No. 17-1225

IN THE

Supreme Court of the United States

AMY P. CAMPANELLI,

Petitioner,

v.

STATE OF ILLINOIS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

BRIEF OF THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

CASES **Page(s)**

CONSTITUTIONAL PROVISIONS

RULES

OTHER AUTHORITIES

INTEREST OF *AMICUS CURIAE*[1]

The National Association of Criminal Defense Lawyers ("NACDL") is a nonprofit voluntary professional bar association that works on behalf of criminal defense attorneys to ensure justice and due process for those accused of crime or misconduct.

Founded in 1958, NACDL has a nationwide membership of many thousands of direct members, and up to 40,000 with affiliates. NACDL's members include private criminal-defense lawyers, public defenders, military defense counsel, law professors, and judges. NACDL is the only nationwide professional bar association for both public defenders and private criminal-defense lawyers. NACDL is dedicated to advancing the proper, efficient, and fair administration of justice. NACDL files numerous *amicus* briefs each year in the U.S. Supreme Court and other federal and state courts, seeking to provide *amicus* assistance in cases that present issues of broad importance to criminal defendants, criminal defense lawyers and the criminal justice system as a whole.

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[1] Pursuant to Rule 37.6, counsel for *amicus curiae* states that no counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity made a monetary contribution to the preparation or submission of this brief. Pursuant to Rule 37.2, *amicus curiae* states that petitioner and respondent, upon timely receipt of notice of NACDL's intent to file this brief have consented to its filing.

From its inception, NACDL has endeavored to promote the proper and fair administration of criminal justice and foster the integrity, independence, and expertise of the criminal-defense profession. Moreover, NACDL is committed to ensuring that every person who arrives before the criminal-justice system, especially those who are poor or racially or ethnically diverse, receive competent and sufficiently resourced counsel.

For these reasons, NACDL has a particular interest in this case, because it believes that the Illinois Supreme Court's decision deprives indigent defendants of their fundamental constitutional rights to conflict-free counsel.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Illinois Supreme Court's ruling — that indigent clients are not entitled to the same standard of conflict-free representation as are wealthier clients who can afford to hire a private attorney — has profound implications for the constitutional rights of the millions of clients served by public defenders' offices nationwide each year. There are over 1,000 public defenders' offices around the country, across both the state and federal criminal justice systems.[2] These offices employ more than 18,000 attorneys who oversee more than 5 million cases

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[2] *See* Donald J. Farole, Jr. & Lynn Langton, U.S. Dep't of Justice, *County-based & Local Public Defender Offices, 2007*, at 3 (Sept. 2010); U.S. Courts, *Defender Services*, http://www.uscourts.gov/services-forms/defender-services (last visited Apr. 9, 2018).

annually. [3] Public defenders' offices handle the overwhelming majority of criminal cases, up to 80% in some jurisdictions.[4]

Importantly for this case, a substantial portion of these cases involves clients who are indicted jointly with at least one co-defendant who may have adverse interests.[5] In concluding that the Sixth Amendment rights of these adverse co-defendants are not burdened when they are simultaneously represented by attorneys within the same centrally managed public defender's office, the Illinois Supreme Court undermined a crucial safeguard of the right to a fair trial: the fundamental right to conflict-free counsel. Far from a narrow issue of criminal procedure, the Illinois Supreme Court's decision undermines the essential nature of the attorney-client relationship between a substantial subset of criminal defendants and their lawyers throughout the nation.

By carving out public defenders' offices from the ethical rules on imputation of conflicts, the Illinois Supreme Court has sustained a tiered system of legal representation based on ability to pay. This Court has expressly and repeatedly held that

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[3] *See County-based & Local Public Defender Offices*, at 3; U.S. Courts, *Defender Services*, http://www.uscourts.gov/services-forms/defender-services (last visited Apr. 9, 2018).

[4] *See* Irene Oritseweyinmi Joe, *Systematizing Public Defender Rationing*, 93 Denv. L. Rev. 389, 392 (2016).

