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More on ‘guilty until proven innocent’

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The Supreme Court is hearing argument today in the case of *Nelson v. Colorado*, in which the petitioners are challenging Colorado’s requirement that people whose criminal convictions are overturned and vacated, in order to receive merely a *refund* of the fees that they paid to the state as a consequence of the earlier convictions, must prove that they were *actually innocent* of the charges against them (and by “clear and convincing evidence,” no less).

(I previously [wrote about this case](#) and about [an amicus brief](#) I helped write for the Institute for Justice and the Cato Institute in support of petitioners, and did a [Cato podcast about the case](#). An excellent summary is also available from [Steve Vladeck at Scotusblog.com](#).)

Colorado is not the only jurisdiction that has some trouble dealing with the presumption of innocence. [Adam Liptak in the New York Times reports](#) on a cert petition recently filed at the Supreme Court focusing on an equally charming feature of a Minnesota county’s criminal procedure, under which individuals who are arrested are charged a \$25 “booking” fee that isn’t returned to them even if their arrest doesn’t lead to an indictment (let alone a conviction), part of what Liptak describes as “a national trend to extract fees and fines from people who find themselves enmeshed in the criminal justice system.”

And speaking of the Supreme Court ... [I’ve blogged](#) at length about the *Packingham v. North Carolina* case the court [will be hearing in February](#), involving a First Amendment challenge to the North Carolina law prohibiting previously convicted sex offenders from accessing any “[commercial social networking Web sites](#)” that allows access to minors. (I’ve also done a [Cato podcast about this case](#).)

I continue to believe that this could be one of the “sleeper” cases of the 2016-2017 term. It’s a bit under the radar but it is an opportunity for the Supreme Court to reaffirm some profoundly important First Amendment principles. And I’ve [submitted an amicus brief here too](#), working with Perry Grossman and Henry Smith (of Boies Schiller & Flexner) on behalf of the Electronic Frontier Foundation, Public Knowledge, and the Center for Democracy and Technology.

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