

No. 19-169

In the
Supreme Court of the United States

JANE DOE,

Petitioner,

v.

IOWA,

Respondent.

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

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

Iowa offers three reasons the Court should deny the petition, but Iowa is mistaken with respect to all three.

ARGUMENT

I. The Equal Protection issue is properly before the Court.

First, Iowa objects (BIO 4-5) to our inclusion of one argument we did not make below. Iowa misunderstands the distinction between *claims* and *arguments*. The Court’s “traditional rule is that ‘[o]nce a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below.’” *Lebron v. National R.R. Passenger Corp.*, 513 U.S. 374, 379 (1995) (quoting *Yee v. City of Escondido*, 503 U.S. 519, 534 (1992)). Our Equal Protection claim is properly presented, because we raised it in the state courts and the state courts decided it. Both parties may now make their best arguments on this issue, regardless of whether these arguments were made below.

Iowa errs further in contending (BIO 5-6) that a proceeding for the expungement of a criminal record is not a quasi-criminal proceeding. It *is* a quasi-criminal proceeding. Jane Doe seeks only one thing—to have her criminal record expunged, on the same terms as non-indigent Iowans. She is not seeking property, as Iowa incorrectly suggests. If her criminal record were expunged, she would still owe the state \$550, just like she does now.

II. Our Equal Protection challenge is to the denial of expungement, not to the validity of the court debt.

Second, Iowa makes much (BIO 6-10) of the fact that in imposing court costs on a defendant who has been acquitted, the defendant's ability to pay is supposed to be taken into account. But this fact has no bearing on our claim, because we are not challenging the validity of Jane Doe's debt. As this case comes to the Court, she owes the state \$550 for having been assigned an attorney. Our challenge is to the way the state discriminates in granting expungement. Defendants who are affluent enough to owe debts for *retained* counsel are entitled to have their criminal records expunged. Defendants who owe debts for *assigned* counsel are not. Rather, they are branded for life with criminal records, even though they were never convicted of any crimes. That violates the Equal Protection Clause.

Iowa appears to suggest (BIO 3) that when Jane Doe applied for expungement, she should have asked the court for an exemption from the statutory requirement that she pay all her court debt. But the statute does not allow for any such exemption. Pet. App. 16a-17a ("had the legislature intended to allow courts to waive the requirement that court-appointed attorney fees be repaid prior to expungement based on a present inability to pay, it could have said so. ... We cannot rewrite the statute to allow waiver of court debt.").

III. Iowa's merits argument is wrong.

Third, Iowa argues on the merits (BIO 10-13) that the state's fiscal interest in collecting money from

criminal defendants allows it to deny expungement to defendants who are unable to pay. If this argument sounds familiar, it is because the Court has rejected it many times.

The same fiscal concern has *always* been the state's asserted interest in denying indigent defendants access to criminal and quasi-criminal proceedings. In *Griffin v. Illinois*, 351 U.S. 12 (1956), *Rinaldi v. Yeager*, 384 U.S. 305 (1966), *Williams v. Oklahoma City*, 395 U.S. 458 (1969), and *Mayer v. City of Chicago*, 404 U.S. 189 (1971), the state or city wanted defendants to pay for trial transcripts. In *Long v. District Ct.*, 385 U.S. 192 (1966), the state wanted defendants to pay for transcripts of habeas corpus proceedings. In *Burns v. Ohio*, 360 U.S. 252 (1959), and *Smith v. Bennett*, 365 U.S. 708 (1961), the state wanted defendants to pay filing fees. In *James v. Strange*, 407 U.S. 128 (1972), the state wanted defendants to pay for defense counsel. In *M.L.B. v. S.L.J.*, 519 U.S. 102 (1996), the state wanted parents to pay record preparation fees. When states have tried to shut the courthouse door to indigent defendants, it has always been for the purpose of collecting money from them. In all these cases, to use Iowa's locution, the state tried "to incentivize repayment by dangling a carrot" (BIO 12)—the carrot of being allowed access to judicial proceedings on the same terms as the affluent.

If the line of cases running from *Griffin* to *James* and *M.L.B.* stands for anything, it is that the state's use of this particular carrot violates the Equal Protection Clause. Every time a state has argued that its interest in collecting money from criminal defendants allows it to deny indigent defendants access

to criminal or quasi-criminal proceedings, the Court has rejected the argument. It should do the same here.

Moreover, even if the Court were to overrule all these cases and accept, as a reason to deny indigent defendants access to the courts, the state's effort to "fund the Iowa Judicial Branch" (BIO 11) on the backs of people too poor to afford a lawyer, the state's own figures demonstrate the utter irrationality of this scheme. Iowa reports (BIO 11) that in 2017 indigent defendants owed \$167 million in court debt for having exercised their right to assigned defense counsel. But the state was able to collect only 2.4% of this figure. Iowa Judicial Branch, *Clerks of Court Collections: FY 18 Compared to FY 17*.¹ Indigent people just don't have much money. The surest way to keep them indigent is to saddle them for life with criminal records, so they won't be able to get jobs. By denying expungement to the poor, Iowa is making it harder, not easier, to alleviate the "current budgetary pressures" (BIO 11) that are the ostensible justification for this discrimination.

The charges against Jane Doe were dismissed, but she is stuck with a criminal record because she cannot afford to pay \$550 in counsel fees to the state. If she owed the same debt to private counsel, her criminal record would already have been expunged. No other state discriminates against indigent criminal defendants in this way. The Court should grant certiorari and reverse.

¹ <https://www.legis.iowa.gov/docs/publications/DF/969686.pdf>. In 2017 the state collected \$3,983,668 in indigent defense reimbursement, which was 2.4% of the \$167,598,811 in outstanding debt for indigent defense reimbursement.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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