[5] Petition for Writ of Cert., *Campanelli v. Illinois*, No. 17-1225, at 4 (Feb. 28, 2018).

fundamental rights may not, consistent with the Fourteenth Amendment, be limited solely due to an individual's financial status. But that is exactly what is happening here: indigent individuals who cannot afford to pay an attorney must accept representation by the public defender and consequently (under the Illinois Supreme Court's rule) be subjected to a lower ethical standard of conflicted representation. This second-class treatment of indigent clients undermines those individuals' fundamental rights to unconflicted representation by lawyers who have undivided loyalty to them and are unconstrained to zealously advocate on their behalves.

Further, the Illinois Supreme Court's rule is based on an overly sanguine view of the "adversary tendency of lawyers within the public defender's office," which purportedly constitutes "sufficient protection against a conflict of interest between assistant public defenders." (Pet. App. 17a.) In practice, however, lawyers within public defenders' offices frequently work with limited resources while shouldering staggering caseloads. The economic realities of many public defenders' offices foster a cooperative and collaborative environment out of sheer necessity, and heighten the need to strictly guard against ethical conflicts on the front end. As a result, the Illinois Supreme Court's relegation of indigent clients to second-class status when it comes to conflict-free representation cannot be squared with these practical realities of working in public defenders' offices.

This petition accordingly presents the opportunity for the Court to flatten the tiers of legal

representation and affirm that all criminal defendants are entitled to the same unconflicted level of zealous advocacy, regardless of their ability to pay.

ARGUMENT

I. THE ILLINOIS SUPREME COURT'S RULING SUBVERTS INDIGENT DEFENDANTS' FUNDAMENTAL RIGHTS TO CONFLICT-FREE COUNSEL, WHILE MISUNDERSTANDING THE PRACTICAL REALITIES FACING PUBLIC DEFENDERS' OFFICES

A. This Court Has Consistently Declared That Fundamental Constitutional Rights May Not Be Abridged Based On An Inability To Pay

Drawing on the Equal Protection and Due Process Clauses of the U.S. Constitution, this Court has long protected fundamental rights — such as the right to counsel — from state policies that purport to limit their exercise based on an ability to pay. U.S. Const. amend. XIV, § 1; *M.L.B. v. S.L.J.*, 519 U.S. 102, 120 (1996). Indeed, this Court has made clear that "lines drawn on the basis of wealth or property" are arbitrary and discriminatory, and "like those of race, are traditionally disfavored." *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 668 (1966) (internal citation omitted).

When laws make fundamental rights inaccessible based on an inability to pay, "due process and equal protection principles converge." *M.L.B.*, 519 U.S. at 120 (alteration and internal quotation

marks omitted). The Equal Protection inquiry considers "whether the State has invidiously denied one class of defendants a substantial benefit available to another class of defendants." *Bearden v. Georgia*, 461 U.S. 660, 665 (1983). The Due Process inquiry "homes in on the essential fairness of the state-ordered proceedings anterior to adverse state action." *M.L.B.*, 519 U.S. at 120.

"[W]here fundamental rights and liberties are asserted . . . , classifications which might invade or restrain them must be closely scrutinized and carefully confined." *Harper*, 383 U.S. at 670. Restrictions on fundamental rights are analyzed by weighing the "character and intensity of the individual interest at stake" against the State's justification. *M.L.B.*, 519 U.S. at 120-21. Applying these considerations, this Court has consistently struck down restrictions that draw lines based on financial status in a variety of contexts.

1. *Right to counsel.* The right to a fair trial is a bedrock principle of the American criminal justice system. *See Strickland v. Washington*, 466 U.S. 668, 684-85 (1984). The right to the assistance of counsel incorporates — and depends on — the right to conflict-free counsel. As this Court held in *Bonin v. California*, 494 U.S. 1039, 1044 (1990), "[t]he right to counsel's undivided loyalty is a critical component of the right to assistance of counsel; when counsel is burdened by a conflict of interest, he deprives his client of his Sixth Amendment right as surely as if he failed to appear at trial."

It is foundational that the fundamental right to conflict-free counsel protected by the Sixth Amendment cannot be denied based on an accused's

inability to afford an attorney. As this Court proclaimed in *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963), "any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him."[6] This is because the State's appointment of counsel for indigent individuals effectuates the "procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law," and protects against the arbitrary denial of these fundamental rights on the basis of financial status. *Id.*

2. *Right to effective appellate review in criminal cases.* This Court has held that the State may not grant appellate review in a manner that discriminates on the basis of financial ability, because the fundamental safeguards of the Due Process Clause would be "meaningless promises" if they were limited based on the ability to pay. *Griffin v. Illinois*, 351 U.S. 12, 17 (1956).

