IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

No. E2023-01684-SC-R11-PD

CHRISTA GAIL PIKE,
Appellant/Petitioner,
v.
STATE OF TENNESSEE,
Appellee/Respondent.

On Application for Permission to Appeal from the
Court of Criminal Appeals of Tennessee at Knoxville,
No. E2023-01684-CCA-R28-PD

BRIEF OF JUVENILE LAW CENTER, ATLANTIC CENTER FOR CAPITAL REPRESENTATION, CHILDREN & FAMILY JUSTICE CENTER, THE SENTENCING PROJECT, AND YOUTH SENTENCING & REENTRY PROJECT AS *AMICI CURIAE* IN SUPPORT OF APPLICATION FOR PERMISSION TO APPEAL

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

STATEMENT OF INTEREST OF *AMICI CURIAE*

Juvenile Law Center fights for rights, dignity, equity, and opportunity for youth. Juvenile Law Center works to reduce the harm of the child welfare and justice systems, limit their reach, and ultimately abolish them so all young people can thrive. Founded in 1975, Juvenile Law Center is the first non-profit public interest law firm for children in the country. Juvenile Law Center's legal and policy agenda is informed by—and often conducted in collaboration with—youth, family members, and grassroots partners. Since its founding, Juvenile Law Center has filed influential *amicus* briefs in state and federal courts across the country to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are consistent with children's unique developmental characteristics and human dignity.

The **Atlantic Center for Capital Representation** is a nonprofit organization whose mission is to serve as a clearinghouse for capital litigation, and to provide litigation support to attorneys with clients facing capital prosecution or execution. The Center furthers its mission through consultation with capital defense teams, training lawyers and mitigation specialists, and conducting trial and post-conviction litigation.

The **Children and Family Justice Center** (CFJC) is a comprehensive children's law office that has represented young people in conflict with the law for over 25 years. In addition to its direct representation of youth and families in matters relating to delinquency and crime, immigration/asylum and fair sentencing practices, the CFJC also collaborates with community members and other advocacy organizations

to develop fair and effective strategies for systemic reform.

The Sentencing Project is a national nonprofit organization established in 1986 to engage in public policy research, education, and advocacy to promote effective and humane responses to crime. The Sentencing Project has produced a broad range of scholarship assessing the merits of extreme sentences in jurisdictions throughout the United States. Because this case concerns the constitutionality of the death penalty for individuals who, as evidenced by scientific principles, have a diminished culpability for their actions and enhanced capacity for change, it raises questions of fundamental importance to The Sentencing Project.

The **Youth Sentencing & Reentry Project** is a nonprofit organization based in Philadelphia that uses direct service and policy advocacy to transform the experiences of children charged and prosecuted in the adult criminal justice system, and to ensure fair and thoughtful resentencing and reentry for individuals who were sentenced to life without parole as children ("juvenile lifers"). YSRP partners with court-involved youth and juvenile lifers, their families, and lawyers to develop holistic, humanizing narratives that mitigate the facts of each case; get cases transferred to the juvenile system or resentenced; and make crucial connections to community resources providing education, healthcare, housing, and employment. YSRP also provides trainings on mitigation, and recruits, trains, and supervises students and other volunteers to assist in this work. YSRP's ultimate goals are to keep children out of adult jails and prisons and to enhance the quality of representation juvenile lifers receive at resentencing as they prepare to reenter the

community.

SUMMARY OF ARGUMENT

Christa Pike was sentenced to death for a crime she committed when she was 18 years old. In the years since, the United States Supreme Court has recognized and affirmed that youth under the age of 18 possess developmental traits that mitigate their culpability and warrant constitutional protections against the state's harshest penalties, including abolishing the death penalty for anyone under 18. Building upon its landmark decisions in *Roper v. Simmons*, *Graham v. Florida*, and *Miller v. Alabama*, the Court established that the unique developmental attributes such as immaturity, susceptibility to external influences, and ongoing brain development and capacity for change distinguish youth from adults and require different treatment under the Eighth Amendment.

