IN THE SUPREME COURT OF IOWA
Supreme Court No. 18–1366

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JANE DOE,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
THE HON. BECKY GOETTSCH, DISTRICT ASSOCIATE JUDGE

APPELLEE'S BRIEF

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ROUTING STATEMENT

The constitutional challenge raised in Doe's brief is new, and it was effectively preserved for review. No appellate court has ruled on the constitutionality of Iowa Code section 901C.2(1)(a)(2). The State agrees that this appeal presents an issue of first impression. However, retention is still not warranted because it is not a *substantial* issue of first impression. *See* Iowa R. App. P. 6.1101(2)(c). No constitutional provision creates a constitutional right to expungement. *See, e.g.*, *Judicial Branch, State Court Adm'r v. Iowa Dist. Ct. for Linn County*, 800 N.W.2d 569, 579 (Iowa 2011) (rejecting argument that "making records of court proceedings available burdens a fundamental right"), *superseded by* Iowa Code § 901C.2 (2015); *see also Sealed Appellant v. Sealed Appellee*, 130 F.3d 695, 699 (5th Cir. 1997) ("There is no constitutional basis for a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."). There is no ambiguity in this statute, and there is no question that rational-basis review is the appropriate level of scrutiny to apply. As a result, this appeal only presents issues requiring application of established legal principles, and transfer to the Iowa Court of Appeals would be appropriate.

STATEMENT OF THE CASE

Nature of the Case:

This is Jane Doe's appeal from an order denying expungement of the record of her criminal case, in which charges were dismissed pursuant to a negotiated agreement. Doe had met almost all of the requirements for expungement under Iowa Code section 901C.2(1). However, Doe still owed repayment of appointed attorney fees, which meant the condition in subsection 901C.2(1)(a)(2) was not satisfied. *See* Iowa Code § 901C.2(1)(a)(2) (stating expungement shall be granted if all conditions are met, including "[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"). Doe argued that condition violated the Equal Protection Clauses in the Fourteenth Amendment and in the Iowa Constitution. *See* Motion to Expunge (6/6/18) at 1–3; App. 26. The district court ruled that 901C.2(1)(a)(2) was not unconstitutional, and it denied Doe's motion to expunge the record. *See* Order (7/18/18); App. 33. Doe now appeals, renewing the same equal protection claim that she raised in her motion to expunge.

Course of Proceedings & Statement of Facts:

Doe was arrested for domestic abuse assault with a weapon and for assault on a police officer. *See* Criminal Complaint I (4/29/09);

App. 6; Criminal Complaint II (4/29/09); App. 7. She filled out a financial affidavit and application for appointment of counsel. That affidavit stated that Doe had no job, lived with three children (but was only supporting one child), and was receiving $250 of FIP benefits each month. *See* Order Appointing (4/29/09); App. 15. Doe signed the affidavit/application directly under this bolded statement:

> I understand I may be required to repay the State for my attorney fees and costs, I may be required to sign a wage assignment, and I must report any changes in this information. I promise under penalty of perjury the statements I make in this application are true and I am unable to pay an attorney.

Order Appointing (4/29/09); App. 15. Doe's income was below 125% of the guideline level, so the court appointed counsel to represent her. *See* Order Appointing (4/29/09); App. 15. Doe posted her $3,000 cash bond for pre-trial release. *See* Bond Posted (4/30/09); App. 17.

On September 15, 2009, the assistant county attorney filed a notice of intent not to prosecute, which stated the following:

> 1. A Preliminary Complaint and/or a Trial Information has been filed in the above-captioned matter.
> 2. The County Attorney, after examining the records, talking to the witnesses and taking all things into consideration, declines to prosecute this case because it is in the interest of justice to do so.
> 3. Δ completed FVC sessions per agreement.
> 4. Costs to Δ.

> Wherefore, the State of Iowa declines to prosecute the above-captioned matter and requests that the Court enter an Order of Dismissal.

