

IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 18-1366

Upon the Petition of

**THE STATE OF IOWA,
Plaintiff-Appellee,**

And Concerning

**JANE DOE,
Defendant-Appellant**

**APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
THE HONORABLE BECKY GOETTSCHE,
DISTRICT ASSOCIATE JUDGE**

APPELLANT'S FINAL BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES3

ISSUE PRESENTED FOR REVIEW5

ROUTING STATEMENT7

STATEMENT OF THE CASE.....8

STATEMENT OF FACTS10

ARGUMENT13

I. Iowa Code 901C.2’s Fee Requirement Violates the Equal Protection Clause by Denying Expungement to Indigent Defendants who have Unpaid Court-Appointed Attorney Fees.....15

 A. IOWA’S DISMISSAL-ACQUITTAL EXPUNGEMENT LAW REQUIRES PAYMENT OF COURT-IMPOSED FEES.....15

 B. EQUAL PROTECTION PRECLUDES THE STATE FROM IMPOSING HARSH OR DISCRIMINATORY TERMS ON INDIGENT DEFENDANTS.....16

 C. THE DISTRICT COURT’S DENIAL OF DOE’S EXPUNGEMENT VIOLATES THE EQUAL PROTECTION CLAUSE23

CONCLUSION.....27

CERTIFICATE OF SERVICE29

COST CERTIFICATE.....30

CERTIFICATE OF COMPLIANCE31

TABLE OF AUTHORITIES

Cases

<i>Callender v. Skiles</i> , 591 N.W.2d 182 (Iowa 1999).....	15
<i>City of Cleburne v. Cleburne Living Center</i> , 473 U.S. 432 (1985).....	17
<i>Gideon v. Wainwright</i> , 372 U.S. 335 (1963)	18
<i>James v. Strange</i> , 407 U.S. 128 (1972)	7, 19, 24, 26
<i>Johnson v. Bredesen</i> , 624 F.3d 742, 749 (6th Cir. 2010)	23
<i>Judicial Branch, State Court Adm’r v. Iowa Dist. Court for Linn Cty.</i> , 800 N.W.2d 569 (Iowa 2011)	16
<i>McLaughlin v. Florida</i> , 379 U.S. 184 (1964).....	17
<i>Racing Ass’n of Central Iowa v. Fitzgerald</i> , 675 N.W.2d 1 (Iowa 2004).....	17
<i>Rhoades v. State</i> , 848 N.W.2d 22 (Iowa 2014)	15
<i>Robinson v. Purkey</i> , 326 F.R.D. 105 (M.D. Tenn. 2018).....	23
<i>State v. Doe</i> , 903 N.W.2d 347 (Iowa 2017).....	16
<i>State v. Dudley</i> , 766 N.W.2d 606 (Iowa 2009).....	20, 21, 26
<i>State v. Huth</i> , 334 N.W.2d 485 (S.D. 1983).	22
<i>State v. Sluyter</i> , 763 N.W.2d 575 (Iowa 2009).....	8, 20, 26
<i>State v. Snyder</i> , 203 N.W.2d 280 (Iowa 1972)	21, 22
<i>State v. Williams</i> , 343 So.2d 35 (Fla. 1977)	22
<i>Tate v. Short</i> , 401 U.S. 395 (1972)	22
<i>Thomas v. Haslam</i> , 2018 WL 3301648 (M.D. Tenn. July 2, 2018)	23

Bills and Statutes

2015 Iowa Acts ch. 83, § 18

2016 Acts ch. 1073 §§ 183–848

H.F. 2350 (2016).....16

Iowa Code § 815.9 18, 21, 24

Iowa Code § 901C.2..... 7, 8, 9, 16, 23, 26

S.F. 385 (2015).....15

Rules

Iowa R. App. P. 6.11018

Treatises

Ants Under the Refrigerator? Criminal Justice (Winter 2016)25

Bruce Vielmetti, *Wisconsin’s criminal expungement rules keep needed workers out of jobs, study says*, MILWAUKEE JOURNAL-SENTINEL (June 8, 2018), <https://www.jsonline.com/story/news/2018/06/06/report-easing-expungement-criminal-records-could-boost-jobs/665374002/>25

Lahny R. Silva, *Clean Slate: Expanding Expungements and Pardons for Non-Violent Federal Offenders*, 79 U. CIN. L. REV. 155 (2010).....26

Legislative Services Agency, Issue Review: Court Debt Collection (January 3, 2018).....18

Unstitching Scarlet Letters?: Prosecutorial Discretion and Expungement, 86 Fordham L. Rev. 2821 (2018)25

ISSUE PRESENTED FOR REVIEW

- I. THE DISTRICT COURT ERRED WHEN IT RULED THAT EXPUNGEMENT CANNOT BE GRANTED IN THIS CASE UNTIL ALL COURT-APPOINTED ATTORNEY FEES ARE PAID.

