, 494 U.S. 715 (1990), is instructive. There, a lawyer was disciplined by his state bar for violating a federal statute prohibiting attorneys from accepting unapproved fees for representing claimants under the Black Lung Benefits Act. *Id.* at 717-18. Triplett's defense was that the law "contravene[d] those claimants' due process rights." *Id.* at 720. The Court agreed that Triplett had third-party standing to press his claim. *Id.* The same principle applies here.

Finally, the State contends that Petitioner faces no harm because "the Illinois Supreme Court has made clear that [Petitioner] will not be required to represent Cole in this matter in the future." Opp. 15. But the court declined to order Petitioner to replace Ms. Cole's current counsel only for reasons of judicial economy. Pet. App. 30a. And on May 17, 2018, Ms. Cole's appointed private counsel moved to withdraw from representing her. *See* Motion to Withdraw as Counsel for the Defendant, *People v. Cole*, No. 16 CR 0508905 (Cook Cty. Cir. Ct. May 17, 2018). Because nothing in the decision below

prevents it, Petitioner anticipates being reappointed to represent Ms. Cole at the next court date, June 20, 2018.

2. Nor is this case moot. The State insists that the Illinois Supreme Court "vacated the trial court's order holding [P]etitioner in contempt." Opp. 15. But the opinion below expressly "affirm[s]" the judgment of contempt three times. Pet. App. 30a-31a. The Illinois Supreme Court knows how to vacate a contempt judgment,[2] and it is not by repeatedly stating that the judgment is "affirmed."

So long as the contempt judgment remains, Petitioner faces adverse consequences. The State does not deny that applications for admission to state bars, admission to federal courts, and *pro hac vice* appearances frequently ask whether the applicant has ever been held in contempt of court. With the affirmance of the judgment, Petitioner must represent that she has, threatening Petitioner's ability to gain admission to the bars of other states and courts. Unsurprisingly, courts have found these and similar consequences from a contempt finding sufficient to confer standing. *E.g.*, *Nakell* v. *Attorney Gen. of N.C.*, 15 F.3d 319, 322-23 (4th Cir. 1994); *Walker* v. *McLain*, 768 F.2d 1181, 1183 (10th Cir. 1985); *United States* v. *Camil*, 497 F.2d 225, 228 (5th Cir. 1974); *United States* v. *Schrimsher*, 493 F.2d 842, 844 (5th Cir. 1974).

Finally, the State asserts that a vacated order of contempt will not cause Petitioner any reputational

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[2] *See, e.g.*, *Oakley* v. *Irish*, 821 N.E.2d 324, 324 (Ill. 2005) (mem.); *City of Urbana* v. *Andrew N.B.*, 813 N.E.2d 132, 145 (Ill. 2004); *Reda* v. *Advocate Health Care*, 765 N.E.2d 1002, 1012 (Ill. 2002).

harm. Opp. 15-16. Again, that ignores that the judgment of contempt was *not* vacated. The affirmance of the contempt judgment means Petitioner cannot avoid the attendant reputational injury.

II. The Question Presented Warrants This Court's Review.

A. There Is A Split Of Authority Over The Question Presented.

The State fails to meaningfully respond to the split that exists over the question presented. Rather than address the conflict, the State focuses on cases cited within decisions making up the split, while ignoring some authority altogether. This approach collapses under even cursory scrutiny.

1. The supreme courts of Florida, Pennsylvania, and Louisiana have held that the Sixth Amendment forbids representation of adverse co-defendants by attorneys in the same public defender's office. *See* Pet. 3, 10-14. Unable to challenge these holdings, the State trains its fire on decisions not cited in the Petition.

