No. 103627-2
(cons. w/ 103673-6)

THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

SIMONE NELSON and SABRA DANIELSON,

Petitioners.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR CLALLAM COUNTY

SUPPLEMENTAL BRIEF OF PETITIONERS

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A. INTRODUCTION

Following this Court's decision in *Blake*,[1] every person convicted under Washington's former drug possession statute is entitled to have their unconstitutional convictions vacated. They are also entitled to receive a refund from the State for their legal financial obligation payments. Despite this, the trial court determined that people who were too poor to pay their legal financial obligations in cash, and who instead worked off those fines and fees though community service, were entitled to nothing for the value of their labor and time.

Because Ms. Nelson and Ms. Danielson were too poor to pay their legal financial obligations in cash, they paid a portion of their debt in community service at the hourly minimum wage rate. The trial court's refusal to refund people like Ms. Nelson and Ms. Danielson violates their right to equal protection under the law. This Court should reverse.

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[1] *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021).

B. ISSUE PRESENTED

The trial court withheld full refunds from Ms. Nelson and Ms. Danielson, who paid their *Blake*-related legal financial obligations partially in labor, while fully refunding those who could afford to pay in cash. This practice burdens a semi-suspect class—the poor—and implicates the important, if not fundamental, right to be restored when an unconstitutional conviction is vacated. Because the State cannot establish this wealth-based classification has at least a direct and substantial relationship to an important government interest, the trial court's disparate treatment of poor people like Ms. Nelson and Ms. Danielson violates equal protection.

C. STATEMENT OF THE CASE

1. Simone Nelson

Simone Nelson twice pleaded guilty to felony drug possession in the late 1990s. 1CP 36, 46–51; 2CP 29, 38–44.[2]

[2] This brief contains references to multiple records. Clerk's papers relating to Ms. Nelson's 1995 conviction (No. 58161-2-II) are referred to as 1CP. Clerk's papers relating to

For these two convictions, she was ordered to pay $2,677.90 in legal financial obligations. 1CP 38–39; 2CP 31–32.

Ms. Nelson's 30-year-old court records are dated and do not make express findings of indigence. However, beginning in 1998, the records make clear that Ms. Nelson was appointed a public defender, which requires a court finding of indigence. 2CP 32, 36;[3] RCW 10.101.020(1). Further, Ms. Nelson was placed on a "Pay or Appear Program" in 2003, requiring her to make monthly payments towards her legal financial obligations. 1CP 29; 2CP 28.

Approximately one month after she was placed on this "Program," the court allowed Ms. Nelson to pay some of her legal financial obligations in community service. 1CP 28. The

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Ms. Nelson's 1998 conviction (No. 58165-5-II) are referred to as 2CP. Ms. Nelson's transcripts are referred to as 1RP.

Records in Ms. Danielson's case (No. 57675-9-II) are referred to as 3CP and 2RP.

[3] Ms. Nelson's 1998 judgment and sentence imposes a $500 fee for Ms. Nelson's court appointed attorney. 2CP 32. It is also signed by Terry Mulligan, who is identified in the judgment and sentence as a public defense attorney. 2CP 36.

court credited Ms. Nelson's 80 hours of community service work towards her legal financial obligations at a rate of about approximately $7 per hour, for a total of $560. 1CP 28.

Following *Blake*, Ms. Nelson asked the court to vacate her convictions and to issue a refund for her legal financial obligation payments. 1CP 26; 2CP 26. The court agreed to vacate her convictions and agreed to order reimbursement for the payments she made in cash. 1CP 5–7; 2CP 5–7; 1RP 23–24. It refused, however, to reimburse her for the legal financial obligations she paid off in labor. 1CP 6; 2CP 6; 1RP 23–24.

Ms. Nelson appealed, arguing the trial court's refusal to refund her for her labor violated her equal protection rights. The Court of Appeals disagreed in a published opinion. *State v. Nelson*, 32 Wn. App. 2d 679, 558 P.3d 197 (2024).

2. Sabra Danielson

Sabra Danielson pleaded guilty to drug possession in 2003. 2RP 7; 3CP 41–48. The court sentenced her to 58 days in jail with credit for the 28 days she already served. 2RP 13; 3CP

35. It converted the remaining 30 days of jail time to 240 hours of community service. 3CP 35. The court found Ms. Danielson indigent and eliminated some of her court fines, but still imposed $1,060.00 in legal financial obligations. 2RP 11, 13; 3CP 8, 32–33. These costs included $350 for her court appointed public defender.[4] 3CP 33.

