

No. 19-169

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**In The  
Supreme Court of the United States**

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JANE DOE,

*Petitioner,*

v.

IOWA,

*Respondent.*

—◆—  
**On Petition For Writ Of Certiorari  
To The Iowa Supreme Court**

—◆—  
**BRIEF IN OPPOSITION**  
—◆—

THOMAS J. MILLER  
Attorney General of Iowa

JEFFREY THOMPSON  
Solicitor General

KEVIN CMELIK  
Division Director,  
Criminal Appeals  
*Counsel of Record*  
Hoover Build., 2nd Floor  
1305 E. Walnut  
Des Moines, Iowa 50319  
(515) 281-5976  
kevin.cmelik@ag.iowa.gov

**QUESTION PRESENTED**

In Iowa, a person who was acquitted in a criminal case or whose charges were dismissed may move for expungement, effectively sealing the records of the charges against them. Expungement is only available to those who have paid all court debts associated with the charges that they seek to expunge. *See* Iowa Code § 902.1C(1)(a)(2) (prohibiting expungement unless “[a]ll court costs, fees, and other financial obligations ordered by the court or assessed by the clerk of the district court have been paid”).

The question presented is whether Iowa Code section 901C.2(1)(a)(2) violates the Equal Protection Clause by requiring applicants to repay their court-appointed attorney fees before an Iowa court will grant expungement, when Iowa Code section 815.9(6) requires an inquiry and a finding that the defendant is reasonably able to pay those costs before including them in any repayment obligations that could limit eligibility for expungement.

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## STATEMENT OF THE CASE

This is a facial challenge to Iowa Code section 901C.2(1)(a)(2), which requires applicants seeking expungement of public records relating to acquittals or dismissed charges to pay all court debt to be eligible for expungement. This includes repayment obligations that were assessed to reimburse the cost of court-appointed attorney fees, under Iowa Code section 815.9. But that law specifies that repayment obligations for those fees can only ever be imposed “after an inquiry which includes notice and a reasonable opportunity to be heard,” and only “to the extent the person is reasonably able to pay.” *See* Iowa Code § 815.9(6); *see also* App. 14a–15a.

Because this is a facial challenge to the constitutionality of the law, the only facts that matter are these: Doe still owed outstanding court debt that included repayment for court-appointed attorney fees, and she applied for expungement of the records for her dismissed charges. *See* App. 3a–4a. Doe challenged a provision that made her ineligible for expungement until she paid that court debt. She alleged that it violated the Equal Protection Clauses of the Fourteenth Amendment and the Iowa Constitution because owing unpaid fees for *appointed* counsel acted as a bar to expungement, but owing unpaid attorney fees to *private* counsel would not. The Iowa district court denied Doe’s motion for expungement. *See* App. 31a–32a.

Doe appealed, and the Iowa Supreme Court affirmed. A majority held that “section 901C.2 survives

rational basis review under both the Iowa and Federal Constitutions,” because “[t]he legislature was not constitutionally required to allow expungement and could choose to condition expungement on payment of court debt to motivate defendants to pay what they owe the State.” *See* App. 15a–17a. The majority rejected comparisons to *James v. Strange*, 407 U.S. 128 (1972), because “[t]he required showing of a reasonable ability to repay the court-appointed attorney fees avoids the constitutional infirmity identified in *James*.” *See* App. 14a. One justice dissented from the holding that Doe did not prove a violation of the Equal Protection Clause of the Fourteenth Amendment. *See* App. 20a–30a (Appel, J., dissenting). Two additional justices dissented because, in their view, Doe had access to an as-applied challenge that proved a violation of the Equal Protection Clause of the Iowa Constitution. *See* App. 18a–20a (Wiggins, J., dissenting).

Doe seeks certiorari to review the Iowa Supreme Court’s holding that Iowa Code section 901C.2(1)(a)(2) does not violate the Equal Protection Clause of the Fourteenth Amendment.