Today, continued advancements in neuroscientific research demonstrate that these developmental characteristics extend beyond age 18 into early adulthood. This evolving scientific consensus underscores that older adolescents share crucial developmental similarities with youth under 18, challenging the constitutionality of subjecting an 18-year-old to the death penalty.

Based on the scientific consensus, the Supreme Court's own Eighth Amendment jurisprudence, and societal norms established by state legislatures, courts, and sentencing practices, the imposition of the death penalty on an 18-year-old constitutes cruel and unusual punishment,

violating fundamental principles of proportionality and evolving standards of decency in our criminal justice system.

ARGUMENT

I. NEUROSCIENTIFIC RESEARCH DEMONSTRATES THAT OLDER ADOLESCENTS SHARE THE SAME CHARACTERISTICS OF YOUTH RELIED UPON BY THE U.S. SUPREME COURT IN *ROPER V. SIMMONS* AND ITS PROGENY

The United States Supreme Court has established as a matter of settled constitutional law that young people under 18 are developmentally different from adults and should be spared the harshest of punishments by the state. *See Roper v. Simmons*, 543 U.S. 551, 578-79 (2005) (striking down the death penalty as unconstitutional for youth under 18); *Graham v. Florida*, 560 U.S. 48, 75, 82 (2010) (striking down life without parole sentences for youth under 18 convicted of nonhomicide offenses); *Miller v. Alabama*, 567 U.S. 460, 465 (2012) (striking down mandatory imposition of life without parole sentences for youth under 18 convicted of homicide).

In *Roper*, the first of the Supreme Court's juvenile sentencing cases, the Court analyzed and adopted established behavioral research to conclude that youth under 18 cannot be classified as "the worst offenders" based on three distinct characteristics that separate them from adults: 1) they lack "maturity" and have "an underdeveloped sense of responsibility" which results in "impetuous and ill-considered actions and decisions," *Roper*, 543 U.S. at 569 (quoting *Johnson v. Texas*, 509 U.S. 350, 367 (1993)); 2) they "are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure" and have

limited control over their environment; and 3) their character is "not as well formed as that of an adult" making their personality traits "more transitory," "less fixed," and capable of change, *id.* at 569-71. The Court found that these developmental differences—which it has relied on across its youth sentencing jurisprudence—make young people's conduct "not as morally reprehensible as that of an adult." *Id.* at 570 (quoting *Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988) (plurality opinion)).

In *Graham*, the Court relied on the same scientific research when it found life without parole unconstitutional for youth who commit non-homicide offenses, finding that "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds." *Graham*, 560 U.S. at 68. Two years later, in *Miller*, the Court recognized that "[t]he evidence presented to us in these cases indicates that the science and social science supporting *Roper*'s and *Graham*'s conclusions have become even stronger." *Miller*, 567 U.S. at 472 n.5.

In the years since, the growing body of scientific research on brain and behavior development has only grown stronger, showing that the qualities that distinguish children from adults also distinguish older adolescents from adults. Researchers have established that the regions of the brain associated with immature decision-making and reduced culpability relied on in the Court's youth sentencing cases, *see Miller*, 567 U.S. at 471-72, continue to develop into the twenties, *see* Catherine Lebel & Christian Beaulieu, *Longitudinal Development of Human Brain Wiring Continues from Childhood into Adulthood*, 31 J. Neurosci. 10937, 10937 (2011); Adolf Pfefferbaum et al., *Variation in Longitudinal*

Trajectories of Regional Brain Volumes of Healthy Men and Women (Ages 10 to 85 Years) Measured with Atlas-Based Parcellation of MRI, 65 NeuroImage 176, 189 (2013). Accordingly, sensation-seeking has been found to peak at age 19 while self-regulation does not reach full development until ages 23 through 26. Laurence Steinberg et al., *Around the World, Adolescence is a Time of Heightened Sensation Seeking and Immature Self-Regulation*, 21 Developmental Sci. 1, 1-2 (2018).