Ms. Danielson made progress toward her community service obligations until her father got sick. 3CP 20; Supp. 3CP 58. She and her children moved in with her father, and she cared for him and children while working, going to school, and slowly completing her community service hours. Supp. 3CP 58. After nearly two years, Ms. Danielson completed the 240 hours of community service. 3CP 20, 23.

[4] Ms. Danielson's 2003 judgment and sentence was signed by her public defense attorney, Terry Mulligan. 3CP 39. Though Mr. Mulligan was not identified as a public defender in Ms. Danielson's judgment and sentence, he was identified as a public defender in the 2003 verbatim report of proceedings. 2RP 2, 4. He was also identified as a public defender in Ms. Nelson's 1998 judgment and sentence. *See supra* footnote 3.

The court permitted Ms. Danielson, like Ms. Nelson, to satisfy some legal financial obligations in community service. 2RP 26–27; 3CP 7. In total, the court credited $110.98 toward Ms. Danielson's legal financial obligations from 15.5 hours of community service work, which the court valued at the minimum wage rate of $7.16 per hour. 2RP 26–27; 3CP 8, 20.

Following *Blake*, the trial court vacated Ms. Danielson's conviction. 3CP 10. As in Ms. Nelson's case, the court ordered the State to reimburse Ms. Danielson for cash payments made toward her legal financial obligations, but refused to refund the $110.98 Ms. Danielson paid in labor. 3CP 9–10.

Ms. Danielson appealed, arguing the trial court's refusal to refund her for her labor violated her equal protection rights. The Court of Appeals disagreed in an unpublished opinion. *State v. Danielson*, 32 Wn. App. 2d 1055, 2024 WL 4542943 (Oct. 22, 2024).

D. ARGUMENT

Providing *Blake* refunds to people who paid their legal financial obligations in cash while denying the same refunds to poor people who satisfied their legal financial obligations in labor violates equal protection.

The Equal Protection Clause of the Fourteenth Amendment guarantees that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV. "The Equal Protection Clause was intended to work nothing less than the abolition of all caste-based and invidious class-based legislation." *Plyler v. Doe*, 457 U.S. 202, 213, 102 S. Ct. 2382, 72 L. Ed. 2d 786 (1982).

Although the Equal Protection Clause does not require the State treat all persons identically, any classification must be at least relevant to the purpose for the disparate treatment. *State v. Osman*, 157 Wn.2d 474, 484, 139 P.3d 334 (2006) (citing *In re Det. of Thorell*, 149 Wn.2d 724, 745, 72 P. 3d 708 (2003)). In other words, equal protection requires that "persons similarly situated with respect to the legitimate purpose of the law be

similarly treated." *State v. Shawn P.,* 122 Wn.2d 553, 560, 859 P.2d 1220 (1993).

Ms. Nelson and Ms. Danielson, like everyone else convicted under the former unconstitutional drug possession statute, have the right to be refunded fines and fees they paid pursuant to their unconstitutional convictions. *See, e.g., Nelson v. Colorado*, 581 U.S. 128, 135–36, 137 S. Ct. 1249, 197 L. Ed. 2d 611 (2017). Indeed, the legislature recognized the right to a refund when it established a statewide "*Blake* Refund Bureau," earmarked $47 million dollars toward *Blake* vacations and sentencing adjustments, and set aside an *additional* $51 million for legal financial obligation refunds.[5] *See also* Laws of 2022, ch. 297, § 114; Laws of 2023, ch. 475, § 114; Laws of 2024, ch. 376, § 113.

[5] Washington Courts: News and Information, *Blake Refund Bureau Launches to Assist with Refunds of Court Fines* (July 31, 2023) https://www.courts.wa.gov/newsinfo/?fa=newsinfo.internetdetail&newsid=50170.

And yet, the trial court has taken the position that it will only issue full refunds to those who could afford to pay their *Blake*-related legal financial obligations in cash. This classification, which burdens the poor with respect to the important, if not fundamental, right to be refunded when the court vacates an unconstitutional conviction, is subject to heightened equal protection review.

Because the State has failed to demonstrate a direct and substantial relationship between an important government interest and issuing diminished *Blake* refunds to the poor while fully refunding those of means, this practice violates equal protection. This Court must reverse.

1. *State action that burdens a suspect or semi-suspect class, or a fundamental or important right, is subject to heightened scrutiny*.