Cases

Callender v. Skiles, 591 N.W.2d 182 (Iowa 1999)
City of Cleburne v. Cleburne Living Center, 473 U.S. 432 (1985)
Gideon v. Wainwright, 372 U.S. 335 (1963)
James v. Strange, 407 U.S. 128 (1972)
Johnson v. Bredesen, 624 F.3d 742 (6th Cir. 2010)
Judicial Branch, State Court Adm'r v. Iowa Dist. Court for Linn Cty., 800 N.W.2d 569 (Iowa 2011)
McLaughlin v. Florida, 379 U.S. 184 (1964)
Racing Ass'n of Central Iowa v. Fitzgerald, 675 N.W.2d 1 (Iowa 2004)
Rhoades v. State, 848 N.W.2d 22 (Iowa 2014)
Robinson v. Purkey, 326 F.R.D. 105 (M.D. Tenn. 2018)
State v. Doe, 903 N.W.2d 347 (Iowa 2017)
State v. Dudley, 766 N.W.2d 606 (Iowa 2009)
State v. Huth, 334 N.W.2d 485 (S.D. 1983)
State v. Shuyter, 763 N.W.2d 575 (Iowa 2009)
State v. Snyder, 203 N.W.2d 280 (Iowa 1972)
State v. Williams, 343 So.2d 35 (Fla. 1977)
Tate v. Short, 401 U.S. 395 (1972)
Thomas v. Haslam, 2018 WL 3301648 (M.D. Tenn. July 2, 2018)

Bills and Statutes

2015 Iowa Acts ch. 83, § 1
2016 Acts ch. 1073 §§ 183–84
H.F. 2350 (2016)
Iowa Code § 815.9
Iowa Code § 901C.2
S.F. 385 (2015)

Rules

Iowa R. App. P. 6.1101

Articles

Ants Under the Refrigerator? Criminal Justice (Winter 2016)

Bruce Vielmetti, *Wisconsin's criminal expungement rules keep needed workers out of jobs, study says*, MILWAUKEE JOURNAL-SENTINEL (June 8, 2018), <https://www.jsonline.com/story/news/2018/06/06/report-easing-expungement-criminal-records-could-boost-jobs/665374002/>

Lahny R. Silva, *Clean Slate: Expanding Expungements and Pardons for Non-Violent Federal Offenders*, 79 U. CIN. L. REV. 155 (2010)

Legislative Services Agency, Issue Review: Court Debt Collection (January 3, 2018)

Unstitching Scarlet Letters?: Prosecutorial Discretion and Expungement, 86 Fordham L. Rev. 2821 (2018)

ROUTING STATEMENT

The issue at the heart of this case involves a basic question of equal protection — namely, can the State employ unduly harsh and discriminatory restrictions on expungement for those relying on indigent defense counsel, where such restrictions are absent for those who can afford to retain counsel in the private market.

The Iowa General Assembly enacted Iowa Code § 901C.2, the dismissal-acquittal expungement law, to allow people who were acquitted of criminal charges or whose cases were dismissed to remove those cases from the public record. The statute provides that, “upon application of a defendant ... in a criminal case, the court shall enter an order expunging the record of such criminal case” if the defendant establishes certain criteria listed in the law. One requirement is that all court costs and fees have been paid.

In this case, a district court dismissed both charges against Ms. Doe and assessed court-appointed attorney fees to her. When Ms. Doe applied for expungement, the court denied her motion because the fees have not been paid. This denial violates the equal protection principles recognized in *James v. Strange*, 407 U.S. 128 (1972), which held that a State may not “impose unduly harsh or discriminatory terms merely because the obligation is to the public treasury rather than to a private creditor.” *See also State v. Sluyter*, 763 N.W.2d 575 (Iowa 2009).