For example, in *Griffin*, the Court held that appellate review — "integral . . . for finally adjudicating the guilt or innocence of a defendant" — is a proceeding at which the full protections of the Equal Protection and Due Process Clauses apply. *Id.* at 18. As such, an Illinois statute, which required appellants to provide the court with a record of trial-

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[6] *See also McCoy v. Court of Appeals of Wis., Dist. 1*, 486 U.S. 429, 435 (1988) (stating that it is "settled law that an indigent defendant has the same right to effective representation by an active advocate as a defendant who can afford to retain counsel of his or her choice").

court proceedings in order to pursue an appeal, invidiously "discriminat[ed] against some convicted defendants on account of their poverty." *Id.* [7] Criminal defendants who were unable to afford the cost of procuring the trial transcript therefore could not be denied the opportunity to appeal their convictions. *Id.*

Moreover, this Court has held that the state's proffered "fiscal and other interests in not burdening the appellate process" cannot limit appellate review based on ability to pay for court documents:

> *Griffin* does not represent a balance between the needs of the accused and the interests of society; its principle is a flat prohibition against pricing indigent defendants out of as effective an appeal as would be available to others able to pay their own way. . . . The State's fiscal interest is, therefore, irrelevant.

Mayer v. City of Chicago, 404 U.S. 189, 196-97 (1971).

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[7] *See also Douglas v. California*, 372 U.S. 353, 357 (1963) (extending *Griffin* to hold that a California rule that provided appellate counsel for indigent defendants only if the court determined, after reviewing the record, that counsel would be helpful, constituted "an unconstitutional line . . . drawn between rich and poor"); *Burns v. Ohio*, 360 U.S. 252, 257 (1959) (applying *Griffin* to hold that an individual cannot be precluded from prosecuting an appeal solely because of an inability to afford appellate filing fees).

3. ***Right to familial relationships.*** This Court has protected individuals' fundamental interests such as divorce and parental rights against laws purporting to restrict them in quasi-criminal proceedings on the basis of financial status. For example, in *Boddie v. Connecticut*, 401 U.S. 371, 383 (1971), the Court struck down a law that required individuals to pay court fees and costs in order to bring an action for divorce. In that case, a class of women who received public assistance were prevented from filing for divorce because they could not afford the court fees and costs of service of process. *Id.* at 372-73. The Court held that, because "marriage involves interests of basic importance in our society," the State could not "pre-empt the right to dissolve this legal relationship without affording all citizens access to the means it has prescribed for doing so." *Id.* at 376, 383.

Similarly, in *M.L.B.*, the petitioner's parental rights were terminated, but she was unable to afford the advance payment of court fees to appeal the termination decision. 519 U.S. at 108-09. The Court held that, owing to "the [fundamental] interest of parents in their relationship with their children," requiring individuals to pay court fees in advance in order to appeal a parental termination decree violated the Due Process and Equal Protection Clauses. *Id.* at 119, 124.

Consistent with its precedent in other areas of fundamental rights, this Court has held that an indigent individual's fundamental interest in familial relationships is not outweighed by the State's countervailing financial interest. *See M.L.B.*, 519 U.S. at 122, 124 (rejecting the State's proffered

"interest in offsetting the costs of its court system," and reasoning that the State's need for revenue cannot prevail over individual fundamental rights, because "access to judicial processes in cases criminal or quasi criminal in nature [cannot] turn on ability to pay" (internal quotation marks and citation omitted)); *Boddie*, 401 U.S. at 382 (holding that "the State's asserted interest in its fee and cost requirements as a mechanism of resource allocation or cost recoupment" could not justify erecting a financial barrier to the exercise of a fundamental right).