The State's "substantial latitude" to legislate and "to establish classifications that roughly approximate the nature of the problem perceived," is subject to limitations under the Equal Protection Clause. *Plyler*, 457 U.S. at 216. While most

forms of state action are subject to rational basis review and need only bear "some fair relationship to a legitimate public purpose[,]" the United States Supreme Court has recognized, "we would not be faithful to our obligations under the Fourteenth Amendment if we applied so deferential a standard to every classification." *Id*.

To that end, this Court begins its equal protection review by determining the "type of classification or right" at issue. *Osman*, 157 Wn.2d at 484. Rational basis review applies when the state action "does not threaten a fundamental or 'important' right, or if the individual is not a member of a suspect or semi-suspect class[.]" *Id*. Otherwise, this Court subjects the state action to strict or intermediate scrutiny. *Id*.

State action that "affects a suspect class or a fundamental right" is subject to strict scrutiny and violates equal protection unless the State proves it is "necessary to accomplish a compelling state interest." *State v. Schaaf*, 109 Wn.2d 1, 17, 743 P.2d 240 (1987). Suspect classifications subject to strict

scrutiny include those based on race, alienage, or national origin. *Id*. at 18. Strict scrutiny also applies when state laws impinge on constitutionally protected personal rights. *Id*. at 19.

Where the classification affects "a member of a 'semi-suspect' class *or* the state action threatens 'important' rights[,]" state action is subject to intermediate scrutiny. *Osman*, 157 Wn.2d at 484 (emphasis added); *Shawn P*., 122 Wn.2d at 560. This Court recognizes that "situations involving discrete classes not accountable for their status[,]" including the poor, "invoke intermediate scrutiny." *Matter of Mota*, 114 Wn.2d 465, 474, 788 P.2d 538 (1990) (citing *Plyler*). Accordingly, this Court has applied intermediate scrutiny in cases involving wealth-based classifications. *See, e.g., id*.; *State v. Phelan*, 100 Wn.2d 508, 514, 671 P.2d 1212 (1983).

Under intermediate scrutiny, the classification violates equal protection unless the State demonstrates the challenged classification "serves important governmental objectives and that the discriminatory means employed are substantially

related to [achieving] those objectives." *Miss. Univ. for Women v. Hogan*, 458 U.S. 718, 724, 102 S. Ct. 3331, 73 L. Ed. 2d 1090 (1982) (internal quotation marks and citation omitted).

Here, the trial court recognized that individuals convicted under the unconstitutional drug possession statute have a right to be refunded their legal financial obligation payments. And yet, it has determined it will only issue full refunds to those wealthy enough to have paid their *Blake*-related legal financial obligations in cash. The court refuses to similarly refund costs paid by a person's labor and time. Because the classifications at issue implicate both an important right and a semi-suspect class, this Court should subject the trial court's refund practice to intermediate scrutiny. *See, e.g., Mota*, 114 Wn.2d at 474.

2. *Individuals convicted under the unconstitutional former drug possession statute have an important, if not fundamental, interest in having their convictions vacated and fines and fees refunded*.

Following this Court's decision in *Blake*, Ms. Nelson and Ms. Danielson, like an estimated 200,000 other similarly

situated individuals,[6] were entitled to have their drug possession convictions vacated and to be refunded fines and fees paid pursuant to their unconstitutional convictions.

The legislature acknowledged the State's obligation to issue refunds by establishing the *Blake* Refund Bureau. *See* Laws of 2022, ch. 297, § 114; s*ee also* Laws of 2021, ch. 334, § 115(6) (establishing a "legal financial obligation aid pool to assist counties that are *obligated* to refund legal financial obligations previously paid by defendants whose convictions or sentences were affected by the *State v. Blake* ruling." (emphasis added)).

The right to be refunded, or made "whole," following the vacation of an unlawful conviction is important, if not fundamental. *See Coffin v. United States*, 156 U.S. 432, 453, 15 S. Ct. 394, 39 L. Ed. 481 (1895) (recognizing an "axiomatic and elementary" presumption of innocence, which "lies at the

[6] *See supra* footnote 5 and accompanying legislative history.

foundation of the administration of our criminal law"). This principle was "obvious" to the United States Supreme Court when it assessed the private interests of exonerees in the return of fines and fees paid pursuant to their reversed convictions. *Nelson*, 581 U.S. at 135–36 (relying on *Coffin*, 156 U.S. at 453). In turn, it was also clear to the Court that the State "has no interest in withholding … money to which the State[,]" after reversing the convictions, "has zero claim of right." *Id*. at 139.