Notice of Intent Not to Prosecute (9/15/09); App. 23. The court granted dismissal without prejudice. Per the apparent agreement, $718.38 in court costs were assessed against Doe, which were unpaid as of August 2014. *See* Request for Execution (8/18/14); App. 24.

On June 6, 2018, Doe filed a motion to expunge her record from this dismissed criminal prosecution. Her motion to expunge noted that she had repaid $193.00 of her $718.38 repayment obligation, and she still owed $550.38 in court costs. *See* Motion to Expunge (6/6/18); App. 26. Doe argued that her outstanding $550.38 costs were indigent defense fees, and that requiring her to repay them to have her record expunged would violate the Equal Protection Clause because defendants who retain counsel would face no such barrier. *See* Motion to Expunge (6/6/18) at 1–3; App. 26–28. An unreported hearing on Doe's motion to expunge was held on June 28, 2018. *See* Order Setting Hearing (6/12/18); App. 30. Subsequently, the court issued a ruling that denied the motion to expunge.

> Counsel was appointed to represent her during the proceedings. In her financial affidavit she signed a statement that she understood she may be required to repay the State for attorney fees and costs.

> As part of a plea negotiation, defendant was ordered to complete a family violence class by a certain date and the case would be dismissed. She completed the class and the State filed a Notice of Intent Not to Prosecute on 9/15/09 with "costs" to the Defendant. Court costs representing attorney fees in the amount of $718.38 were assessed per defendant's agreement to pay costs in exchange for a dismissal. These fees remain unpaid.
>
> [. . .]
>
> Defendant argues 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. The Court rejects this argument. Defendant was made aware of the possibility of reimbursing attorney fees and that expungement could not occur until all fees and assessed costs were paid. This was part of the bargain defendant negotiated. She has had several years to pay and may still obtain expungement if and when the fees are paid.

Order (7/18/18) at 1–2; App. 33–34. Doe appealed from that ruling.

Additional facts will be discussed when relevant.

ARGUMENT

I. Requiring Repayment of Court Costs and Appointed Attorney Fees Before Granting Expungement Does Not Violate Any Equal Protection Guarantee.

Preservation of Error

This argument was raised in Doe's motion to expunge and ruled upon by the district court. *See* Order (7/18/18) at 1–2; App. 33–34; Motion to Expunge (6/6/18); App. 26. That ruling preserved error. *See Lamasters v. State*, 821 N.W.2d 856, 864 (Iowa 2012).

Standard of Review

A ruling on an equal protection challenge is reviewed de novo. *See State v. Mitchell*, 757 N.W.2d 431, 434 (Iowa 2008) (quoting *State v. Carter*, 733 N.W.2d 333, 335 (Iowa 2007)). As a general rule, "statutes are cloaked with a presumption of constitutionality"—and to prevail, a challenger "must prove the [statute's] unconstitutionality beyond a reasonable doubt." *See State v. Seering*, 701 N.W.2d 655, 661 (Iowa 2005) (quoting *State v. Hernandez-Lopez*, 639 N.W.2d 226, 233 (Iowa 2002)). Additionally, "if the statute may be construed in more than one way, we adopt the construction that does not violate the constitution." *See Mitchell*, 757 N.W.2d at 434 (quoting *Carter*, 733 N.W.2d at 335); *see also Seering*, 701 N.W.2d at 661 (quoting *Hernandez-Lopez*, 639 N.W.2d at 233).

Merits

The State shares Doe's desire to make expungement of records available to as many Iowans as possible. But the legislature crafted this specific set of conditions for expungement, and every word of the statutory enactment must be given force. *See, e.g.*, Iowa Code § 4.4(2). The responsibility and the authority to balance the competing policy priorities surrounding expungement belongs to the legislature alone—it does not belong to the judiciary, to appellate advocates, or to Doe.

Doe's challenge fails because she alleges disparate impact, not disparate treatment. Additionally, even if this Court views Doe's claim as an allegation of disparate treatment, it would still be problematic because it concerns two groups that are not similarly situated. Finally, even if this claim were cognizable, the challenged statutes would only be subject to rational basis review, which they would survive.