The Iowa Supreme Court should retain jurisdiction because the case presents a substantial constitutional question as to the validity of the fee requirement of Iowa Code § 901C.2, and because the case presents a substantial issue of first impression. Iowa R. App. P. 6.1101(2)(a)(2)(c). & 6.1101(2)(c).

STATEMENT OF THE CASE

This case arises from a domestic abuse incident nearly a decade ago, on April 29, 2009. Although police were called to investigate an incident in which a witness reported Ms. Doe was held at knife point, they charged her instead. App. 8–9. Ms. Doe’s first court-appointed attorney negotiated an agreement in which the case against her would be dismissed if she completed a family violence service class, which she did. App. 21–22. The State moved to dismiss the case in September 2009 and the court assessed the costs to Ms. Doe. App. 23.

In 2015, six years after Ms. Doe’s case was dismissed, the General Assembly enacted Chapter 901C of the Iowa Code. *See* 2015 Iowa Acts ch. 83, § 1 (adopting this provision); 2016 Acts ch. 1073 §§ 183–84, 188 (making clarifying amendments). Section 901C.2 provides that a defendant in a criminal case may apply for expungement when all charges in the case were dismissed. Iowa Code § 901C.2(1)(a)(1). As an additional requirement, expungement will not be granted until “[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.” Iowa Code § 901C.2(1)(a)(2).

In June 2018, Ms. Doe filed a motion to expunge this case under Iowa Code § 901C.2. App. 26–28. The district court set a hearing for June 28, in which both Ms. Doe and the State were represented by counsel and no court reporter was present. App. 30–32. On July 18, the district court entered an order denying the expungement. App. 33–35. The court acknowledged that Ms. Doe had argued that “requiring an indigent person to reimburse attorney fees prior to expungement, unlike an individual who hired their own counsel, violates the Constitution, specifically due process and equal protection.” *Id.* The court rejected the constitutional argument, finding that “Defendant was made aware of reimbursing attorney fees and that expungement could not occur until all fees and assessed costs were paid.” *Id.* The court referenced a “bargain defendant negotiated,” and stated Ms. Doe “has had several years to pay and may still obtain expungement if and when the fees are paid.” *Id.* Ms. Doe noted her timely, pseudonymous appeal to the Iowa Supreme Court on August 9, 2018. App. 38. The district court accepted an amended notice of appeal on August 17, 2018. App. 49.

STATEMENT OF FACTS

At 3 a.m. on April 29, 2009, a woman called Des Moines police to respond to a residence on Southwest 3rd Street, where a man held another woman at knife point. App. 8; App. 12. Upon arrival, Officer Andersen received several reports that the man with the knife had fled from an upstairs window. App. 8–10. When officers could not find the man outside, they attempted to enter the residence through the front door, where they encountered Ms. Doe. *Id.* Ms. Doe identified herself as the victim, stood in the entrance, and told the officers she did not want them to come inside. *Id.* After Ms. Doe refused the officers entry multiple times, Officer Andersen reported that she pushed and shoved him to keep the officers from entering. *Id.* The officers grabbed Ms. Doe, forced her arms behind her back, and put her in handcuffs while they searched the residence for the man. *Id.* The officers later noted a small cut on Ms. Doe’s lip and stated they were not sure when the injury occurred. App. 11. Ms. Doe told officers that she sustained the injury to her lip during her struggle to keep the officers out of the residence. *Id.* Inside the residence, the officers found the man hiding in a closet. App. 8.

Ms. Doe told police that the man, with whom she has a child, had gotten a call from another woman, which prompted the dispute. App. 10. Despite what others had told police, Ms. Doe said she had pulled the knife on the man and bitten his finger. *Id.* When the man was questioned, he denied that a knife was used but

acknowledged having been bitten on the finger. *Id.* Officers Andersen and Miller concluded, “It is still unknown why [the man] was hiding from us except that he stated he has had a lot of run ins with the law and was on probation.” *Id.* Officers learned that Ms. Doe had wanted others to tell police that the individual with whom she was fought was someone else. App. 13–14. “As a result of this,” Officer O’Donnell reported, Ms. Doe “was arrested and charged with domestic simple.” *Id.* Police attempted to follow up with the man after the incident but he did not return their phone calls. *Id.*