4. ***Right to liberty.*** This Court has consistently held that a State violates the Equal Protection Clause when it imprisons an indigent individual solely because he cannot afford to pay a fine. In *Williams v. Illinois*, 399 U.S. 235, 236-37 (1970), the defendant had served his prison sentence, but remained incarcerated pursuant to an Illinois statute because of his inability to pay the monetary penalty of his sentence. The Court invalidated the statute, holding that "the Equal Protection Clause of the Fourteenth Amendment requires that the statutory ceiling placed on imprisonment for any substantive offense be the same for all defendants irrespective of their economic status." *Id.* at 244. The Court reasoned that, "[s]ince only a convicted person with access to funds can avoid the increased imprisonment, the Illinois statute in operative effect exposes only indigents to the risk of imprisonment beyond the statutory maximum," and that "[b]y making the maximum confinement contingent upon one's ability to pay, the State has visited different

consequences on two categories of persons." *Id.* at 242.[8]

This Court has similarly held that the State impermissibly discriminates on the basis of financial status when it automatically revokes an individual's probation when he or she has failed to pay a fine, without inquiring into why. *Bearden*, 461 U.S. at 672-73. "To do [so] would deprive the probationer of his conditional freedom simply because, through no fault of his own, he cannot pay the fine. Such a deprivation would be contrary to the fundamental fairness required by the Fourteenth Amendment." *Id.*

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These four examples demonstrate this Court's long history of protecting fundamental rights in the face of policies that discriminate on the basis of financial status.

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[8] *See also Tate v. Short*, 401 U.S. 395, 398-99 (1971) (extending *Williams* to hold that the State violated the Equal Protection Clause when it imprisoned defendant convicted under fine-only statute solely because defendant was indigent and unable to immediately pay fine in full); *Smith v. Bennett*, 365 U.S. 708, 709 (1961) (holding that the State denied indigent prisoners equal protection by making writ of habeas corpus available only to those prisoners who could pay necessary filing fees).

B. The Illinois Supreme Court's Carve-Out Of Public Defenders From Ethical Rules Applicable To Private Law Firms Deprives Indigent Defendants Of Their Fundamental Rights To Conflict-Free Counsel

Despite this Court's unambiguous precedent holding that fundamental rights cannot be infringed based on an inability to pay, the Illinois Supreme Court's ruling does exactly that.

Specifically, the Illinois Supreme Court's ruling that a public defender's office is not a "law firm" within the meaning of the Illinois Rules of Professional Conduct,[9] and is therefore exempt from the rule governing imputation of conflict among

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[9] The Illinois Rule governing imputation of conflicts of interest provides that, "[w]hile lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so . . . , unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm." Ill. R. Prof'l Conduct 1.10. The official comment to Rule 1.10 defines "firm" for the purposes of the Rules to include "lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization." *Id.* cmt. 1.

attorneys associated in practice, sets up an untenable distinction: it effectively creates a second tier of clients, for whom conflicted representation is tolerated instead of prohibited. In practice, whether an individual falls into the first or second tier is *solely* determined by financial status, because an individual only will be represented by the public defender's office if he cannot afford to hire a private attorney. *See* Nat'l Ass'n of Criminal Def. Lawyers, *Gideon at 50: A Three-Part Examination of Indigent Defense in America, Part 2 — Redefining Indigence: Financial Eligibility Guidelines for Assigned Counsel*, at 28 (Mar. 2014), https://www.nacdl.org/reports/ (stating that individuals are eligible for appointed counsel when they "lack[ ] financial resources on a practical basis to retain counsel" (citing *People v. Adams*, 903 N.E.2d 892 (Ill. App. Ct. 2009)).

This type of disparity in the effectuation of Sixth Amendment rights — based solely on whether a criminal defendant is represented by a public defender or a private attorney — constitutes invidious discrimination based on the ability to pay, in violation of the Equal Protection Clause. *Gaines v. Manson*, 481 A.2d 1084, 1094-95 (Conn. 1984). In *Gaines*, the Connecticut Supreme Court considered disparities in Sixth Amendment speedy-trial rights between clients of private attorneys — whose appeals were typically filed within six months of trial — and clients of the public defender's office, whose appeals were not filed for four years. *Id.* at 1094. Observing that it was "undeniable" that indigent defendants' equal-protection rights were implicated, the court held that "[t]he difference between four years and six months reflects a disparity in opportunity of access to the appellate forum that is constitutionally

impermissible," since "[t]he protracted delays . . . [,] caused as they are by the understaffing and overwork of the public defender's office, can affect only those criminal defendants who are indigent." *Id.*

So, too, here: the Illinois Supreme Court's ruling "in operative effect exposes only indigents to the risk" of representation by conflicted attorneys who are unable to zealously advocate for their clients, thereby "visit[ing] different consequences on two categories of persons" in violation of the Equal Protection Clause. *Williams*, 399 U.S. at 242. This Court has, time and again, rejected such "impermissible discrimination that rests on ability to pay." *Id.* at 241. This Court should grant the writ to affirm that clients of public and private attorneys alike are entitled to the same level of zealous advocacy and undivided loyalty.