### **REASONS TO DENY THE PETITION**

Many of the arguments in Doe’s petition and in the amicus briefs were not raised or decided by the Iowa Supreme Court below. This Court should not grant certiorari because the only challenge that was raised below has already been resolved correctly by the Iowa

Supreme Court, and it does not raise any new or interesting issues that would warrant further review.

Doe did not argue that she was unable to pay her outstanding debt, or that it is unconstitutional to require her to pay her outstanding debt. *See* App. 7a–8a, 15a. The argument raised in the amicus petition filed by the Public Defender Association of Iowa—that Iowa Code section 815.9(6) is unconstitutional, either as an excessive fine or an impermissible burden on a right to counsel—was never raised below or decided by any Iowa court, nor is it part of Doe’s advocacy in her petition. *See* PDAI Pet. at 8–10.

Does also did not raise any claim that she had a constitutional right to expungement of records. *See* App. 8a–9a. Doe made policy arguments on the value of expungement, but did not claim any constitutional right that would invalidate even-handed limitations on eligibility for expungement. The claim raised in the amicus petition from Community Legal Services—that denying expungement is equivalent to punishment—is another claim that was neither argued nor decided below. *See* CLS Pet. at 11–21.

Doe also did not seek any opportunity for an individualized finding that she deserves an exemption from this limit on expungement eligibility based on her inability to pay, and she did not seek an updated assessment of her ability to pay costs at the moment when she filed her next application for expungement. *See* App. 7a–8a. Instead, Doe raised a facial challenge: that requiring *anyone* to repay their court-appointed



attorney fees to obtain expungement is a violation of the Equal Protection Clause, because it treats defendants who had counsel appointed for them differently from those who retained counsel. App. 7a–8a, 15a; App. 21a & n.5 (Appel, J., dissenting).

The Iowa Supreme Court was correct to reject that challenge. Iowa may condition expungement on payment of validly assessed court debt.

**I. Doe asked the Iowa Supreme Court to apply rational basis. Certiorari should not be granted to review any argument that it should have applied any heightened scrutiny.**

*James v. Strange* held that, for wealth-based classifications that do not implicate suspect characteristics, the Equal Protection Clause “imposes a requirement of some rationality in the nature of the class singled out.” See *James v. Strange*, 407 U.S. 128, 141 (1972). *Fuller v. Oregon* repeated that explanation of the Court’s review for wealth-based classifications that are “wholly noninvidious.” See *Fuller v. Oregon*, 417 U.S. 40, 48–49 (1974). The Iowa Supreme Court applied rational basis review. See App. 8a–9a. Along the way, it discussed *James*, *Fuller*, and its own precedent on the constitutionality of Iowa’s recoupment statutes. See App. 11a–17a.

Doe’s petition argues that the Iowa Supreme Court “erred by trying to fit this case into the tiers of scrutiny that are applied in other areas of Equal

Protection jurisprudence.” *See* Pet. at 10–11. But Doe had invited the Iowa Supreme Court to apply rational basis review. *See* App. 21a & n.6 (Appel, J., dissenting) (“The parties agree that we should evaluate the challenge under rational basis review.”); *accord* Video of Oral Argument (Mar. 6, 2019), at 1:41–2:17, *available at* <https://youtu.be/KjAvVkRDPAw?t=101> (“When the law addresses economic concerns, as in this case, courts review whether the state had a rational basis for enacting it.”).

Even if Doe could shift her advocacy now, it would not help—Doe was correct below, and is incorrect now. In her petition for a writ of certiorari, Doe commits a category error by citing the *Griffin* line of cases that involve “denial of access to criminal or quasi-criminal proceedings based on ability to pay.” *See* Pet. at 10–11. But those cases are inapposite. This is not a case where Doe is “[l]ike a defendant resisting criminal conviction,” nor similar to a defendant seeking access to proceedings to challenge their conviction. *See M.L.B. v. S.L.J.*, 519 U.S. 102, 125 (1996); *see also Fowler v. Benson*, 924 F.3d 247, 260–61, 263 (6th Cir. 2019) (noting that “[p]roperty interests are not due the same degree of legal protection as the fundamental liberty interests implicated in the *Griffin* line of cases,” and that “Supreme Court precedent does not require anything like exact parity between the State and private creditors in this regard”); *Johnson v. Bredesen*, 624 F.3d 742, 749 (6th Cir. 2010) (distinguishing *Griffin* line of cases because they “concerned fundamental interests subject to heightened scrutiny” and often “involved the denial