The man was released but Ms. Doe was charged, by criminal complaint, with one count of domestic abuse assault with a dangerous weapon, Iowa Code § 708.2A(2)(c), an aggravated misdemeanor, and one count of assault on a police officer, Iowa Code § 708.3(A)(4), a serious misdemeanor. App. 10; App. 6–7. On April 29, 2009, the date of the incident and the date she was charged, Ms. Doe requested court-appointed counsel. App. 15. The court ordered a private, court-appointed attorney to represent her. App. 16. In her affidavit, Ms. Doe stated she was a single mother of three children and that her only income was food assistance of \$250 per month. App. 15. On June 3, an assistant county attorney filed a trial information with the same two charges alleged in the preliminary complaint. App. 20. On August 3, Ms. Doe’s first court-appointed attorney filed a motion to withdraw, in which he informed the court that Ms. Doe and the State had reached

an agreement: upon Ms. Doe’s successful completion of a family violence services class by September 15, 2009, the State would dismiss the case against her. App. 21–22. The court approved the withdrawal and appointed a second private attorney to represent Ms. Doe on August 3. *Id.* After Ms. Doe completed the family violence services class, the assistant county attorney filed a notice of intent not to prosecute the case, and the Polk County District Court entered an order of dismissal. App. 23. Costs of the case were assessed to Ms. Doe. *Id.* A request for execution filed in 2014 stated that Ms. Doe’s unpaid court costs for the judgment entered on September 15, 2009 totaled \$718.38. App. 24. There is nothing in the record that suggests the court performed a reasonable ability to pay assessment when it assessed costs to Ms. Doe. As of August 17, 2018, the date this appeal was noted in district court, Ms. Doe still owed \$550.38, all of which is court-appointed attorney fees. App. 47.

Ms. Doe filed a written motion to expunge this case on June 6, 2018. App. 26–28. The district court set a hearing, which was held on June 28. App. 30–32. On July 18, the district court entered an order denying the expungement. App. 33–35. The district court found, among other things, that Ms. Doe “may still obtain expungement if and when the fees are paid.” *Id.* Ms. Doe noted her timely appeal to the Iowa Supreme Court on August 9, 2018 and the district court accepted her amended appeal on August 17, 2018. App. 38; App. 49. In her affidavit in support

of filing this appeal without prepayment of fees, Ms. Doe stated under penalty of perjury that she receives monthly food assistance of \$500, and \$426 monthly from the Family Investment Program to support two children and a third that was due in August 2018. App. 36–37. She further stated that her monthly expenses are estimated at \$1,445 per month. *Id.*

ARGUMENT

Only two years ago, criminal defendants in Iowa who were acquitted or whose charges were dismissed gained the ability to remove those cases from the public record. The dismissal-acquittal expungement law, Iowa Code § 901C.2, represents an enormous opportunity for people with criminal records to remove significant barriers to employment. A law that removes barriers to employment will have its greatest impact on individuals who have little or no income, such as Ms. Doe.

That same law provides that a person who was acquitted of all criminal charges or whose case was dismissed must first pay all costs assessed to her by the court before she can expunge the case. In this case, the only costs owed are court-appointed attorney fees. Under a strict statutory construction, the district court found that Ms. Doe cannot expunge this case until she pays her attorney bill.

Ms. Doe does not dispute the validity of the court-appointed attorney fee debt, although there is no evidence that an ability to pay determination was made at the time that debt was assessed. Nothing except her indigency prohibits the State from recouping these fees, even if the case is expunged. Ms. Doe challenges only the discriminatory effect of the court debt — namely, the barrier against expungement of her dismissed criminal case.

Equal protection demands that a State cannot treat a poor person differently because her debt is to the State, rather than to a private creditor. If Ms. Doe had been able to hire the same private attorneys who represented her in this case, she would owe that bill to them, rather than to the State. Those attorneys could not deny Ms. Doe the ability to expunge this case because of that bill. But because Ms. Doe could not afford an attorney, she owes her attorney bill to the State. Now the State has told her that because of her poverty, she cannot expunge her dismissed case.

If a law places a greater burden on someone who could not afford an attorney than it does on someone who can, the law violates equal protection. The Iowa Constitution and United States Constitution require that Ms. Doe be treated the same as any other criminal defendant, regardless of whether she could afford an attorney. Equal protection requires that she be allowed to expunge this case, even if she still owes the State a debt for her attorneys' services.