Developmental psychology has also shown that though reasoning improves throughout adolescence and into adulthood, limited by the adolescent's psychosocial immaturity. *See* Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am. Psych. 1009, 1011-13 (2003). Even if an adolescent like Ms. Pike might have "adult-like" cognitive capacity to apply in certain "cold" decision-making contexts, the adolescent's sense of time, lack of future orientation, pliable emotions, calculus of risk and gain, and vulnerability to pressure will often drive the adolescent to make very different decisions than an adult would make in emotionally stressful or "hot" situations. *See* Elizabeth S. Scott & Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*, 18 Future Child. 15, 20-22 (2008); Alexandra O. Cohen et al., *When is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Nonemotional Contexts*, 27 Psych. Sci. 549, 559 (2016) ("[Y]oung adulthood is a time when cognitive control is still vulnerable to negative emotional influences, in part as a result of continued development of lateral and medial prefrontal circuitry."); Grace Icenogle et al., *Adolescents' Cognitive Capacity*

Reaches Adult Levels Prior to Their Psychosocial Maturity: Evidence for a "Maturity Gap" in a Multinational, Cross-Sectional Sample, 43 Law & Hum. Behav. 69, 71 (2019).

The parts of the brain associated with impulse control, propensity for risky behavior, vulnerability, and susceptibility to peer pressure are still developing well into late adolescence and into the twenties. Elizabeth S. Scott et al., *Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy*, 85 Fordham L. Rev. 641, 642 (2016) ("Over the past decade, developmental psychologists and neuroscientists have found that biological and psychological development continues into the early twenties, well beyond the age of majority." (citing Laurence Steinberg, *Age of Opportunity: Lessons from the New Science of Adolescence* 5 (2014))); *see also* Laurence Steinberg, *Does Recent Research on Adolescent Brain Development Inform the Mature Minor Doctrine?*, 38 J. Med. & Phil. 256, 263-64 (2013).

A comprehensive 2019 report from the National Academies of Sciences explains this shift in the understanding of adolescence, noting that "the unique period of brain development and heightened brain plasticity . . . continues into the mid-20s," and that "most 18–25-year-olds experience a prolonged period of transition to independent adulthood, a worldwide trend that blurs the boundary between adolescence and 'young adulthood,' developmentally speaking." Nat'l Acads. of Scis., Eng'g & Med., *The Promise of Adolescence: Realizing Opportunity for All Youth* 22 (Richard J. Bonnie & Emily P. Backes eds., 2019) (emphasis omitted), https://www.ncbi.nlm.nih.gov/books/NBK545481/pdf/Bookshelf_NBK54

5481.pdf. The report concludes it would be "arbitrary in developmental terms to draw a cut-off line at age 18." *Id.*

In the almost two decades since *Roper*, the scientific research has expanded to show that, like youth under 18, older adolescents are developmentally distinct from adults, making them less culpable and less deserving of the state's most severe punishments.

II. BASED ON CURRENT SCIENCE, SUPREME COURT JURISPRUDENCE, AND THE EVOLVING STANDARDS OF DECENCY, THE DEATH PENALTY IS DISPROPORTIONATE AND THEREFORE CRUEL AND UNUSUAL UNDER THE EIGHTH AMENDMENT FOR OLDER ADOLESCENTS

The Eighth Amendment guarantees individuals the right to be free from cruel and unusual punishment. This right is grounded in the basic "precept of justice that punishment for crime should be graduated and proportioned to [the] offense." *Atkins v. Virginia*, 536 U.S. 304, 311 (2002) (alteration in original) (quoting *Weems v. United States*, 217 U.S. 349, 367 (1910)). To be proportionate a sentence must at a minimum have some penological justification since "[a] sentence lacking any legitimate penological justification is by its nature disproportionate to the offense." *Graham*, 560 U.S. at 71.