For example, the Petition explains that the Florida Supreme Court in *Bouie* v. *State* announced that "[d]ifferent attorneys in the same public defender's office cannot represent defendants with conflicting interests" because "a lawyer representing clients with conflicting interests *cannot provide the adequate assistance required by th[e] [sixth] amendment*." 559 So. 2d 1113, 1115 (Fla. 1990) (emphasis added). Yet the State attacks not *Bouie*, but *Turner* v. *State*, 340 So. 2d 132 (Fla. 2d DCA 1976), a Florida intermediate appellate court decision cited in *Bouie* purportedly interpreting a

state ethical rule. Opp. 12. But even that gets the State nowhere because *Turner*, like *Bouie*, is a Sixth Amendment case. 340 So. 2d at 133 ("The Sixth Amendment guarantee of the assistance of counsel includes the right to counsel whose loyalty is not divided between clients with conflicting interests."). If anything, *Turner* was even more explicit, explaining that the Sixth Amendment "contemplates that members of the same firm cannot represent conflicting interests" before holding that the ethical rule mirrors the Constitution. *Id.*

Likewise, rather than directly challenge *Commonwealth* v. *Westbrook*, 400 A.2d 160 (Pa. 1979), the State emphasizes a case cited in *Westbrook*, *Commonwealth* v. *Via*, 316 A.2d 895 (Pa. 1974). Opp. 12-13. But *Westbrook* did not rely on the portion of *Via* the State quotes. It borrowed *Via*'s conclusion that "members of the public defender's office would be considered members of the 'same firm.'" *Westbrook*, 400 A.2d at 162. Furthermore, the State offers nothing to undermine *Westbrook*'s clear constitutional footing: The public defender's office could not simultaneously represent both suspects because "'the 'Assistance of Counsel' guaranteed by the Sixth Amendment contemplates that such assistance be untrammeled and unimpaired by a court order requiring that one lawyer shall simultaneously represent conflicting interests.'" *Id.* at 164 (quoting *Glasser* v. *United States*, 315 U.S. 60, 70 (1942)).

The State's treatment of Louisiana law is even more deficient. In *State* v. *Connolly*, the Louisiana Supreme Court declared that "Indigent Defender Boards are . . .

the equivalent of private law firms to effectuate a defendant's Sixth Amendment right to effective assistance of conflict-free counsel." 930 So. 2d 951, 954 n.1 (La. 2006). The State dismisses this as "dicta." Opp. 13. But this rule was relevant to *Connolly*'s holding, which distinguished a prosecutor's office from a public defender's office for these purposes, 930 So. 2d at 954 & n.1, and the Louisiana Supreme Court has since treated *Connolly* as binding, *State* v. *Garcia*, 108 So. 3d 1, 28 (La. 2012).

Nor is there anything to the State's claim that *Williams* v. *State*, 807 S.E.2d 418 (Ga. 2017), "is consistent with the Illinois Supreme Court's decision here." Opp. 13-14. *Williams* concluded that public defender's offices *are* just like firms for conflict-imputation purposes. 807 S.E.2d at 424 n.6. And unlike Petitioner, the public defender in *Williams* did not "suggest that his representation of [the defendant] could actually be affected by his office's representation of [a testifying co-defendant]." *Id.* at 424 n.7; *see* Pet. App. 8a (recounting Petitioner's argument that conflict exists because Petitioner has "a right to know every fact, every strategy, and every defense of every case").[3]

2. At the same time, the State largely disregards the decisions on the Illinois Supreme Court's side of the split. Citing a state intermediate appellate decision that appears nowhere in the Petition, the State asserts that courts "generally do not rest on an interpretation of the

[3] The State's focus on *Williams* thus is surprising because even Petitioner acknowledged that *Williams*, while "similar," was "factually distinguishable." Pet. 12-13.

Sixth Amendment" when permitting a single public defender's office to represent adverse co-defendants. Opp. 14 (citing *Anderson* v. *Comm'r of Corr.*, 15 A.3d 658 (Conn. Ct. App. 2011)). But the State ignores two decisions expressly grounding that rule in the Constitution. The high courts of Idaho and New Jersey have held that a public defender's office's simultaneous representation of adverse parties does not violate the Sixth Amendment. *See State* v. *Severson*, 215 P.3d 414, 423-27 (Idaho 2009); *State* v. *Bell*, 447 A.2d 525, 527-29 (N.J. 1982).