I. Iowa Code 901C.2's Fee Requirement Violates the Equal Protection Clause by Denying Expungement to Indigent Defendants who have Unpaid Court-Appointed Attorney Fees

Preservation of Error and Scope of Review

Ms. Doe preserved error in her Motion to Expunge, which cites Iowa Code § 901C.2 and the equal protection clauses of the Iowa Constitution and United States Constitution.

The district court's order denying Ms. Doe's expungement request presents issues of statutory interpretation, which are reviewed for correction of errors at law. *Rhoades v. State*, 848 N.W.2d 22, 26 (Iowa 2014). The standard of review for constitutional claims is de novo. *Callender v. Skiles*, 591 N.W.2d 182, 185 (Iowa 1999).

Discussion

A. IOWA'S DISMISSAL-ACQUITTAL EXPUNGEMENT LAW REQUIRES PAYMENT OF COURT-IMPOSED FEES

On May 1, 2015, the dismissal-acquittal expungement bill became law. S.F. 385 (2015). Previously, acquitted defendants and defendants whose criminal charges had been dismissed had tried to remove such records from public view, but those efforts were unsuccessful for lack of a proper statutory expungement tool or a constitutional right to expungement. *See, e.g., Judicial Branch, State Court*

Adm'r v. Iowa Dist. Court for Linn Cty., 800 N.W.2d 569, 579 (Iowa 2011). The dismissal-acquittal expungement law took effect on January 1, 2016. The current, amended version was approved April 6, 2016 and took effect on July 1, 2016. H.F. 2350 (2016).

Iowa Code § 901C.2(1)(a) states, in relevant part:

Except as provided in paragraph “b”, upon application of a defendant or a prosecutor in a criminal case, or upon the court’s own motion in a criminal case, the court shall enter an order expunging the record of such criminal case if the court finds that the defendant has established that all of the following have occurred, as applicable: (1) The criminal case contains one or more criminal charges in which an acquittal was entered for all criminal charges, or in which all criminal charges were otherwise dismissed. (2) All court costs, fees, and other financial obligations ordered by the court or assessed by the clerk of the district court have been paid.

Iowa Code § 901C.2. In its first opportunity to review the new law, the Iowa Supreme Court considered the question of what constitutes a criminal case under Iowa Code § 901C.2(1)(a)(1). *State v. Doe*, 903 N.W.2d 347 (Iowa 2017). This case asks whether the record clearing intent and effect of the law can be denied indigent defendants because of their indigency.

B. EQUAL PROTECTION PRECLUDES THE STATE FROM IMPOSING HARSH OR DISCRIMINATORY TERMS ON INDIGENT DEFENDANTS

The Equal Protection Clause “is essentially a direction that all persons similarly situated should be treated alike.” *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439 (1985). Whether this standard has been met in situations where there is no suspect class nor fundamental rights implicated, is measured by a rational basis test. The standard under the United States Constitution has been “whether the classifications drawn in a statute are reasonable in light of its purpose.” *McLaughlin v. Florida*, 379 U.S. 184, 191 (1964).

Although the Equal Protection analysis under the Iowa Constitution has been like that under the U.S. Constitution, Iowa has taken a somewhat more critical view of the statutes being analyzed, applying a more rigorous test. “Although equal protection does not demand that a statute apply equally to all persons, it does require that persons similarly situated with respect to the legitimate purpose of the law receive like treatment.” *Racing Ass’n of Central Iowa v. Fitzgerald*, 675 N.W.2d 1, 7 (Iowa 2004) (citing *Bierkamp v. Rogers*, 293 N.W.2d 577, 580 (Iowa 1980)). As the court stated in *Racing Ass’n*, 675 N.W.2d at 9:

Our prior cases illustrate that, although the rational basis standard of review is admittedly deferential to legislative judgment, “ ‘it is not a toothless one’ ” in Iowa. *Mathews v. de Castro*, 429 U.S. 181, 185, 97 S.Ct. 431, 434, 50 L.Ed.2d 389, 394 (1976) (citation omitted); *accord Fed. Land Bank*, 426 N.W.2d at 156 (recognizing the “deferential scrutiny” accorded the state “in the realm of economic policy and regulation,” but stating that “even in the economic sphere, a citizen’s guarantee of equal protection is violated if desirable legislative goals are achieved by the state through wholly arbitrary classifications or otherwise invidious discrimination”); *Bierkamp*, 293

N.W.2d at 581 (noting court’s “considerable deference to the judgment of the legislature ... is not, in and of itself, necessarily dispositive”).