To determine which punishments are sufficiently disproportionate as to be cruel and unusual, the Court has "established the propriety and affirmed the necessity of referring to 'the evolving standards of decency that mark the progress of a maturing society.'" *Roper*, 543 U.S. at 560-61 (quoting *Trop v. Dulles*, 356 U.S. 86, 100-01 (1958) (plurality opinion)). The need for a flexible Eighth Amendment jurisprudence responsive to evolving societal standards "is because '[t]he standard of extreme cruelty

is not merely descriptive, but necessarily embodies a moral judgment. The standard itself remains the same, but its applicability must change as the basic mores of society change.'" *Kennedy v. Louisiana*, 554 U.S. 407, 419 (2008) (alteration in original) (quoting *Furman v. Georgia*, 408 U.S. 238, 382 (1972) (Burger, C.J., dissenting)). Accordingly, as the science has evolved over the last 20 years to recognize that older adolescents are more developmentally similar to youth under 18 than they are to older adults, so too must our Eighth Amendment jurisprudence evolve to afford them similar protections.

A. Because Older Adolescents Possess The Same Developmental Characteristics As Youth Under 18, The Imposition Of The Death Penalty On Older Adolescents Should Be Categorically Barred

Considering the death penalty's unique "severity and irrevocability," *Gregg v. Georgia*, 428 U.S. 153, 187 (1976), its imposition must be consistent with the underlying objectives of the criminal justice system—deterrence, retribution, incapacitation, and rehabilitation, *id.* at 183 n.28; *Kennedy*, 554 U.S. at 420. The Supreme Court has found that "[u]nless the imposition of the death penalty . . . 'measurably contributes to [either retribution or deterrence of capital crimes by prospective offenders], it 'is nothing more than the purposeless and needless imposition of pain and suffering,' and hence an unconstitutional punishment.'" *Atkins*, 536 U.S. at 319 (quoting *Enmund v. Florida*, 458 U.S. 782, 798 (1982)). To ensure that imposition of the death penalty comports with these standards, certain classes of offenders are categorically exempt from capital punishment.

While at common law only children under seven years of age were exempt from the death penalty (or any criminal sanction), *see In re Gault*, 387 U.S. 1, 16 (1967), the Supreme Court has extended this ban to all youth under 18, *see Roper*, 543 U.S. at 578-79. The Court's own evolving interpretation of the proscriptions of the Eighth Amendment illustrate why older adolescents must now be included in this modern framework.

In first protecting youth from the death penalty, the Court limited the class to include only those youth who were under the age of 16. *Thompson*, 487 U.S. at 838. The Court reasoned, "[i]nexperience, less education, and less intelligence make the teenager less able to evaluate the consequences of his or her conduct while at the same time he or she is much more apt to be motivated by mere emotion or peer pressure than is an adult." *Id.* at 835. The Court then held in *Roper*:

> [A] plurality of the [*Thompson*] Court recognized the import of these characteristics with respect to juveniles under 16, and relied on them to hold that the Eighth Amendment prohibited the imposition of the death penalty on juveniles below that age. We conclude that the same reasoning applies to all juvenile offenders under 18.

543 U.S. at 570-71 (citing *Thompson*, 487 U.S. at 833-38). The developmental differences between youth under age 18 and adults "render[ed] suspect any conclusion that a juvenile falls among the worst offenders . . . for a greater possibility exists that a minor's character deficiencies will be reformed." *Id.* at 570.

In *Roper*, the Court surveyed the national landscape, considering both legislative enactments and the actual imposition of the death

penalty on youth under age 18 as objective indicia of whether the death penalty was a disproportionate punishment for youth under 18. *Id.* at 564. The Court concluded that there was a national consensus against the death penalty for youth because more than half of states—thirty plus the District of Columbia—prohibited the death penalty for youth under 18 (including states that had rejected the death penalty altogether). *Id.* The Court then evaluated the objectives of the criminal justice system and found, in light of the scientific research, that none of the system's primary objectives justified the death penalty being imposed on youth under 18. *Id.* at 568-74.

