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IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Petitioner,

v.

BRIAN M. BASSETT,

Respondent.

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*AMICI CURIAE* BRIEF OF JUVENILE LAW CENTER,  
AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON,  
CAMPAIGN FOR FAIR SENTENCING OF YOUTH, COUNCIL OF  
JUVENILE CORRECTIONAL ADMINISTRATORS, AND  
MOTHERS AGAINST MURDERERS ASSOCIATION  
IN SUPPORT OF RESPONDENT, BRIAN BASSETT

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## **IDENTITY AND INTEREST OF AMICI CURIAE**

The identity and interest of *amici curiae* are set forth in the accompanying Motion for Leave to File an *Amicus Curiae* Brief.

## **STATEMENT OF THE CASE**

Brian Bassett is serving three life without the possibility of parole sentences for the murders of his family members committed when he was age 16. This sentence was re-imposed when Mr. Bassett was age 35 and had served 20 years in prison, despite the prosecution's failure to rebut the significant evidence demonstrating Mr. Bassett's post-offense rehabilitation. The Court of Appeals ruled that the sentence violated the state Constitution. In addition, *amici curiae* adopt the Statement of the Case as set forth by Respondent Bassett.

## **ARGUMENT**

The United States Supreme Court has consistently recognized that children are fundamentally different from adults and categorically less deserving of the harshest forms of punishments. *Roper v. Simmons*, 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed.2d 1 (2005); *Graham v. Florida*, 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed.2d 825 (2010); *Miller v. Alabama*, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed.2d 407 (2012); *Montgomery v. Alabama*, \_\_\_ U.S. \_\_\_, 136 S. Ct. 718, 193 L. Ed.2d 599 (2016). As

explained in *Miller*, “[b]ecause juveniles have diminished culpability and greater prospects for reform . . . ‘they are [categorically] less deserving of the most severe punishments.’” 567 U.S. at 471 (quoting *Graham*, 560 U.S. at 68).

Mr. Bassett appears to be the first person in Washington to have a sentence of life without parole re-imposed under the *Miller* fix statute, RCW 10.95.030. The statute forbids Mr. Bassett from ever requesting release, unlike the defendant in *Ramos*, *infra*, who can regularly petition for release. He has been deemed permanently incorrigible and irredeemable because of the nature of his offense and without regard to any evidence he might present now or in the future. This Court is being asked to review whether sentencing an individual to life without parole is constitutional for a crime committed as a juvenile. For the reasons set forth in Mr. Bassett’s briefs, the Court of Appeals’ ruling below, and in the *amici* briefs filed in this case, the answer is no.

The U.S. Supreme Court noted three significant differences that distinguish youth from adults for culpability purposes:

First, children have a “lack of maturity and an underdeveloped sense of responsibility,” leading to recklessness, impulsivity, and heedless risk-taking. Second, children “are more vulnerable . . . to negative influences and outside pressures,” including from their family and peers; they have limited “contro[l] over their own environment” and lack the ability to extricate themselves from horrific,

crime-producing settings. And third, a child's character is not as “well formed” as an adult's; his traits are “less fixed” and his actions less likely to be “evidence of irretrievabl[e] deprav[ity].”

*Miller*, 567 U.S. at 471 (alterations in original) (citations omitted). These scientific findings led the court to hold that

sentencing a child to life without parole is excessive for all but “the rare juvenile offender whose crime reflects irreparable corruption,” 567 U.S. at 479-80 (quoting *Roper*, 543 U.S. at 573), [rendering] life without parole an unconstitutional penalty for “a class of defendants because of their status”—that is, juvenile offenders whose crimes reflect the transient immaturity of youth.

*Montgomery*, 136 S. Ct. at 734. The Court further held that although individuals are not guaranteed release, they must have “some realistic opportunity to obtain release.” *Graham*, 560 U.S. at 82.

Although *Miller* and *Montgomery* reserved life without parole sentences for “permanently incorrigible youth,” such a classification is an oxymoron. Neither at the time of sentencing, nor in a case like this where there is evidence of significant post-offense rehabilitation, can a court or factfinder make a determination that a young person is so incapable of rehabilitation that they should be condemned to die in prison.