Under either the federal or state constitutional standard, the requirement under the statute that all fees, including court-appointed attorney fees, must be paid before a dismissed case can be expunged violates equal protection.

Gideon v. Wainwright established that indigent criminal defendants in state courts have the right to the effective assistance of defense counsel. 372 U.S. 335 (1963). Not long after *Gideon*, states began enacting laws to recoup the costs of providing court-appointed counsel. *See, e.g.*, Iowa Code § 815.9. Of 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 4 (January 3, 2018), available at <https://www.legis.iowa.gov/docs/publications/IR/916685.pdf>.

Although *Gideon* established the groundwork of the Sixth Amendment right to counsel, subsequent cases involving the recoupment of indigent defense fees implicated the Equal Protection Clause. One of the first cases to analyze state recoupment methods was *James v. Strange*, 407 U.S. 128 (1972). Under the Kansas Aid to Indigent Defendants Act, the state of Kansas sought to recoup delinquent court-appointed attorney fees by placing a lien on any real estate owned by an indigent defendant. When the state pursued such a debt by execution and

garnishment, however, the Kansas law disallowed the indigent defendant the benefit of all the normal debtor's exemptions, except the homestead exemption. *Id.* at 131. The Court focused on the law's different treatment of indigent defendants and those who have hired their own counsel. "Should the latter prove unable to pay and a judgment be obtained against him, his obligation would become enforceable under the relevant provisions of the Kansas Code of Civil Procedure. But, unlike the indigent under the recoupment statute, the code's exemptions would protect this judgment debtor." *Id.* at 136–37.

In striking down the Kansas law, the United States Supreme Court held that a State may not "impose unduly harsh or discriminatory terms merely because the obligation is to the public treasury rather than to a private creditor." *Strange*, 407 U.S. at 138. In finding that the Kansas statute failed a rational basis test, the *Strange* Court stated that the "Equal Protection Clause 'imposes a requirement of some rationality in the nature of the class singled out'" and that "[t]his requirement is lacking where, as in the instant case, the State has subjected indigent defendants to such discriminatory conditions of repayment." *Id.* at 140. For a state "to impose these harsh conditions on a class of debtors who were provided counsel as required by the Constitution is to practice ... a discrimination which the Equal Protection Clause proscribes." *Id.* at 140–41.

The Iowa Supreme Court applied the equal protection principles of *James v. Strange* when it considered whether the state could hold an acquitted defendant in contempt of court for nonpayment of indigent defense fees. *State v. Sluyter*, 763 N.W.2d 575 (Iowa 2009). The day after Michael Sluyter was acquitted by a jury of all remaining charges against him, the district court issued a show cause order to monitor his payment of indigent defense fees, which were assessed after trial. *Id.* at 577–78. When the court later tried to hold him in contempt for nonpayment of his obligation, he sought certiorari. *Id.* at 579. The Iowa Supreme Court held that the state’s effort to use contempt to collect Sluyter’s debt suffered the same constitutional deficiency as the Kansas recoupment law in *Strange*. *Id.* at 584. If the state prevailed, the court found, it would “bypass all the protections enjoyed by civil judgment debtors under our execution and related statutes and send Sluyter directly to jail.” *Id.* Because equal protection precludes such a result, Sluyter prevailed.

In *State v. Dudley*, 766 N.W.2d 606 (Iowa 2009), an indigent defendant who had been acquitted of a criminal charge by a jury challenged the court’s post-trial imposition of court-appointed attorney fees without considering his reasonable ability to pay. Two weeks after Dudley’s jury acquittal, the district court assessed him the costs of his court-appointed lawyer and ordered him to pay those fees within eight days. *Id.* at 611. Absent such a payment, the court ordered that the fees

would be entered against him as a judgment. *Id.* Dudley requested a hearing and raised several constitutional objections to the court's actions, claiming violations of his Sixth Amendment right to counsel, due process and equal protection, and the debtor clause of the Iowa Constitution. *Id.* The court overruled the objections and ordered that Dudley pay \$200 per month until the fees were paid, or the court would hold him in contempt. *Id.*