Today, given the current neuroscientific research described above, as well as the national landscape that has evolved in response to the research, it is apparent that just as *Roper* extended the death penalty preclusion under the Eighth Amendment from those under 16 to those under 18, so now must that preclusion be extended to older adolescents, like Ms. Pike who was just 18 at time of her crime. While the Supreme Court has not yet ruled on such an extension, it is nonetheless in line with several of the Court's recent Eighth Amendment cases, which have seen the Court ensuring that its Eighth Amendment jurisprudence reflects emerging scientific research on individual culpability. In the capital punishment context specifically, the Court has recognized that new scientific findings and the consensus of the medical community must supplement judicial understanding of when punishment is excessive. *See Hall v. Florida*, 572 U.S. 701, 723-24 (2014); *Moore v. Texas*, 581 U.S. 1, 13 (2017).

In *Hall*, the Supreme Court held unconstitutional a bright-line rule in Florida that required defendants to present a threshold IQ test score of 70 or below before being permitted to present any additional evidence of intellectual disability. 572 U.S. at 723-24. Based on the teachings of the scientific and medical communities, the Court determined that those individuals with an IQ score within the standard error of measurement might also be intellectually disabled, so such individuals should not be denied the opportunity to present other evidence of intellectual disability. *Id.* Relying heavily on the scientific and medical community's expertise in reaching that conclusion, the Court explained that "it is proper to consider the psychiatric and professional studies that elaborate on the purpose and meaning of IQ scores to determine how the scores relate to the holding of *Atkins*." *Id.* at 709-10. By "disregard[ing] established medical practice," Florida "had violated the Eighth Amendment." *Moore*, 581 U.S. at 13 (alteration in original) (describing the ruling in *Hall*). Ultimately, the Court in *Hall* found that, because the "death penalty is the gravest sentence our society may impose[,] [p]ersons facing that most severe sanction must have a fair opportunity to show that the Constitution prohibits their execution." 572 U.S. at 724.

The Supreme Court reiterated its view that courts must heed the teachings of the scientific community when, in *Moore*, it found unconstitutional Texas's practice of using factors that lacked scientific support in its capital sentencing procedures when making intellectual-disability determinations. *Moore*, 581 U.S. at 18-19. The Court stated, "[e]ven if 'the views of medical experts' do not 'dictate' a court's intellectual-disability determination, . . . the determination must be

'informed by the medical community's diagnostic framework.'" *Id.* at 13 (quoting *Hall*, 572 U.S. at 721). The Court cautioned further that, while "being informed by the medical community does not demand adherence to everything stated in the latest medical guide[,] . . . neither does precedent license disregard of current medical standards." *Id.* Once again, the Court "require[d] that courts continue the inquiry and consider other evidence of intellectual disability where an individual's IQ score, adjusted for the test's standard error, falls within the clinically established range for intellectual-functioning deficits." *Id.* at 15. As in *Hall*, *Moore* was grounded on the "'unacceptable risk'" that Texas's inconsistency with the prevailing scientific consensus would result in the execution of some intellectually disabled people. *Id.* at 6 (quoting *Hall*, 572 U.S. at 704).[1]

The current scientific research teaches that a hard cut-off at age 18 creates an unacceptable risk that the death penalty will be imposed against older adolescents who lack the requisite culpability required for that most severe punishment. In *Hall*, the Court recognized that "[i]ntellectual disability is a condition, not a number." 572 U.S. at 723. So, too, is adolescence. As the Court stated more than 40 years ago, "[Y]outh is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to

[1] On remand, the Texas Court of Criminal Appeals determined that Moore did not have an intellectual disability. *Moore v. Texas*, 586 U.S. 133, 134 (2019). In 2019, the U.S. Supreme Court reversed that finding, ruling that the appeals court's opinion "rests upon analysis too much of which too closely resembles what we previously found improper." *Id.* at 142.

psychological damage." *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982). Youth "is a time of immaturity, irresponsibility, 'impetuousness[,] and recklessness'" and "a moment and 'condition of life'" that creates an unacceptable risk of a disproportionate sentence when disregarded. *Miller*, 567 U.S. at 476 (alteration in original) (first quoting *Johnson*, 509 U.S. at 368; and then quoting *Eddings*, 455 U.S. at 115). Just as an I.Q. score of 70 is only an approximation of intellectual disability, so too is age 18 only an approximation for the passage from adolescence to adulthood.