C. The Practicalities Of Working In Public Defenders' Offices Demand Equally Exacting Standards As Those Governing Private Law Firms

The Illinois Supreme Court justified treating public defenders differently than attorneys in private practice, in part, on the "adversary tendency of lawyers within the public defender's office." (Pet. App. 17a.) According to the court, this tendency constitutes "sufficient protection against a conflict of interest between assistant public defenders." (*Id.*) However, not only is any such "adversary tendency" insufficient on its own to guard against conflicts of interest, the idea that this tendency actually exists is out of step with the reality of working as a public

defender in 2018. In an era of cash-strapped governments and backbreaking caseloads, public defenders simply do not have the luxury of diverting scarce resources into an "adversarial" practice. Instead, the economic realities of public defenders' offices across the country dictate a level of cooperation and collaboration that is incompatible with the Illinois Supreme Court's rosy view.

1. The Resources Of Public Defenders' Offices Nationwide Are Stretched Thin By Staggering Caseloads

It is by now an unfortunate truism that public defenders' offices throughout the country are consistently overburdened and underfunded. Indeed, even this Court has recognized that public defenders are "overworked and underpaid . . . . [,] render[ing] less effective the basic right the Sixth Amendment seeks to protect." *Luis v. United States*, 136 S. Ct. 1083, 1086 (2016).[10] This problem has reached crisis

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[10] *See also, e.g.*, *Phillips v. State*, No. 15-CECG-02201, 2016 WL 1573199, at *4 (Cal. Super. Ct. Apr. 11, 2016) (denying motion to dismiss and holding that plaintiffs stated claims for violation of rights to counsel based on systemic deficiencies in indigent defense system, including excessive caseloads and "[c]ase management practices that create conflicts of interest for attorneys"); *Pub. Def., Eleventh Judicial Circuit of Fla. v. State*, 115 So. 3d 261, 272-75 (Fla. 2013) (noting "excessive caseloads" and "woefully inadequate funding" of Florida public defender system and holding that an attorney's motion to

proportions as budget cuts have compounded the burden shouldered by offices' shrinking personnel, particularly in parts of the country that have seen an explosion of cases stemming from the opioid epidemic. *See, e.g.*, Deanna Allbrittin, *Opiate Epidemic Helps Lead to Public Defender Agency Budget Shortfalls*, CBS 4 Indianapolis (Mar. 29, 2017), http://cbs4indy.com/2017/03/29/opiate-epidemic-helps-lead-to-public-defender-agency-budget-shortfalls/ (noting that cases involving parental rights of individuals battling opioid addiction have doubled since 2013, threatening compliance with state caseload standards).

Although the American Bar Association ("ABA") advises that no criminal-defense attorney should ever handle more than 150 felonies or 400 misdemeanors per year — a limit that "should in no event be exceeded"[11] — public defenders' caseloads routinely surpass this threshold. According to the latest national survey of public defenders' offices,

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withdraw may be granted to safeguard client's Sixth Amendment rights); *Kuren v. Luzerne Cty.*, 146 A.3d 715, 718 (Pa. 2016) (holding that "a cause of action exists entitling a class of indigent criminal defendants to allege prospective, systemic violations of the right to counsel due to underfunding, and to seek and obtain an injunction forcing a county to provide adequate funding to a public defender's office").