The Iowa Supreme Court held that Iowa Code § 815.9 had effectively deprived Dudley of his right to counsel under the Iowa and U.S. constitutions by imposing court-appointed attorney fees without considering his reasonable ability to pay. *Id.* at 614. Citing *James v. Strange*, the court also found that the version of Iowa Code § 815.9(7) then in force violated Dudley's equal protection rights by granting courts the ability to impose the recoupment debt without considering his ability to pay it and deny him the normal exemption protections under the law. *Id.* at 617. The court found that "the different treatment of acquitted defendants such as Dudley as compared to ordinary civil judgment debtors violates the Equal Protection Clause." *Id.*

In a case decided around the same time as *Strange*, the Iowa Supreme Court found that jailing someone for mere inability to pay a fine was a violation of equal protection. *State v. Snyder*, 203 N.W.2d 280 (Iowa 1972). In reaching this decision, the *Snyder* Court stated that "[d]istinctions in the administration of criminal justice

between rich and poor are generally not likely to bear up under constitutional scrutiny... [s]uch economic discrimination falls squarely within the protection of [the Fourteenth] Amendment.” *Id.* at 287. Drawing from a then-recent United Supreme Court decision in *Tate v. Short*, 401 U.S. 395 (1972), the court found that “[t]he trial court’s direction for confinement of [the defendant] for default in payment of his fine gives rise to a difference in treatment that constitutes invidious discrimination on the basis of wealth in violation of the equal protection clause of the United States Constitution.” *Id.* at 291.

Courts in other jurisdictions have also recognized that the equal protection analysis in *Strange* necessarily goes beyond the availability of debtor’s exemptions. The Supreme Court of Florida, for example, found that a perpetual lien for indigent defense reimbursement not subject to any statute of limitations was void on equal protection grounds. *State v. Williams*, 343 So.2d 35 (Fla. 1977). Invoking *Strange*, the court found that, as an ordinary civil judgment debtor would enjoy the normal protections of time limitation on a judgment, it was a denial of equal protection to treat indigent defense debtors more harshly. *Id.* Using similar logic, the Supreme Court of South Dakota found restrictions on bankruptcy to be a violation of the equal protection principles laid out in *Strange*, to the extent that defense attorney fees not owed to the state would be subject to a bankruptcy discharge. *State v. Huth*, 334 N.W.2d 485 (S.D. 1983).

In a recent challenge to a Tennessee law that prohibits a person from having a driver's license when court debt is owed, a federal district court concluded that:

Whereas Kansas took away protections from its ordinary scheme, Tennessee heaped on additional tools of coercion — most notably, the loss of a driver's license. While the structure of the schemes is different, the effect is the same: one particular type of debtor is singled out for a regime uniquely capable of driving those debtors into, or further and more inextricably into, poverty.

Thomas v. Haslam, 2018 WL 3301648, at *43 (M.D. Tenn. July 2, 2018), *appeal docketed*, No. 18-5766 (6th Cir. July 25, 2018). *See also Robinson v. Purkey*, 326 F.R.D. 105, 161 (M.D. Tenn. 2018) (holding that Tennessee's method of revoking driver's licenses for failure to pay fines and fees is, "like Kansas' scheme of unlimited garnishment [in *Strange*], a threat to the debtor's basic subsistence"). In both cases, the court applies a heightened version of scrutiny based on the Sixth Circuit's interpretation of *James v. Strange*. *See Johnson v. Bredesen*, 624 F.3d 742, 749 (6th Cir. 2010).

C. THE DISTRICT COURT'S DENIAL OF DOE'S EXPUNGEMENT VIOLATES THE EQUAL PROTECTION CLAUSE

Iowa Code § 901C.2(1)(a)(2) violates the Equal Protection Clause of the Iowa Constitution and United States Constitution by requiring payment of court-appointed attorney fees before a defendant can obtain an expungement. In its ruling denying expungement in this case, the district court rejected this argument, finding

that Ms. Doe “has had several years to pay and may still obtain expungement if and when the fees are paid.” App. 34.

Consider two criminal defendants charged with the same crime, one indigent and one with means. The court will appoint an attorney for the indigent defendant, while the other will retain private counsel at her own expense. In each hypothetical case, the criminal charge is dismissed. For the indigent defendant, the court may impose the costs of court-appointed counsel after an assessment of the person’s reasonable ability to pay. Iowa Code § 815.9(6). The defendant who retained private counsel, meanwhile, will owe a private debt to her attorney.