“[J]ustify[ing] life without parole on the assumption that the juvenile offender forever will be a danger to society requires the sentencer to make a judgment that the juvenile is incorrigible,” and such judgment would be



“questionable” due to the characteristics of youth, and the capacity for juveniles to change. *Graham*, 560 U.S. at 72-73. *See also infra* Part I.D. The Court recognized that the salient characteristics of youth noted above would make it “difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.” *Graham*, 560 U.S. at 68 (citing *Roper*, 543 U.S. at 573).

Moreover, as discussed below, classification as “permanently incorrigible” fails in light of prevailing scientific research on adolescence. This Court has recognized the need to consider this research when determining the constitutional validity of a lengthy adult sentence imposed for a crime committed as a youth. *See, e.g., State v. Houston-Sconiers*, 188 Wn.2d 1, 391 P.3d 409 (2017) and *State v. O'Dell*, 183 Wn.2d 680, 695, 358 P.3d 359 (2015) (where this Court recognized “the studies underlying *Miller*, *Roper*, and *Graham* . . . establish a clear connection between youth and decreased moral culpability for criminal conduct.” Scientific research, detailed below, confirms that youth cannot be deemed incorrigible based solely on their teenage conduct.

“[J]uvenile offenders cannot with reliability be classified among the worst offenders.” *Graham*, 560 U.S. at 68 (quoting *Roper*, 543 U.S. at

569). *Graham* and *Miller* both recognized that though youth does not absolve juveniles of responsibility for their actions, it does lessen their culpability. (“A juvenile is not absolved of responsibility for his actions, but his transgression ‘is not as morally reprehensible as that of an adult.’”) *Graham*, 560 U.S. at 68 (quoting *Thompson v. Oklahoma*, 487 U.S. 815, 835, 108 S. Ct. 2687, 101 L.Ed.2d 702 (1988) (plurality opinion)). See also *State v. Ramos*, 187 Wn.2d 420, 444, 387 P.3d 650 (2017) (“due to ‘children’s diminished culpability and heightened capacity for change . . . appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon.”) (quoting *Miller*, 567 U.S. at 479)). The “[scientific] findings—of transient rashness, proclivity for risk, and inability to assess consequences—both lessened a child’s ‘moral culpability’ and enhanced the prospect that, as the years go by and neurological development occurs, his ‘deficiencies will be reformed.’” *Miller*, 567 U.S. at 472 (quoting *Graham*, 560 U.S. at 68-69); *Roper*, 543 U.S. at 570. Punishments that fail to recognize these findings are constitutionally infirm.

**I. RESEARCH IN ADOLESCENT DEVELOPMENT AND NEUROSCIENCE CONFIRMS THAT LIFE WITHOUT PAROLE SENTENCES SERVE NO LEGITIMATE PENOLOGICAL PURPOSE WHEN APPLIED TO CHILDREN, RENDERING THEM VIOLATIVE OF THE STATE CONSTITUTION**

The *Graham* Court found that none of the accepted goals of punishment—retribution, deterrence, incapacitation, or rehabilitation—provide an adequate justification for sentencing a juvenile to life without parole for committing a non-homicide crime. *Graham*, 560 U.S. at 71. While Mr. Bassett committed homicide, as the Court recognized in *Miller*, “the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, *even when they commit terrible crimes*,” 567 U.S. at 472 (emphasis added). The well-established characteristics that are inherent to youth, such as immaturity, impetuosity, vulnerability to “negative influences and outside pressures,” and a greater capacity for change and rehabilitation, *Roper*, 543 U.S. at 569-570, weaken the penological justifications for imposing the most extreme sentence short of the death penalty on a juvenile offender. *See Miller*, 567 U.S. at 473-74. The Supreme Court explicitly found that

*Miller* . . . did more than require a sentencer to consider a juvenile offender’s youth before imposing life without parole; it established that the penological justifications for life without parole collapse in light of “the distinctive attributes of youth.” *Miller*, 567 U.S. at 472. Even if a court considers a child’s age before sentencing him or her to a

lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects “unfortunate yet transient immaturity.” *Id.* at 479 (quoting *Roper*, 543 U.S. at 573).