of an indigent defendant’s physical liberty,” and noting that alleging denial of a statutory benefit does not invoke any “comparable interest triggering a heightened standard of review”). Expungement is not related to ascertaining guilt or contesting deprivation of liberty or property, so the Iowa Supreme Court was correct to apply rational basis review.

**II. Repayment obligations are only imposed on those who receive appointed counsel and are reasonably able to pay. Incentivizing repayment of that payable debt by making it a condition of eligibility for expungement is reasonable.**

Iowa only imposes repayment obligations upon a finding that the defendant is reasonably able to pay the amounts that would be assessed. *See* Iowa Code § 815.9(5)–(6); *cf. State v. Albright*, 925 N.W.2d 144, 161 (Iowa 2019) (“The inclusion of the reasonable-ability-to-pay requirement makes these restitution provisions constitutional.”). As a result, expungement is only denied upon nonpayment of debt that was imposed after finding that it could be repaid—just like the statutes that survived rational basis review in *Fuller v. Oregon*, which only imposed repayment obligations on those who had “the ability to pay the expenses of legal representation.” *See Fuller*, 417 U.S. at 46. Just like in *Fuller*, each defendant who receives appointed counsel only has “the obligation to repay the State” if that defendant had “means to do so without hardship.” *See id.* Doe did not ask the Iowa Supreme Court to wipe away

her debt obligation or grant an individualized exemption from the limitation on eligibility for expungement based on any alleged failure to make that required finding. *See* App. 15a. Instead, Doe mounts a facial attack on the constitutionality of this limit on eligibility for expungement—but her petition for a writ of certiorari does not grapple with this feature of Iowa’s recoupment statutes. Instead, she argues that Iowa is “pricing indigents out of the criminal justice system” by denying expungement to people who are “not affluent enough” to pay. *See* Pet. at 7–11. But people who are indigent at the moment of acquittal or dismissal of criminal charges are exempt from this condition on eligibility for expungement because Iowa Code section 815.9 forbids Iowa courts from imposing these repayment obligations on defendants who cannot pay. *See* Iowa Code § 815.9(6) (“If the person receiving legal assistance is acquitted in a criminal case . . . , the court shall order the payment of all or a portion of the total costs and fees incurred for legal assistance, to the extent the person is reasonably able to pay, after an inquiry which includes notice and reasonable opportunity to be heard.”).<sup>1</sup> Again, like *Fuller*, “[t]he limitation of the obligation to repay to those who are found

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<sup>1</sup> Doe’s petition for writ of certiorari provides an incomplete quotation of this statute, omitting the reasonable-ability-to-pay requirement without noting that material is omitted from the end of the sentence. *See* Pet. at 2. There is no other mention of this statute in Doe’s petition, nor is there any discussion of the reasonable-ability-to-pay requirement or any reference to the Iowa Supreme Court’s discussion of that statute in assessing the impact of this condition on expungement eligibility. *But see* App. 13a–15a.

able to do so also disposes of the argument . . . that [an adverse effect] for failure to pay constitutes an impermissible discrimination based on wealth.” *Fuller*, 417 U.S. at 54 n.12.

The fact that charges against *Doe* were dismissed does not affect the rationale of *Fuller*, which permits recovery from those who are able to pay:

We live in a society where the distribution of legal assistance, like the distribution of all goods and services, is generally regulated by the dynamics of private enterprise. A defendant in a criminal case who is just above the line separating the indigent from the nonindigent must borrow money, sell off his meager assets, or call upon his family or friends in order to hire a lawyer. We cannot say that the Constitution requires that those only slightly poorer must remain forever immune from any obligation to shoulder the expenses of their legal defenses, even when they are able to pay without hardship.