Now consider when each of these defendants — the indigent defendant and the defendant who retained private counsel — applies to have her dismissed criminal case expunged. Under the district court’s interpretation, the defendant who had the means to hire private counsel will have her case expunged, while the indigent defendant’s request will be denied. The state has exercised its power as a creditor to deny expungement to an indigent defendant. This is precisely what happened to Ms. Doe. Unlike the State, a retained attorney could never deny expungement to a client who had not paid her private debt.

The heart of *James v. Strange* was preservation of an indigent debtor’s ability to achieve a “self-sufficiency which might make of the criminally accused a contributing citizen.” *Strange* at 139. Like the aegis of debtor’s exemptions, record

clearance has become an indispensable element of self-sufficiency in the modern information age.

“The overwhelmingly negative effect of a criminal record is undeniable.”

Brian M. Murray, *Unstitching Scarlet Letters?: Prosecutorial Discretion and Expungement*, 86 FORDHAM L. REV. 2821, 2831 (2018). For a misdemeanor criminal arrest in a case that ultimately results in dismissal, consider the negative effects of an arrest and prosecution on a person’s ability to get and maintain employment, education, or housing. *Id.* at 2834–36. Criminal records are both an effect of poverty in the United States and a cause of it. Sharon M. Dietrich, *Ants Under the Refrigerator? Criminal Justice*, at 26 (Winter 2016), *available at* https://www.americanbar.org/content/dam/aba/publications/criminal_justice_magazine/2016winter_cj.authcheckdam.pdf.

A significant benefit of criminal record clearance is increased access to employment. A recent Wisconsin study found that the lack of expungement opportunities in that state, which does not have a dismissal-acquittal expungement law, has kept thousands of potential workers from finding employment. Bruce Vielmetti, *Wisconsin’s criminal expungement rules keep needed workers out of jobs, study says*, MILWAUKEE JOURNAL-SENTINEL (June 8, 2018), <https://www.jsonline.com/story/news/2018/06/06/report-easing-expungement-criminal-records-could-boost-jobs/665374002/>. Employment is the single most

important factor in reducing recidivism. John M. Nally et al., *Post-Release Recidivism and Employment among Different Types of Released Offenders*, 9 Int'l J. Crim. Just. Sciences 16, 28 (2014), <http://www.sascv.org/ijcjs/pdfs/nallyetalijcjs2014vol9issue1.pdf>; Lahny R. Silva, *Clean Slate: Expanding Expungements and Pardons for Non-Violent Federal Offenders*, 79 U. CIN. L. REV. 155, 162 (2010). The Iowa legislature acknowledged these facts by passing the legislation that makes the expungement of Ms. Doe's record possible. The state has options to recover its costs, just as any other civil creditor, but in this situation cannot use its extraordinary powers of collection to bar the relief the statute will bring.

Iowa Code § 901C.2(1)(a)(2) unduly burdens indigent defendants with more harsh and discriminatory terms than defendants with the means to hire private counsel by requiring payment of attorney fees, merely because the obligation is to the public treasury rather than to a private creditor. Such "discriminatory conditions of repayment" are prohibited by the 14th Amendment's guarantee of equal protection under the law. *See James v. Strange*, 407 U.S. 128, 140 (1972); *State v. Sluyter*, 763 N.W.2d 575 (Iowa 2009); *State v. Dudley*, 766 N.W.2d 606 (Iowa 2009). Ms. Doe is entitled to have her dismissed criminal cases expunged and to not be subject to the unduly harsh and discriminatory terms, prohibited by equal protection clauses of the U.S. and Iowa constitutions.

CONCLUSION

For the reasons stated herein, Ms. Doe respectfully asks that this Court reverse the ruling of the district court and grant her request for expungement.

REQUEST FOR ORAL SUBMISSION

Jane Doe respectfully requests oral argument.

Respectfully submitted,

/S/ _____
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CERTIFICATE OF SERVICE

I certify that this document was served upon the following parties pursuant to Iowa R. Elec. P. 16.316, on January 3, 2019:

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Jane Doe by U.S. Mail.

/S/
ROBERT J. POGGENKLASS,
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