*Montgomery*, 136 S. Ct. at 734. Not only is the line between youth whose crimes reflect transient immaturity and the permanently incorrigible undiscernible, but the distinction is particularly fallacious in light of post-offense rehabilitation evidence.

**A. The Penological Objective Of Retribution Does Not Justify Juvenile Life Without Parole Sentences**

As the Court observed in *Roper*, “[w]hether viewed as an attempt to express the community’s moral outrage or as an attempt to right the balance for the wrong to the victim, the case for retribution is not as strong with a minor as with an adult.” 543 U.S. at 571. *See also O’Dell*, 183 Wn.2d 692-93. The *Roper* Court reasoned that retribution could not be proportional if the law’s most severe penalty was imposed on an individual whose culpability was “diminished, to a substantial degree, by reason of youth and immaturity.” *Roper*, 543 U.S. at 571. Because the hallmark characteristics of youth render difficult the ability to “differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption,” *Graham*, 560 U.S. at 68, a sentence imposed for a crime committed as a juvenile must go beyond the facts of

the offense and be based on consideration of how the youth's age, development, and capacity for rehabilitation *counsel against* a life without parole sentence. *See also Ramos*, 187 Wn.2d at 443 (“The required *Miller* hearing is not an ordinary sentencing proceeding. *Miller* ‘establishes an affirmative requirement that courts fully explore the impact of the defendant’s juvenility on the sentence rendered.’ Therefore, a court conducting a *Miller* hearing must do far more than simply recite the differences between juveniles and adults and make conclusory statements that the offender has not shown an exceptional downward sentence is justified.” (internal citation omitted))

In the instant case, the trial court ordered a sentence precluding any opportunity to request release solely because of the nature of the crime, and without regard to evidence of Mr. Bassett’s background at the time of the offense and unrebutted evidence of his post-offense rehabilitation. But *Miller* requires that “[t]he opportunity for release . . . be afforded to those who demonstrate the truth of *Miller*’s central intuition—that children who commit *even heinous crimes* are capable of change.” *Montgomery*, 136 S. Ct. at 736 (emphasis added). The crime is not the focus of *Miller*, but rather the ability for an individual to change even after committing a crime such as murder, and even if that crime was especially heinous. Allowing the facts of a crime to overwhelm the relevant research and catapult

retribution over all else as the driver of the sentence undermines the central holding in *Miller* and results in the improper denial of any meaningful opportunity for parole.

**B. The Penological Objective Of Deterrence Does Not Justify A Juvenile Life Without Parole Sentence**

Just as the heinous nature of the offense cannot alone justify a juvenile life without parole sentence, deterrence is an even less compelling penological goal when it comes to youth as “the same characteristics that render juveniles less culpable than adults suggest as well that juveniles will be less susceptible to deterrence.” *Roper*, 543 U.S. at 571. As the Supreme Court recognized, “[b]ecause juveniles’ ‘lack of maturity and underdeveloped sense of responsibility . . . often result in impetuous and ill-considered actions and decisions,’ they are less likely to take a possible punishment into consideration when making decisions.” *Graham*, 560 U.S. at 72 (internal citation omitted). The details of the differences between adult and adolescent brains, discussed below, help illuminate why the deterrence rationale fails to justify the constitutionality of juvenile life without parole sentences.

**1. Underdeveloped abstract reasoning and decision-making skills make it difficult for youth to foresee and appreciate the consequences of their actions**

In drawing constitutional distinctions between adults and children, this Court and the U.S. Supreme Court have relied upon an increasingly settled body of both developmental and neuroscientific research confirming that the structural, developmental and functional differences in adolescent brains impact adolescent behavior. *Graham*, 560 U.S. at 68 (confirming that since *Roper*, “developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds”); *Miller*, 567 U.S. at 471 (citing *Graham*’s recognition that “developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds”—for example, in “parts of the brain involved in behavior control.”). *See generally* Laurence Steinberg, *The Influence of Neuroscience on US Supreme Court Decisions about Adolescents’ Criminal Culpability*, 14 NATURE NEUROSCIENCE 513 (2013). *See also* Richard J. Bonnie & Elizabeth S. Scott, *The Teenage Brain: Adolescent Brain Research and the Law*, 22 CURRENT DIRECTIONS IN PSYCHOL. SCI. 158 (2013).