B. There Is A Growing National Consensus That Older Adolescents Should Be Afforded The Same Protections Afforded To Youth Under 18

The proper Eighth Amendment analysis also must take into account "'objective indicia of society's standards, as expressed in legislative enactments and state practice,' to determine whether there is a national consensus against the sentencing practice at issue." *Graham*, 560 U.S. at 61 (quoting *Roper*, 543 U.S. at 572). A review of state laws and practices demonstrates a growing consensus that an adolescent of 18 should not be subjected to the death penalty.

1. A growing number of states have recognized the science on emerging adulthood and reformed sentencing laws and practices affecting youth who commit crimes after age 18

Across the country, state sentencing practices demonstrate a trend toward abolishing the death penalty and other severe sentences for older adolescents. Of the fifty-two jurisdictions in the United States (the fifty states, District of Columbia, and the federal government), there is no reasonable likelihood of executing a person under the age of 21 in 37 of those jurisdictions. These jurisdictions include 23 states plus the District

of Columbia that do not have the death penalty at all.[2] Nine of these states have rejected the death penalty in the past fifteen years—New Mexico (2009), Illinois (2011), Connecticut (2012), Maryland (2013), Delaware (2016), Washington (2018), New Hampshire (2019), Colorado (2020), and Virginia (2021). *State by State*, *supra* note 2. Six other states—California,[3] Pennsylvania,[4] Oregon,[5] Arizona,[6]

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[2] These states are Alaska, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Rhode Island, Vermont, Virginia, Washington, West Virginia, and Wisconsin. *See State by State*, Death Penalty Info. Ctr., https://deathpenaltyinfo.org/states-landing (last visited July 19, 2024).

[3] *California Executive Order N-09-19* (Mar. 13, 2019), https://www.gov.ca.gov/wp-content/uploads/2019/03/3.13.19-EO-N-09-19.pdf.

[4] *Governor Shapiro Announces He Will Not Issue Any Execution Warrants During His Term, Calls on General Assembly to Abolish the Death Penalty*, Commonwealth of Pa. (Feb. 16, 2023), https://www.pa.gov/en/governor/newsroom/press-releases/governor-shapiro-announces-he-will-not-issue-any-execution-warra.html.

[5] In 2022, then-Governor Kate Brown extended her predecessor's moratorium on executions and commuted the sentences of all people on death row in the state. Governor Tina Kotek has continued the moratorium. *See Gov. Kate Brown Commutes the Sentences of Oregon's 17 Death-Row Prisoners,* Death Penalty Info. Ctr. (Dec. 14, 2022), https://deathpenaltyinfo.org/news/gov-kate-brown-commutes-the-sentences-of-oregons-17-death-row-prisoners.

[6] There has been a gubernatorial hold on executions since 2023. *See Botched Executions Prompt New Arizona Governor and Attorney General to Halt Executions Pending Independent Review of State's Execution Process*, Death Penalty Info. Ctr. (Jan. 23, 2023), https://deathpenaltyinfo.org/news/botched-executions-prompt-new-arizona-governor-and-attorney-general-to-halt-executions-pending-independent-review-of-states-execution-process.

Ohio,[7] and Tennessee[8]—and the federal government[9] have declared holds on executions.

Several other jurisdictions that retain the death penalty on the books have exhibited long-term disuse, and have little or no potential prospect of executing anyone who was under age 21. Most of these jurisdictions have no individual on death row who was 20 years old or younger at the time of the offense, and have not in the modern era executed a person who was that young at the time of the offense. Wyoming has executed one person in the last 50 years, and currently has no one on death row. *Wyoming*, Death Penalty Info. Ctr., https://deathpenaltyinfo.org/state-and-federal-info/state-by-state/wyoming (last visited July 19, 2024). Montana has executed three people in the last 50 years, all of whom were older than 30 at the time of the offense, and currently has two persons on death row, one of whom was 24 at the time of the offense, and the other was 26 at the time of the offense. *See Montana*,

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[7] Executions have been suspended since 2020. *See* Julie Carr Smyth et al., *Ohio Governor: Lethal Injection No Longer Execution Option*, Associated Press (Dec. 8, 2020), https://apnews.com/article/legislature-ohio-coronavirus-pandemic-mike-dewine-executions-f7f1542613ae6922444d77341d4d3b40.