3. In short, the State fails to refute that a split persists over the proper construction of the Sixth Amendment. On one side are Florida, Pennsylvania, and Louisiana, whose high courts hold that the Sixth Amendment forbids representation of adverse co-defendants by members of a single public defender's office. On the other is Illinois, joined by New Jersey and Idaho, holding that the Sixth Amendment poses no barrier to multiple representation. Only this Court's intervention can ensure that indigent criminal defendants in all states receive the conflict-free representation the Constitution guarantees.

B. The Decision Below Conflicts With This Court's Precedent.

Holloway forbids the choice put to Petitioner: disclose client confidences or undertake a conflicted representation. 435 U.S. at 486-87. So the State's answer to *Holloway*—that the trial court could force Petitioner to reveal client confidences because Petitioner "strategically framed" the conflict as involving the "mere fact of [her office's] multiple

representation of codefendants," Opp. 19—is no answer at all. Nor is it accurate. Petitioner repeatedly told the court that there was a conflict, but she could not "divulge attorney/client privilege information" that she had "learned about the other five co-defendants *in this case* in order to tell [the court] what the conflicts are *in this case*." *E.g.*, 5/19/16 R7 (emphasis added); *see also* Pet. 7-8.[4]

This refutes the State's assertion that the trial court "complied with *Holloway*'s inquiry requirement." Opp. 18. *Holloway* certainly forecloses courts from demanding "concrete evidence of a direct conflict." Pet. 2. And the Illinois Supreme Court's alternative demand that Petitioner disclose "'facts peculiar to the case'" and the "gist" of a conflict fares no better under *Holloway* when that test requires betrayal of client confidences. Pet. App. 20a, 25a.

Nor is the conflict with *Holloway* "belie[d]" by the trial court's decision to allow Petitioner to withdraw from her representations of Mr. Whitehead and Mr. Reed. Opp. 20. Mr. Whitehead and Mr. Reed were charged with witness intimidation against a co-defendant represented by Petitioner, a fact clear from their indictments. Pet. App. 5a n.1. That the trial court correctly allowed Petitioner to withdraw from those

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[4] These representations also doom the State's contention that Petitioner's *Holloway* argument "rest[s] entirely on her erroneous interpretation of state law." Opp. 18. Petitioner did argue that under state law her office has conflicts in any multiple representation case. But the unconstitutionality of the trial court's attempt to force Petitioner to disclose specific conflicts does not turn on state ethics rules.

representations based on non-privileged information establishing an actual conflict does not cure its refusal to do the same when a conflict was not obvious from non-privileged information.

Finally, the State wrongly suggests that Petitioner demands a "per se" rule that would conflict with *Holloway*. Opp. 18-19. Petitioner does no such thing. Instead, Petitioner only seeks a rule recognizing that her office is the equivalent of a private law firm for Sixth Amendment conflict-imputation purposes. *See* Pet. 4-5, 29. This rule would still allow indigent criminal defendants to consent to a joint representation by a single public defender's office. *See Holloway*, 435 U.S. at 483 n.5. And defendants who wait until *after* trial to raise an objection to joint representation still would be required to demonstrate an actual conflict under the standard announced in *Cuyler*, 446 U.S. 335. *See Burger* v. *Kemp*, 483 U.S. 776, 783 (1987). But such a rule would remedy the Sixth Amendment violation here, where the trial court refused to ameliorate a conflict after Petitioner objected to the representation *before* trial, but could not prove that a conflict already existed without disclosing client confidences. *Holloway*, 435 U.S. at 485-86, 488-90. This is what *Holloway* requires.

CONCLUSION

For the foregoing reasons, and those set forth in the petition, the petition for a writ of certiorari should be granted.

May 25, 2018

Respectfully submitted,

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