A. Doe alleges that section 901C.2(1)(a)(2) has a disparate impact, but her equal protection claim does not allege disparate treatment. As a result, there cannot be an equal protection problem.

An equal protection challenge "requires an allegation of disparate treatment, not merely disparate impact." *See King v. State*, 818 N.W.2d 1, 24 (Iowa 2012). Doe argues that indigent defendants owe additional costs arising out of section 815.9, which states:

> If a person is granted an appointed attorney, the person shall be required to reimburse the state for the total cost of legal assistance provided to the person pursuant to this section. . . .
>
> [. . .]
>
> If the person receiving legal assistance is acquitted in a criminal case or is a party in a case other than 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.

Iowa Code §§ 815.9(3), (6). Doe is correct that a showing of indigency is required before appointing counsel for a defendant, and that costs and fees incurred by appointed attorneys must be repaid "to the extent the person is reasonably able to pay" before an expungement can be granted. *See* Iowa Code §§ 815.9(6), 901C.2(1)(a)(2). But this is only sufficient to establish a disparate impact on indigent defendants, not differential treatment—no defendant can obtain expungement of their record without repaying *all* costs and fees, irrespective of their origin. *See, e.g.*, *White-Ciluffo v. Iowa Dep't. of Educ.*, No. 16–0309, 2017 WL 2469216, at *7 (Iowa Ct. App. June 7, 2017) (rejecting plaintiff's equal protection challenge because she "failed to show the Collegiate Rule treats any high school student-athlete differently from any other high school student-athlete" because "all high school student-athletes are subject to eligibility rules such as the Collegiate Rule").

The interesting part of Doe's challenge is her argument that only indigent defendants need to repay this specific cost associated with appointed attorneys. To Doe, this means including these costs within the requirement created by section 901C.2(1)(a)(2) qualifies as disparate treatment of indigent defendants. *See* Def's Br. at 13–15, 25. But this only establishes a disparate impact from another provision that operates independently of the expungement statute. Nothing in section 901C.2 can be construed to single out indigent defendants or to treat expungements differently based on types of costs/fees owed. *See* Iowa Code § 901C.2. For that reason, American courts generally reject similar challenges to analogous expungement statutes. *See, e.g*. *People v. Covington*, 98 Cal.Rptr.2d 852, 857–58 (Cal. Ct. App. 2000) (rejecting similar equal protection claim because "[e]qual protection means only that Covington can have her conviction expunged, the same as the wealthier defendant in her hypothetical, if and when she pays restitution"); *State v. Hanes*, 79 P.3d 1070, 1070–72 (Idaho Ct. App. 2003) (rejecting similar equal protection claim when statute required total compliance with terms of probation as condition for expungement, and defendant had repeatedly "failed to make timely payments for his restitution and costs of probation supervision").

Disparate impact without disparate treatment cannot prove an equal protection violation. *See State v. Mann*, 602 N.W.2d 785, 792 (Iowa 1999) (quoting *State v. Hall*, 227 N.W.2d 192, 194 (Iowa 1975)) (noting that a challenged policy "does not deny equal protection simply because in practice it results in some inequality; practical problems in government permit rough accommodation"). Because section 901C.2 applies equally to anyone who is seeking expungement and still owes "court costs, fees, and other financial obligations ordered by the court or assessed by the clerk," Doe cannot establish disparate treatment. At best, Doe can establish disparate impact—but that is not sufficient to state a cognizable equal protection challenge.

B. Applicants who have repaid all costs and fees and applicants who have not yet repaid costs or fees are not similarly situated.

"[E]qual protection demands that laws treat alike all people who are similarly situated with respect to the legitimate purposes of the law." *McQuistion v. City of Clinton*, 872 N.W.2d 817, 830 (Iowa 2015) (quoting *Varnum v. Brien*, 763 N.W.2d 862, 882 (Iowa 2009)). Doe has not repaid all costs and fees ordered by the district court, so she is not similarly situated to applicants for expungement who *have* repaid those debts. *See* Motion to Expunge (6/6/18) at 4; App. 29.