[8] There has been a gubernatorial hold on executions since 2023. *Tennessee Gov. Says No Death Warrants Until Execution Protocol Problems Fixed*, Death Penalty Info. Ctr. (Jan. 17. 2023), https://deathpenaltyinfo.org/news/tennessee-gov-says-no-death-warrants-until-execution-protocol-problems-fixed.

[9] There has been a moratorium on federal executions since 2021. *See Attorney General Merrick B. Garland Imposes a Moratorium on Federal Executions; Orders Review of Policies and Procedures*, U.S. Dep't of Just. (July 1, 2021), https://www.justice.gov/opa/pr/attorney-general-merrick-b-garland-imposes-moratorium-federal-executions-orders-review.

Death Penalty Info. Ctr., https://deathpenaltyinfo.org/state-and-federal-info/state-by-state/montana (last visited July 23, 2024). The state of Utah has seven people on death row, none of whom were under age 22 at the time of the offense; and, although one of the seven people executed in Utah over the last 50 years was 19 years old at the time of the offense, that execution occurred over 30 years ago. *See* Utah Dep't of Corrs., *Utah State Prison Death Sentence Inmates* (2022), https://corrections.utah.gov/wp-content/uploads/2021/08/Utah.deathsentence.March2022.pdf; *In Utah, A Bitter Execution Debate*, Chi. Trib. (July 29, 1992), https://www.chicagotribune.com/1992/07/29/in-utah-a-bitter-execution-debate/. Idaho has executed two offenders in the last 15 years, neither of whom was underage 21 at the time of the offense. *See Idaho*, Death Penalty Info. Ctr, https://deathpenaltyinfo.org/state-and-federal-info/state-by-state/idaho (last visited July 22, 2024). Of the nine people on Idaho's death row, only one was under age 22 at the time of the offense, and the sentence was imposed over 25 years ago. *See Death Row*, Idaho Dep't of Corrs., https://www.idoc.idaho.gov/content/prisons/death-row (last visited July 22, 2024); *Judge Sentences Man To Death*, Spokesman-Rev. (Nov. 16, 1996), https://www.spokesman.com/stories/1996/nov/16/judge-sentences-man-to-death-20-year-old-james/. Kentucky has executed three persons since 1968, and each was older than 22 at the time of the offense. *See Kentucky*, Death Penalty Info. Ctr., https://deathpenaltyinfo.org/state-and-federal-info/state-by-state/kentucky (last visited July 22, 2024). Of the 25 individuals on Kentucky's death row, four were under age 22 at the time of the offense, and their sentences were imposed in 1980s and 1990s. *See Death Row Inmates*, Ky.gov,

https://corrections.ky.gov/Facilities/AI/Pages/deathrowinmates.aspx (last visited July 22, 2024). Kansas has not carried out an execution in nearly 60 years. *Capital Punishment Information*, Kan. Dep't of Corrs., https://www.doc.ks.gov/newsroom/capital (last visited July 22, 2024). Of the nine individuals on Kansas' death row, only one of those individuals was under the age of 22 at the time of the offense. *See id.* This data reflects a broad consensus that the death penalty should be reserved for the most culpable offenders and recognizes that youth offenders are not the most culpable.