The right to receive a refund of legal financial obligation payments following *Blake* is acknowledged by the legislature and rooted in principles of due process. *See, e.g., id*. at 135–36. Thus, the State's decision to honor its obligation to issue legal financial obligation refunds to some people and not others affects an important right and must survive intermediate scrutiny. *See Osman*, 157 Wn.2d at 484.

3. The State's refusal to issue refunds for legal financial obligation payments made in community service work is a wealth-based classification.

Ms. Nelson and Ms. Danielson are similarly situated to all others who incurred, and satisfied, legal financial obligations under the former drug possession statute. But rather than treat all individuals the same for purposes of restoration, the State has chosen to withhold full refunds from the poor.

While the dated records in these cases do not make express findings that Ms. Nelson and Ms. Danielson worked off their legal financial obligations due to poverty, the following facts are plainly clear: (1) Ms. Nelson and Ms. Danielson were represented by public defenders, which required a finding of indigence,[7] (2) the trial court found Ms. Danielson indigent at the time of sentencing, and (3) Ms. Nelson and Ms. Danielson both satisfied a portion of their legal financial debt by performing community service work valued at a minimum wage rate of approximately $7 per hour. This Court can infer

[7] RCW 10.101.020(1).

from these facts that it is *because* of their indigence that they paid their debt in labor, and it is *because* of their indigence that the trial court now withholds their refund.

This wealth-based classification merits intermediate scrutiny. In *Mota*, this Court established that "[a] higher level of scrutiny is applied to cases involving a deprivation of a liberty interest due to indigency." *Mota*, 114 Wn.2d at 474. And even though a superseding statute rendered *Mota*'s specific holding obsolete, this Court has noted that *Mota*'s reasoning remains undisturbed and that wealth-based classifications merit "semi-suspect" status. *See Petition of Fogle*, 128 Wn.2d 56, 62–63, 904 P.2d 722 (1995).

Likewise, United States Supreme Court cases have long recognized that when a State creates a right, equal protection prohibits the State from withholding that right from the indigent. *See, e.g., Griffin v. Illinois*, 351 U.S. 12, 76 S. Ct. 585, 100 L. Ed. 891 (1956) (when the State creates a right to appellate review, equal protection prohibits effectively barring

the poor from the opportunity where they cannot afford transcripts); *Williams v. Illinois*, 399 U.S. 235, 90 S. Ct. 2018, 26 L. Ed. 2d 586 (1970) (statute that extends imprisonment beyond statutory maximum for failure to pay fines and court costs violates equal protection where the "operative effect" disproportionally burdens the indigent).

This Court should reaffirm *Mota* and should subject this State action to intermediate scrutiny; not only because it burdens the important right to be restored, but because the wealth-based classification implicates a semi-suspect class. *Mota*, 114 Wn.2d at 474.

4. The trial court violated equal protection by refusing to refund Ms. Nelson and Ms. Danielson the legal financial obligations they paid in community service work.

Poor people constitute a semi-suspect class and restoration following an invalid conviction is an important, if not fundamental, right. Accordingly, the trial court's decision not to issue *Blake* refunds to poor people who paid their legal financial obligations in labor is subject to intermediate scrutiny.

Osman, 157 Wn.2d at 484. And, although the state action here implicates both a semi-suspect class *and* an important right, this Court should clarify that Ms. Nelson and Ms. Danielson need not demonstrate both to merit heightened scrutiny. *Id*. (intermediate scrutiny applies to classifications affecting *either* "a member of a 'semi-suspect' class *or* the state action threatens 'important' rights." (emphasis added)).

Because intermediate scrutiny applies, the State must establish this discrimination has a direct relationship to a "substantial interest." *Mota*, 114 Wn.2d at 474; *see also United States v. Virginia*, 518 U.S 515, 533, 116 S. Ct. 2264, 135 L. Ed. 2d 735 (1996) (noting that for intermediate scrutiny "[t]he burden of justification is demanding and it rests entirely on the State"). And unlike rational basis review, where courts may "hypothesize facts to justify a legislative distinction," *see Schroeder v. Weighall*, 179 Wn.2d 566, 574, 316 P.3d 482 (2014), intermediate scrutiny requires the State's proffered

justification be "genuine, not hypothesized or invented *post hoc* in response to litigation." *Virginia*, 518 U.S. at 533.