*Fuller*, 417 U.S. at 53–54. Nothing in that sensible explanation is limited to defendants who have appointed counsel and are convicted—its logic applies with equal force when appointed counsel succeeds in winning an acquittal or securing dismissal of charges. *Cf. Rinaldi v. Yeager*, 384 U.S. 305, 309 (1966) (noting “a legislature could validly provide for replenishing a county treasury from the pockets of those who have directly benefited from county expenditures,” and identifying violation of the Equal Protection Clause with

laws that “fasten a financial burden only upon those unsuccessful appellants who are confined in state institutions” when that distinction “bears no relationship whatever to the purpose of the repayment provision”).

Iowa is not obligated to offer expungement to any claimant. *See Sealed Appellant v. Sealed Appellee*, 130 F.3d 695, 699 (5th Cir. 1997) (“There is no constitutional basis for a ‘right to expungement.’”); *Duke v. White*, 616 F.2d 955, 956 (6th Cir. 1980) (“The right to expungement of state records is not a federal constitutional right.”); accord *Judicial Branch v. Iowa Dist. Ct. for Linn County*, 800 N.W.2d 569, 578–79 (Iowa 2011) (finding legislative decision that some court records should be expunged while others remain public “does not violate the Equal Protection Clause of the Iowa Constitution”). When it does choose to offer expungement, Iowa may choose to require full payment of all validly imposed court debt as a precondition to eligibility. This is not an extraordinary measure, deployed only against those who still owe attorney fees—it applies to *all* court debt, including other costs, fines, and restitution. *See* Iowa Code § 901C.2(1)(a)(2). This renders *James v. Strange* inapposite, because nothing in this statute strips away any right that others may enjoy. *See James*, 407 U.S. at 134–40. And a determination that a defendant is reasonably able to pay those debts, over time, converts any debts left unpaid into “a wrongful withholding from the State of a [debt] on assets in the actual possession of the [defendant].” *See id.* at 138 n.21. Because Iowa Code section 901C.2(1)(a)(2) only requires payment of court-appointed attorney fees

that were imposed after a finding that the applicant was reasonably able to pay, it is inherently reasonable to require that payment as a precondition to eligibility for a gratuitous benefit, which Iowa is not constitutionally obligated to offer to anyone. *See* App. 14a (“The required showing of a reasonable ability to repay the court-appointed attorney fees avoids the constitutional infirmity identified in *James*.”).

**III. Iowa has a strong interest in collecting the massive amount of outstanding and unpaid fees that are owed as repayment for services rendered by appointed attorneys, and owed by defendants who were found to be reasonably able to pay.**

Doe argues that the Iowa Supreme Court “erred in accepting as a permissible state interest the desire to collect money from the indigent.” *See* Pet. at 11. But this Court expressly recognizes that “state recoupment statutes may betoken legitimate state interests.” *James*, 407 U.S. at 141. Indeed, *James* recognized those interests have become more important because of “expanding criminal dockets,” requirements that defendants receive appointed counsel “in widening classes of cases” and at new stages, and expanding “federal dominance of the Nation’s major revenue sources.” *See id.* The Iowa Supreme Court quoted the paragraph from *James* that contains that language, describing the legitimacy of that state interest in payment of court debt. *See* App. 15a–16a (quoting *James*, 407 U.S. at 141).

Doe’s petition attacks the legitimacy of that interest. But Iowa courts struggle to collect on debts owed for court-appointed attorney fees. Iowa’s Legislative Services Agency reported that “[o]f the \$731.9 million owed in Iowa court debt as of June 30, 2017, \$167.6 million—almost a quarter—was owed for indigent defense fee reimbursement.” Legislative Services Agency, *Issue Review: Court Debt Collection*, at 4 (Jan. 3, 2018), available at <https://www.legis.iowa.gov/docs/publications/IR/916685.pdf>. If collected, that could almost fund the Iowa Judicial Branch for an entire fiscal year—and collecting any substantial portion of that amount would help alleviate current budgetary pressures. See Todd Nuccio, State Court Administration, *Iowa Judicial Branch Budget Presentation* (Feb. 28, 2018) at 11, 18–22, <https://www.legis.iowa.gov/docs/publications/SD/925459.pdf>.