Doe's equal protection challenge alleges that section 901C.2 draws a classification based on indigency. *See* Def's Br. at 13–15. But indigent defendants who waive their right to counsel or whose cases were dismissed before appointed counsel rendered billable services have no obligation to pay for counsel's services. Moreover, indigency is a broad category that, for these purposes, encompasses all defendants with "an income level at or below [125%]" of the poverty line and who are not otherwise "able to pay for the cost of an attorney" during the pendency of the prosecution. *See* Iowa Code § 815.9(1)(a). It may also include defendants with higher incomes, if not appointing counsel "would cause the person substantial hardship." *Id.* § 815.9(1)(b)–(c). When acquitted, each indigent defendant is entitled to "an inquiry which includes notice and reasonable opportunity to be heard" to help determine how much of the total costs and fees "the person is reasonably able to pay." *Id.* § 815.9(6); *see also State v. Dudley*, 766 N.W.2d 606, 613–15 (Iowa 2009) (determining that prior version of section 815.9 was unconstitutional because "[a] cost judgment may not be constitutionally imposed on a defendant unless a determination is first made that the defendant is or will be reasonably able to pay"). So, applicants must have been found reasonably able to pay those costs

(even if they do so by making small payments over a period of time) and may seek expungement after payment is made, notwithstanding their past or present indigency. *See, e.g.*, *United States v. Ledbetter*, No. 92-30212, 1993 WL 280403, at *2–3 (9th Cir. July 26, 1993) (rejecting an equal protection challenge alleging that "Washington's restoration statute requiring restitution for issuance of discharge certificates violates the equal protection rights of indigents" because "there is no indication that [defendant] could not have paid the rather nominal sums had he made the effort to do so by obtaining gainful employment or obtaining money in some other lawful way").

In reality, the classification drawn by section 901C.2(1)(a)(2) is between applicants who have paid all their outstanding costs and fees (including costs and fees for appointed counsel, to the extent they are found reasonably able to pay), and those who are ineligible because they were ordered to pay costs or fees (perhaps for services rendered by appointed counsel, after being found reasonably able to pay them) and subsequently did not pay them. Doe seeks to frame this as a challenge to a classification that distinguishes on the basis of wealth—but wealth does not guarantee eligibility under section 901C.2(1)(a)(2) and indigency does not preclude it (especially after *Dudley*). *See, e.g.*,

State v. Colbert, No. 2015AP1880–CR, 2017 WL 5054306, at *2–3 (Wis. Ct. App. Nov. 1, 2017) (rejecting similar constitutional challenge arguing "denying expungement based on unpaid supervision fees may violate equal protection if the probationer is financially unable to pay" because "Colbert never actually asserts that he could not pay the $220 supervision fee"). These two different categories of applicants—those who have outstanding obligations to pay reasonable costs or fees, and those who fulfilled all relevant payment obligations—are not similarly situated for the purposes of seeking expungement.

If a challenger "cannot show as a preliminary matter that they are similarly situated" to someone else receiving different treatment, "courts do not further consider whether their different treatment under a statute is permitted under the equal protection clause." *See Varnum*, 763 N.W.2d at 882; *see also Timberland Partners XXI, LLP v. Iowa Dept. of Revenue*, 757 N.W.2d 172, 176–77 (Iowa 2008) (rejecting an equal protection challenge to distinctions between apartments/condominiums for tax assessment purposes because "any similarities between apartments and condominiums are insufficient to consider them 'similarly situated' for equal protection analysis"). As such, Doe's equal protection challenge should proceed no further.

C. If this challenge to section 901C.2(1)(a)(2) presents a cognizable equal protection claim, then it fails on its merits.

Even if section 901C.2(1)(a)(2) is subjecting similarly situated applicants to disparate treatment, there is no constitutional infirmity.