As a group, youth make decisions in ways that differ from adults, and those distinctions are at least partially attributable to developmental differences in a variety of brain regions. *See* Laurence Steinberg, *A Social*

*Neuroscience Perspective on Adolescent Risk-Taking*, 28

DEVELOPMENTAL REV. 78, 83-92 (2008). These developmental differences impact adolescents' capacities to appreciate the benefits and consequences of their actions, and their ability to make reasoned, independent decisions about the best course of action. Although general cognitive skills improve greatly by mid-adolescence, the development of some important cognitive functions lags, as different parts of the brain mature at different rates.

Areas involved in more basic functions, such as those involved in sensory information processing and in movement control, develop first, Nitin

Gogtay et al., *Dynamic Mapping of Human Cortical Development During Childhood Through Early Adulthood*, 101 PROCEEDINGS OF THE

NATIONAL ACADEMY OF SCIENCES OF THE UNITED STATES OF AMERICA

8174, 8174 (2004), and the parts of the brain responsible for more top-

down control, such as impulse control and foresight, are among the last to

mature. Terry A. Maroney, *The Once and Future Juvenile Brain*, in

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(Franklin E. Zimring & David S. Tanenhaus eds., 2014).

Synaptic pruning and myelination—both processes involved in the maturation of the brain—occur relatively late in the prefrontal cortex, *id.*, the brain region associated with executive functioning, which governs “the capacity . . . to control and coordinate our thoughts and behavior.” Sarah-



Jayne Blakemore & Suparna Choudhury, *Development of the Adolescent Brain: Implications for Executive Function and Cognition*, 47 J. OF CHILD PSYCHOL. & PSYCHIATRY 296, 301 (2006). This later development within the prefrontal cortex is critical for the evolution of higher-order cognitive functions, such as foresight, weighing risks and rewards, and making decisions that require the simultaneous consideration of multiple sources of information. Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 5 ANN. REV. OF CLINICAL PSYCHOL. 47, 54 (2009). Because of the under-development of the pre-frontal cortex, adolescents have difficulty in thinking realistically about events that may occur in the future. This means that adolescents are both less likely to think about potential long-term consequences, and more likely to assign less weight to those that they *have* identified, especially when faced with the prospect of short-term rewards. See Elizabeth S. Scott & Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*, 18 THE FUTURE OF CHILDREN 15, 20 (2008); *J.D.B. v. North Carolina*, 564 U.S. 261, 272, 131 S. Ct. 2394, 180 L. Ed.2d 310 (2011) (stating that adolescents “often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them.”); *Graham*, 560 U.S. at 78. Although adolescents have the capacity to reason logically, they “are likely less capable than adults are in *using* these capacities in making real-

world choices, partly because of lack of experience and partly because teens are less efficient than adults in processing information.” Scott & Steinberg, *supra*, at 20.

These aspects of the differences between adolescent and adult brains demonstrate why the deterrence rationale fails to support the constitutionality of juvenile life without parole sentences, even for juveniles who commit murder. Whatever deterrence might be achieved by a life without parole sentence for an adult, the courts have recognized “youth matters” for purposes of analyzing the constitutionality of that sentence when imposed for a crime committed as a juvenile, rendering the permanent elimination of any chance for release unconstitutional as the Court of Appeals ruled. *See, State v. Bassett*, 198 Wn. App. 714, 724, 394 P.3d 430, *review granted by* 189 Wash.2d 1008 (2017) (where the Court recognized “it has been established that children are ‘constitutionally different from adults for purposes of sentencing,’” (citing *Miller*, 567 U.S. at 471)).