Not only does Iowa have a legitimate interest in collecting that debt, but it has an interest in incentivizing relatively prompt repayment—because “[t]he longer the delay, the less likely it is that the defendant will pay.” See Legis. Serv. Agency, *Issue Review: Court Debt Collection*, at 15. That is why it makes sense to condition the availability of expungement on repayment of all court debt. Expungement becomes available at 180 days after charges are dismissed or 180 days after the defendant is acquitted (or earlier, if the applicant demonstrates good cause to waive the 180-day minimum), which creates a repayment timeline that incentivizes defendants to pay off their court debt so



that they can obtain expungement at the earliest opportunity. See Iowa Code § 901C.2(1)(a)(3). It is true that applicants who choose not to pay their outstanding court debt will remain ineligible for expungement—but the Iowa legislature may choose not to extend a statutory benefit to applicants who do not meet neutral eligibility criteria. See, e.g., *Lyng v. Automobile Workers*, 485 U.S. 360, 370–374 (1988) (rejecting challenge under Equal Protection Clause to amendment to Food Stamp Act denying eligibility for new benefits for households with a member on strike, because “our review of distinctions that [the legislature] draws in order to make allocations from a finite pool of resources must be deferential, for the discretion about how best to spend money to improve the general welfare is lodged in [the legislature] rather than the courts”). Obligations assessed for repayment of court-appointed attorney fees are like any other court debt, and the Iowa legislature may reasonably decide to incentivize repayment by dangling a carrot, instead of brandishing a stick. See *Christian Legal Soc’y Chapter of the Univ. of Cal., Hastings Coll. of Law v. Martinez*, 561 U.S. 661, 682–83 (2010) (noting that “our decisions have distinguished between policies that require action and those that withhold benefits” and recognizing a constitutionally meaningful difference between “dangling the carrot” of conditional benefits and “wielding the stick of prohibition”).

Indeed, that metaphor is the best way to understand why this case is distinguishable from *James*. Rather than treating court-appointed attorney fee

reimbursement as debt that is qualitatively different from similar debts and brandishing a more punitive stick—which was the problem in *James*—Iowa is treating court-appointed attorney fee repayment just like any other outstanding court debt and using the same carrot to incentivize repayment. Compare *James*, 407 U.S. at 137–38 (“[O]ther Kansas statutes providing for recoupment of public assistance to indigents do not include the severe provisions imposed on indigent defendants in this case.”), with App. 16a–17a (rejecting Equal Protection Clause challenge because Iowa legislature “could choose to condition expungement on payment of court debt to motivate defendants to pay what they owe the State,” and observing that “[o]ther Iowa statutes impose consequences such as loss of licenses for failure to pay state debt or child support”). The Iowa Supreme Court was correct to reject Doe’s challenge, and there is no need to grant certiorari.

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## CONCLUSION

Policy arguments about the benefits of expungement may persuade Iowa legislators to eliminate this requirement or craft some exception. But that decision is for the Iowa legislature to make. Doe and amici make a series of policy arguments about the wisdom of limiting availability of expungement to incentivize repayment of court debt, but those arguments “should be directed to the legislature.” See App. 16a. They cannot establish a violation of the Equal Protection Clause through this broad facial challenge. Iowa has a rational

basis for withholding expungement until applicants pay outstanding debts, which can only be assessed to those who are able to pay. As such, this Court should deny Doe's petition for a writ of certiorari.

Respectfully submitted,

THOMAS J. MILLER  
Attorney General of Iowa

JEFFREY THOMPSON  
Solicitor General

KEVIN CMELIK  
Division Director,  
Criminal Appeals  
*Counsel of Record*  
Hoover Build., 2nd Floor  
1305 E. Walnut  
Des Moines, Iowa 50319  
(515) 281-5976  
kevin.cmelik@ag.iowa.gov