1. Rational basis review applies to this challenge.

"Unless a suspect class or a fundamental right is at issue, equal protection claims are reviewed under the rational basis test." *See King*, 818 N.W.2d at 25. Doe suggests "a heightened form of scrutiny" may apply. *See* Def's Br. at 24. But Doe's citations to *State v. Sluyter*, 763 N.W.2d 575 (Iowa 2009) and *State v. Snyder*, 203 N.W.2d 280 (Iowa 1972) are inapposite because both of those cases involved a fundamental right—the policies at issue in both *Sluyter* and *Snyder* deprived indigent litigants of freedom from incarceration. *See Sluyter*, 763 N.W.2d at 584 (noting potential equal protection problem where "[e]nforcement of the cost judgment by contempt allows the State to bypass all the protections enjoyed by civil judgment debtors under our execution and related statutes and send Sluyter directly to jail"); *Snyder*, 203 N.W.2d at 290 (quoting *Frazier v. Jordan*, 457 F.2d 726, 728 (5th Cir. 1972)) ("[T]he alternative fine before us creates two disparately treated classes: those who can satisfy a fine immediately

upon its levy, and those who can pay only over a period of time, if then. Those with means avoid imprisonment; the indigent cannot escape imprisonment. Since the difference in treatment is one defined by wealth, the alternative fine creates a 'suspect' classification which must be tested by the compelling state interest test."). But denial of expungement is not tantamount to imprisonment, nor does it amount to deprivation of any other fundamental right. *See Judicial Branch, State Court Adm'r v. Iowa Dist. Ct. for Linn County*, 800 N.W.2d 569, 579 (Iowa 2011) ("Persons who have had criminal proceedings terminated in their favor are not a suspect class. Nor do we believe that making records of court proceedings available burdens a fundamental right."), *superseded by* Iowa Code § 901C.2 (2015); *cf. 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."); *Arnold v. State*, 384 S.W.2d 488, 495 (Ark. 2011) (noting "there is no constitutional right to expungement of a conviction"); *State v. Granger*, 982 So.2d 779, 790–95 (La. 2008) (applying rational basis review to equal protection challenge to Louisiana's expungement statutes).

In *Dudley*, the Iowa Supreme Court noted that "the statute governing recoupment of the costs of legal assistance does not affect a fundamental right or classify on the basis of race, alienage, national origin, gender, or legitimacy"—and, therefore, it was "subject to a rational-basis review." *See Dudley*, 766 N.W.2d at 615; *cf. Thomas v. Fellows*, 456 N.W.2d 170, 172 (Iowa 1990) ("We believe that section 668.11 does not abridge the plaintiffs' right of access to the courts; it merely establishes reasonable procedural requirements in the exercise of that right. We therefore reject the plaintiffs' strict scrutiny argument and apply the traditional 'rational basis' test."). There is no basis for applying a more demanding review for this challenge, which neither draws a suspect classification nor burdens a fundamental right.

2. Section 901C.2(1)(b)(2) is rationally related to legitimate government interests in limiting expungement where outstanding debts remain.

Under rational-basis review, a statute "will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest." *Dudley*, 766 N.W.2d at 615 (quoting *Sanchez v. State*, 692 N.W.2d 812, 817 (Iowa 2005)). To prevail, Doe must prove that "the relationship between the classification and the purpose behind it is so weak the classification must be viewed as arbitrary or capricious."

See King, 818 N.W.2d at 27–28 (quoting *Ames Rental Prop. Ass'n v. City of Ames*, 736 N.W.2d 255, 259 (Iowa 2007)). To do so, Doe must "negate every reasonable basis upon which the classification may be sustained." *See id.* at 28 (quoting *Bierkamp v. Rogers*, 293 N.W.2d 577, 579–80 (Iowa 1980)). Doe cannot make that showing because this eligibility classification in section 901C.2 is rationally related to legitimate state interests in incentivizing repayment of costs and fees.