[11] *See* Am. Bar Ass'n Standing Comm. on Legal Aid & Indigent Defendants, *Ten Principles of a Public Defense Delivery System*, at 2 & n.19 (Feb. 2002).

more than seven in ten countywide offices and nearly eight in ten statewide offices fail to meet the ABA standards. *See* Donald J. Farole, Jr. & Lynn Langton, U.S. Dep't of Justice, *County-based & Local Public Defender Offices, 2007*, at 8, 12 (2010). Indeed, the caseloads in some public defenders' offices are several times the upper limit set by the ABA. For example:

- As of 2015, the average caseload of a Louisiana public defender was 2.36 times the ABA limit, and by spring 2016, thirty-three out of forty-two public defender districts in the state had entered a "restriction of services" protocol due to underfunding.[12]
- To provide the minimum level of representation for the 15,000 cases assigned each year, Rhode Island requires 136 full-time attorneys. As of July 2017, there were only 49 public defenders in the entire state.[13]
- In Missouri, the number of cases handled by the public defender's office grew from 74,000 in 2016 to 82,000 in 2017, with most

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[12] Andrea M. Marsh, Nat'l Ass'n of Criminal Def. Lawyers & Found. for Criminal Justice, *State of Crisis: Chronic Neglect and Underfunding for Louisiana's Public Defense System*, at 16 (2017).

[13] Am. Bar Ass'n & Nat'l Ass'n of Criminal Def. Lawyers, *The Rhode Island Project: A Study of the Rhode Island Public Defender System and Attorney Workload Standards*, at 7 (Nov. 2017).

public defenders expected to manage 80 to 100 cases per week.[14]

- In Lea County, New Mexico, where each public defender was handling 200 cases at any given time, the office declined to take on new cases as of October 2016,[15] stating that doing so would compromise its ethical duty to provide "effective and constitutional representation."[16]

In light of these overwhelming caseloads, most public defender systems currently operate well beyond capacity, with little — if any — slack.

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[14] Phil McCausland, *Public Defenders Nationwide Say They're Overworked and Underfunded*, NBC News (Dec. 11, 2017), https://www.nbcnews.com/news/us-news/public-defenders-nationwide-say-they-re-overworked-underfunded-n828111.

[15] Fernanda Santos, *When Defendants Cannot Afford a Lawyer, and Neither Can New Mexico*, N.Y. Times (Dec. 29, 2016), https://www.nytimes.com/2016/12/29/us/new-mexico-lawyer-shortage.html.

[16] Debra Cassens Weiss, *Public Defender Is Found in Contempt for Refusing Cases; DA Asks State Supreme Court to Intervene*, ABA Journal (Dec. 1, 2016), http://www.abajournal.com/news/article/public_defender_is_found_in_contempt_for_refusing_cases_da_asks_state_supre.

2. The Practical Realities Of Working In Public Defenders' Offices Promote Cooperation And Collaboration, Not An "Adversary Tendency"

With caseloads stretching public defenders' offices to their breaking points, public defenders must also stretch their resources as far as possible. Particularly in light of the sheer volume of cases that public defenders handle at any one time, it is simply unrealistic to expect that they stand as "adversaries" to one another. To the contrary, the inevitable byproduct of this strain on resources is cooperation and collaboration within public defenders' offices, so as to maximize productivity and client service. For example:

- Public defenders are often pressed for time and accordingly must adapt — or simply reuse — existing research and precedent drawn from briefs authored by other attorneys in their offices in similar cases.
- Public defenders are frequently double-booked for court hearings and may rely on their counterparts to accommodate scheduling conflicts.
- Public defenders rely on each other for tips about judges' and prosecutors' individual practices, guidance in dealing with recurring issues, and advice in interacting with clients.
- Public defenders work in close proximity to one another and share physical office space,

including computer systems and filing cabinets.

- Public defenders rely on a common pool of support personnel, including administrative assistants, paralegals, investigators, and experts, who are familiar with case details and have access to confidential client information.

This environment makes it difficult to construct and enforce barriers to the same degree as in private law firms. Accordingly, it is a myth that public defenders representing adverse co-defendants are sealed off from one another as "adversaries." The realities of public defenders' working relationships therefore do not protect against conflicts of interest that arise in the representation of adverse co-defendants and in fact call for stronger ethical rules — precisely the ones that apply to private law firms.

* * *

The public defender system throughout the United States is in a state of crisis. Excessive caseloads and scant resources make it difficult — if not impossible — for overworked, underfunded public defenders to devote sufficient time, focus, and resources to meet their clients' needs. The decision of the Illinois Supreme Court, and those like it, only further intensify these endemic issues by failing to treat all criminal defendants equally without regard to an individual's ability to pay. This Court should grant the writ to affirm that all individuals are entitled to conflict-free representation, thereby

ensuring the proper and fair administration of the criminal justice system.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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