In the Court of Appeals, the State defended against Ms. Nelson's equal protection claim on the basis that only rational basis review applies.[8] Brief of Respondent in *Nelson*, at 28, 31–32. It offered a singular justification: that the "*legislature's* decision to not allow monetary compensation for [community service work] performed to satisfy overturned sentences protects the solvency of the State by limiting the flow of actions for monetary compensation to claims of wrongful conviction or tortious conduct by the State." Brief of Respondent in *Nelson*, at 31–32 (emphasis added). This Court should find this justification fails to establish a substantial government interest, and it should reject any additional proffered justifications at this stage as *post hoc*. *Virginia*, 518 U.S. at 516.

[8] In Ms. Danielson's case, the State did not explicitly address the applicable level of scrutiny before the Court of Appeals; nor did it advance any justifications for the classification. Brief of Respondent in *Danielson*, at 19–23.

As a threshold matter, the State's proffered justification—to achieve cost saving—is unsupported. There is no indication that the *legislature* intended to withhold refunds from those who were too poor to satisfy their legal financial obligation payments in cash. To the contrary, it generously funded the *Blake* Refund Bureau to issue full refunds, with no express restriction on reimbursement to those who paid their legal financial obligations in labor.

Additionally, even under rational basis review, "[p]reservation of state funds is not in itself a sufficient basis to defeat an equal protection challenge." *Willoughby v. Dep't. of Lab. and Indus.*, 147 Wn.2d 725, 741, 57 P.3d 611 (2002), *partially abrogated on other grounds by Yim v. City of Seattle*, 194 Wn.2d 682, 451 P.3d 694 (2019). Indeed, in cases where a Washington court has applied intermediate scrutiny and upheld the State action, the substantial interest identified almost always involved some element of public safety. *See, e.g., State v. Jorgenson*, 179 Wn.2d 145, 162, 312 P.3d 960 (2013),

overruled by New York State Rifle & Pistol Assoc., Inc. v. Bruen, 597 U.S. 1, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022) (finding an "important interest in restricting potentially dangerous persons from using firearms"); *Fogle*, 128 Wn.2d at 63 (finding a substantial interest in "maintaining prisoner discipline, . . . preventing flight from prosecution and preserving local control over jails"); *State v. Miles*, 66 Wn. App. 365, 368, 832 P.2d 500 (1992) (finding a substantial interest in "protecting society" and "deterring offenders on community placement from committing subsequent crimes"). The State does not contend any public safety interest in support of its wealth-based classification here.

The impact of the former drug possession statute disproportionately harmed the poor. *Blake*, 197 Wn.2d at 208 (Stephens, J., concurring in part).[9] In implementing the remedy *Blake* required, it would have been fundamentally unjust for the

[9] Citing to Benjamin Levin, *Mens Rea Reform and Its Discontents*, 109 J. Crim. L. & Criminology 491, 530 (2019).

legislature to have provided refunds for people of means while withholding full restoration from similarly situated people who paid with their physical labor.

The State has not proffered a substantial, or even legitimate, interest in denying refunds to people who paid their legal financial obligations in their time and labor instead of cash. In *Blake*, this Court held the State abused its police power by prosecuting thousands of people under the former drug possession statute and by "[i]mposing such harsh penalties[.]" 197 Wn.2d at 185. Those harsh penalties include the $560 in legal financial obligations Ms. Nelson satisfied in her labor, and the $110.98 Ms. Danielson satisfied in her labor. 1CP 28; 3CP 8, 20. The State has lost any claim of right to fines and fees it collected from Ms. Nelson and Ms. Danielson by cash payment and their labor alike. Because equal protection prohibits the State from withholding from the poor the same restoration it provides to those with means, this Court must reverse.

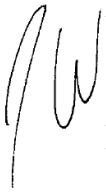
E. CONCLUSION

Ms. Nelson and Ms. Danielson are entitled to a full refund for the legal financial obligations they paid in cash and by their labor. Anything else violates their rights to equal protection of the laws. This Court should reverse with instructions to the trial court to provide Ms. Nelson and Ms. Danielson the full refunds to which they are entitled.

This brief is in 14-point Times New Roman, contains 3,700 words, and complies with RAP 18.17.

Respectfully submitted this 18th day of April, 2025.

WILLA D. OSBORN (WSBA 58879)



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