Doe is correct 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." Def's Br. at 19 (citing Legis. Serv. Agency, *Issue Review: Court Debt Collection*, at 4 (Jan. 3, 2018), https://www.legis.iowa.gov/docs/publications/IR/916685.pdf). That same report observes: "It is important for fines, penalties, court costs, fees, forfeited bail, and surcharges to be paid as quickly as possible. The longer the delay, the less likely it is that the defendant will pay." *See* Legis. Serv. Agency, *Issue Review: Court Debt Collection*, at 15. By conditioning the availability of expungement on the repayment of costs and fees, the legislature has crafted an incentive that encourages repayment of outstanding debt (which becomes available at 180 days after acquittal/dismissal, when it may be necessary to jog memories).

Collecting outstanding indigent defense fee reimbursement fees is a legitimate state interest that the legislature may consider and pursue, and section 901C.2(1)(a)(2) is rationally related to that state interest. The legislature could rationally conclude that conditional availability of expungement was the best incentive to offer to motivate repayment of indigent defense fees after an acquittal/dismissal.

Note that "[t]he legislature chose to make the process for obtaining reimbursement for the costs of legal assistance part of the criminal case." *See Dudley*, 766 N.W.2d at 618; Iowa Code § 815.9. The legislature also chose to make expungement applications part of the same criminal case. *See* Iowa Code § 901C.2(1)(a). This evinces a legislative judgment that neither indigent defense reimbursement fees nor eligibility for expungement should be considered in a vacuum—to the legislature, both are inextricably linked to the underlying case and should be assessed as part of a case file that provides some explanation as to what occurred. And the legislature chose *not* to draw distinctions between various types of costs and fees: all financial obligations that are "ordered by the court or assessed by the clerk of the district court" are treated equally under section 901C.2(1)(a)(2), and nonpayment of *any* cost or fee assessed in that underlying case undermines eligibility.

See Iowa Code § 901C.2(1)(a)(2). Moreover, the legislature gave the court discretion to waive a *different* requirement for "good cause"—but did not give discretion to waive the requirement pertaining to repayment of costs and fees. *See* Iowa Code § 901C.2(1)(a)(3). This reflects a clear legislative judgment about the relative importance of meeting these statutory requirements for expungement eligibility: one of those five requirements may be waived for good cause, but the other four requirements (including the repayment requirement) are all indispensably necessary to ensure that expungement is warranted and will serve the goals that section 901C.2 intends to promote. *E.g.*, *Staff Mgmt. v. Jimenez*, 839 N.W.2d 640, 649 (Iowa 2013) (quoting *Meinders v. Dunkerton Cmty. Sch. Dist.*, 645 N.W.2d 632, 637 (Iowa 2002)) ("[L]egislative intent is expressed by omission as well as by inclusion, and the express mention of one thing implies the exclusion of others not so mentioned"). Doe cannot supplant the legislature's assessment about the relative importance of these requirements.

"[T]he legislature is not required to employ the "best" means of achieving a legitimate state interest. Equal protection only requires the legislature to have reasonably believed that the means chosen would promote the purpose." *See Sanchez*, 692 N.W.2d at 818 (citing

W. & S. Life Ins. Co. v. State Bd. of Equalization, 451 U.S. 648, 668, (1981)). Because the legislature could reasonably believe that making repayment of all financial obligations (including reimbursement fees for indigent defendants found reasonably able to pay) a requirement for expungement availability would balance the legislature's goals of recovering outstanding debts and making expungement available to those who have satisfied relevant obligations arising from their cases, section 901C.2(1)(a)(2) survives review under the rational-basis test.

Doe argues that "record clearance has become an indispensable element of self-sufficiency in the modern information age," and he further states that "[c]riminal records are both an effect of poverty in the United States and a cause of it." *See* Def's Br. at 25–26. Here, the strongest authority that Doe provides in support of her argument is *Thomas v. Haslam*, No. 3:17–cv–00005, 2018 WL 3301648 (M.D. Tenn. July 2, 2018), which found that "revoking the driver's licenses of indigent court debtors appears to be counterproductive to the legitimate purpose of collecting on the underlying debt," which meant the policy was "so manifestly counterproductive that it fails even the deferential standard of rational basis review." *See* Def's Br. at 24; *Thomas*, 2018 WL 3301648, at *10. But *Dudley*'s holding, now codified