## **2. Stressful situations further compromise youths’ reasoning skills, weakening the deterrence rationale**

While youths’ brains are undergoing changes in cognitive control regions, areas of the brain responsible for emotion also change substantially. During tasks that require self-control, adults employ a wider

network of brain regions than adolescents do, making self-control easier by distributing the work across multiple areas of the brain rather than overtaxing a smaller number of regions. Laurence Steinberg, *The Science of Adolescent Brain Development and Its Implication for Adolescent Rights and Responsibilities*, in Human Rights and Adolescence 59, 64 (Jacqueline Bhabha ed., 2014). Because there is less communication between brain systems that regulate rational decision making and those that regulate emotional arousal during adolescence, very strong feelings are less likely to be tempered by impulse control, planning ahead, and comparing costs and benefits of alternative choices of action. *Id.* at 65.

Though studies have shown that the older adolescents do not differ significantly from adults in their ability to rationally evaluate risk information, Dustin Albert & Laurence Steinberg, *Judgment and Decision-making in Adolescence*, 21 J. OF RES. ON ADOLESCENCE 211, 213 (2011), research has shown that in reality, teens still engage in dangerous behaviors despite understanding the risks involved. Mariam Arain, Maliha Haque, Lina Johal, Puja Mathur, Wynand Nel, Afsha Rais, Ranbir Sandhu, & Sushil Sharma, *Maturation of the Adolescent Brain*, 9 NEUROPSYCHIATRIC DISEASE & TREATMENT 449, 453 (2013). This disparity has led researchers to examine differences in decision-making

during modes of information processing that are analytic, or “cold,” with those that are experiential, or “hot.” Albert & Steinberg, *supra*, at 212.

Hot cognition is described as thinking under conditions of high arousal and intense emotion. Under these conditions, teens tend to make poorer decisions. The opposite of hot cognition is cold cognition, which is critical and over-analyzing. In cold cognition, circumstances are less intense and teens tend to make better decisions.

Arain et al., *supra*, at 455. Adolescent decision-making is particularly susceptible to influence from emotional and social factors. Sarah-Jayne Blakemore & Trevor W. Robbins, *Decision-Making in the Adolescent Brain*, 15 NATURE NEUROSCIENCE 1184, 1184 (2012). In hot emotional contexts, youth decision-making tends to be driven more by the socio-emotional parts of the brain than by the cognitive controls, *id.* at 1188, making adolescents more likely to act emotionally and impulsively without engaging in a formal decision-making process. *See* Albert & Steinberg, *supra*, at 211. “Thus, adolescents are more likely than children and adults to make risky decisions in emotionally ‘hot’ contexts[.]” Blakemore & Robbins, *supra*, at 1187. All of these attributes cause adolescents to make different calculations than adults when they participate in criminal conduct, weakening the deterrence rationale for a life without parole sentence and supporting the categorical unconstitutionality of this sentence when imposed for juvenile offenses.

**C. The Penological Justification Of Rehabilitation Further Demonstrates Why Juvenile Life Without Parole Sentences Are Unconstitutional**

Because almost all youth are capable of rehabilitation as they mature developmentally and neurologically, in the context of life without parole sentences for non-homicides, the U.S. Supreme Court found that “[a] State need not guarantee the offender eventual release, but if it imposes a sentence of life it must provide him or her with some realistic opportunity to obtain release before the end of that term.” *Graham*, 560 U.S. at 82. *Graham* further clarified that this “meaningful opportunity to obtain release” should be based on “demonstrated maturity and rehabilitation.” *Id.* at 75.

Research that has mostly emerged post-*Miller* demonstrates that as youth mature, even those with histories of violent crime can and do become productive and law-abiding citizens. For example, one study of over thirteen hundred juvenile offenders found that “even among those individuals who were high-frequency offenders at the beginning of the study, the majority had stopped these behaviors by the time they were 25.” Laurence Steinberg, *Give Adolescents the Time and Skills to Mature, and Most Offenders Will Stop*. (2014) Chicago, IL: MacArthur Foundation, p. 3, available at <http://www.pathwaysstudy.pitt.edu/documents/MacArthur%20Brief%20G>

ive%20Adolescents%20Time.pdf. Studies have also shown that youthful criminal behavior can be distinguished from permanent personality traits, and that “it is hard to determine who will continue or escalate their antisocial acts and who will desist,” as “the original offense . . . has little relation to the path the youth follows over the next seven years.” See *Research on Pathways to Desistance: December 2012 Update*, Models for Change, p. 3-4, available at <http://www.modelsforchange.net/publications/357> (finding that, of the more than 1,300 serious offenders studied for a period of seven years, only approximately 10% report continued high levels of antisocial acts.)