in section 815.9(6), prevents repayment requirements from becoming "manifestly counterproductive" by ensuring that indigent defendants are not assessed obligations to repay any indigent defense fees except "to the extent the person is reasonably able to pay, after an inquiry which includes notice and reasonable opportunity to be heard." *See* Iowa Code § 815.9(6); *Dudley*, 766 N.W.2d at 614–15. The presence of this safeguard guarantees expungement will only be withheld due to non-fulfillment of financial obligations when it occurs in defiance of reasonable expectations regarding repayment of those costs and fees, in light of each individual defendant's ability to repay them. *See, e.g.*, *State v. Huth*, 334 N.W.2d 485, 490–91 (S.D. 1983) (holding denial of opportunity to discharge debt in bankruptcy was unconstitutional as applied solely to indigent defense fees, but finding no constitutional problem with repayment as a condition of probation because state law "requires any court revoking appellant's probation to find that the defendant has available funds before repayment can be ordered"); *accord Thomas*, 2018 WL 3301648, at *10 ("The state can still use the specter of revocation to encourage payment of court debt; it simply must afford the debtor the opportunity to demonstrate, first, that the only reason he has failed to pay is that he simply cannot.").

Doe compares this to *James v. Strange*, 407 U.S. 128 (1972) and argues the State "cannot use its extraordinary powers of collection to bar the relief the statute will bring." *See* Def's Br. at 24–27. But this is not a case like *Strange*, where indigent defendants were targeted and singled out by statutes "expressly denying them the benefit of basic debtor exemptions" that all other debtors could invoke. *See Strange*, 407 U.S. at 139–40. Section 901C.2 imposes identical requirements for expungement eligibility, regardless of the origin of unpaid debt. And there is no fundamental or constitutional right to expungement; the State is not using "extraordinary powers" to do anything beyond offering an incentive that it hopes will encourage repayment. Indeed, the only relevant part of *Strange* is the paragraph that recognized the importance and validity of the state's interest in recouping those costs:

> We note here also that the state interests represented by recoupment laws may prove important ones. Recoupment proceedings may protect the State from fraudulent concealment of assets and false assertions of indigency. Many States, moreover, face expanding criminal dockets, and this Court has required appointed counsel for indigents in widening classes of cases and stages of prosecution. Such trends have heightened the burden on public revenues, and recoupment laws reflect legislative efforts to recover some of the added costs.

Strange, 407 U.S. at 141 (footnotes omitted). That legitimate interest in repayment is more than enough to satisfy rational basis review.

As of June 2018, Doe had succeeded in repaying $193.00 of her original total repayment obligation of $743.38. *See* Motion to Expunge (6/6/18) at 4; App. 29. Hopefully, she will soon repay the rest and obtain expungement of this record. But Doe's dissatisfaction with the impact of section 901C.2(1)(a)(2) does not render it unconstitutional. *See In re Dyer*, 163 S.W.3d 915, 920–21 (Mo. 2005) ("It is unfortunate that Dyer cannot, under the law, be relieved of the consequences of his arrest. The legislative judgment that such records not be expunged is not irrational."). At best, Doe's claim is about disparate impact, not disparate treatment. *See, e.g.*, *City of Coralville v. Iowa Utils. Bd.*, 750 N.W.2d 523, 530–31 (Iowa 2008) (rejecting an equal protection challenge because it was "in substance a misplaced argument for uniformity of consequences rather than uniformity of operation"). Section 901C.2 only draws a classification between the applicants who repaid their financial obligations and those who have not—and those are not similarly situated groups. *See Timberland Partners XXI, LLP*, 757 N.W.2d at 176–77. And even if they were, this classification would survive rational basis review because of the legitimate state interest in recovering indigent defense reimbursement fees. Doe cannot establish any constitutional infirmity, and her equal protection challenge fails.

CONCLUSION

The State respectfully requests that this Court affirm the ruling that denied Doe's motion to expunge.

REQUEST FOR NONORAL SUBMISSION

This case should be set for nonoral submission. In the event argument is scheduled, the State asks to be heard.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

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