Because research increasingly shows that most juvenile offenders will not be persistent public safety risks, rehabilitation cannot justify sentencing a juvenile to life without parole, where the statute forbids any request for release. Because a sentence of life without parole “forfeits altogether the rehabilitative ideal,” rehabilitation cannot justify such a sentence. *Graham*, 560 U.S. at 74.

**D. The Penological Justification Of Incapacitation Does Not Justify A Juvenile Life Without Parole Sentence**

Even when juveniles commit terrible crimes, “[i]ncapacitation cannot override all other considerations, lest the Eighth Amendment’s rule against disproportionate sentences be a nullity.”) (emphasis added).

*Graham*, 560 U.S. at 73. As Mr. Bassett’s brief and the Court of Appeals’ ruling explain, this concern is especially key under the cruel punishment clause of the state constitution, Wash. Const. art. 1, sec. 14, either based on its stronger protection against disproportionate sentences or its categorical prohibition on certain sentences. The U.S. Supreme Court cautioned, “[a]n unacceptable likelihood exists that the brutality or cold-blooded nature of any particular crime would overpower mitigating arguments based on youth as a matter of course, even where the juvenile offender’s objective immaturity, vulnerability, and lack of true depravity should require a sentence less severe than death.” *See Roper*, 543 U.S. at 573. Thus, the Court recognized the real and untenable risk that a sentencer could be so overwhelmed by the facts of a crime that they would allow the penological goal of incapacitation to outweigh all other considerations, including the mitigating characteristics that are inherent to youth.

This Court and the U.S. Supreme Court have repeatedly ruled that youth must be treated differently than adults when it comes to sentencing. The courts have cautioned against sentences which reflect a judgment that a juvenile is permanently incorrigible. *See Graham*, 560 U.S. at 72.

To justify life without parole on the assumption that the juvenile offender forever will be a danger to society requires the sentencer to make a judgment that the juvenile is

incurrigible. The characteristics of juveniles make that judgment questionable. . . . As one court concluded in a challenge to a life without parole sentence for a 14-year-old, ‘incurrigibility is inconsistent with youth.’

*Graham*, 560 U.S. at 72-73 (internal citations omitted). This observation is no less true where the underlying crime is murder, and it is even more true where a person is sentenced years later and presents proof of post-offense rehabilitation. Instead, the Court requires that a sentence reflect the youth’s ability to change after committing a homicide or non-homicide crime. *See id.* at 73. (“Even if the State’s judgment that Graham was incurrigible were later corroborated by prison misbehavior or failure to mature, the sentence was still disproportionate because that judgment was made at the outset.”). The conclusion that a child must be irretrievably depraved or permanently incurrigible, based on the crime alone, is untenable under the reasoning of *Roper*, *Graham*, *Miller*, and *Montgomery*. In fact, as the American Psychological Association stressed:

[T]here is no reliable way to determine that a juvenile’s offenses are the result of an irredeemably corrupt character; and there is thus no reliable way to conclude that a juvenile—even one convicted of an extremely serious offense—should be sentenced to life in prison, without any opportunity to demonstrate change or reform.

Brief for the American Psychological Association et al. as Amici Curiae in Support of Petitioners at 25, *Miller v. Alabama*, 567 U.S. 460 (2012), (Nos. 10-9646 & 10-9647).



As “[a] life without parole sentence improperly denies the juvenile offender a chance to demonstrate growth and maturity,” *Graham*, 560 U.S. at 73, the sentence here should be ruled invalid. A constitutional sentence must provide some opportunity for the offender to show growth and rehabilitation with time and maturity despite the severity of their youthful misconduct.

### CONCLUSION

For the foregoing reasons, the Court of Appeals’ ruling should be affirmed.

Respectfully Submitted,

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