In banning the juvenile death penalty in *Roper*, the Court relied on data showing that most states had banned the execution of juveniles and that, even where permitted, few states actually imposed the death penalty on individuals under 18. *See supra* Section II.A. Similar patterns can now be seen regarding application of the death penalty to older adolescents. Executions of young offenders who were 18, 19, or 20 at the time of their offenses "are rare and occur in just a few states." Brian Eschels, *Data & the Death Penalty: Exploring the Question of National Consensus Against Executing Emerging Adults in Conversation with Andrew Michaels' A Decent Proposal: Exempting Eighteen- to Twenty-Year-Old's From the Death Penalty*, 40 Harbinger 147, 152 (2016). As of December 2018, only 165 of the 1,351 people sentenced to death were under age 21 at the time of the offense. John H. Blume et al., *Death by Numbers: Why Evolving Standards Compel Extending* Roper*'s Categorical Ban Against Executing Juveniles from Eighteen to Twenty-One*, 98 Tex. L. Rev. 921, 939 (2020). The majority of youth offender death sentences were imposed in just five jurisdictions—California, Florida,

Texas, Alabama, and the federal government. *Id.* at 941. Further, between January 2005 and December 2018, of the 546 people executed in the United States, 19% were under 21 at the time of their offenses—and all were sentenced prior to *Roper*. *Id.* at 943. In Tennessee, which currently has a hold on executions, Ms. Pike is the only person on death row who was 18 years old at the time of her offense.[10] The death sentences of the only other people in the state who were 18 when they committed their crimes have been vacated. *See* Gregory Raucoules, *Woman Convicted in 1995 Knoxville Murder Asks Death Sentence be Vacated*, WATE Knoxville (Aug. 30, 2023), https://www.msn.com/en-us/news/crime/woman-convicted-in-1995-knoxville-murder-asks-death-sentence-be-vacated/ar-AA1g0Kq9.

In line with the current neuroscientific research on youth brain development, states have also enacted or amended statutes impacting sentencing and release for older adolescents and young adults who committed offenses after age 18. For example, California provides youth offender parole hearings to inmates who committed crimes when they were under 26, Cal. Penal Code § 3051; Connecticut provides earlier parole eligibility to people who were under 21 at the time of their offense, Conn. Gen. Stat. Ann. § 54-125a; Rhode Island shortened the first parole review date to 20 years for individuals who committed offenses prior to

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[10] There are currently 45 people on death row in Tennessee, seven of whom were 21 or younger at the time of their offense, with Ms. Pike being the youngest. Ms. Pike is also the only woman on death row in the state. *See Death Row Offenders*, Tenn. Dep't of Corrs., https://www.tn.gov/correction/statistics/death-row-facts/death-row-offenders.html (last visited July 22, 2024).

age 22, R.I. Gen. Laws Ann. § 13-8-13(e); Illinois provides inmates who committed crimes when they were under 21 parole eligibility after 10-20 years, 730 Ill. Comp. Stat. Ann. 5/5-4.5-115; the District of Columbia allows judges discretion to review sentences for offenders under 25 years old at the time of their offense after 15 years, D.C. Code Ann. § 24-403.03; and Wyoming provides an avenue for offenders under 30 years old to be placed in a youthful transition program and to receive a sentence reduction, Wyo. Stat. Ann. §§ 7-13-1002, 7-13-1003.

Since *Roper*, an expanding number of states have in law or in practice rejected extreme sentences for older adolescents, recognizing that that population, like youth under 18, is not deserving of the state's most severe punishments. Sentenced to death for an offense she committed at age 18, Ms. Pike's death sentence is not in step with the clear national consensus against executing youth offenders.

2. Other courts have applied the current neuroscientific research in rejecting extreme sentences for older adolescents

Recent court decisions from around the country reflect this evolving framework and acknowledge the salience of current brain science in addressing challenges to sentencing practices for young people over the age of 18.[11] For example, in *Commonwealth v. Bredhold*, a Kentucky

[11] *But see United States v. Johnson*, No. 17-201, 2020 WL 8881711, at *3 (E.D. La. July 13, 2020) (holding that sentencing to death defendant who was 21 years old at the time of the offense did not violate the Eighth and Fourteenth Amendments); *Hairston v. State*, 472 P.3d 44, 50 (Idaho 2020) (upholding death sentence of defendant who was 19 years old at the time of the offense); *Stinski v. Ford*, No. 4:18-cv-66, 2021 WL

Circuit Court found that the state's death penalty statute was unconstitutional as applied to individuals under the age of 21 because of research demonstrating that those individuals were "psychologically immature in the same way that individuals under the age of eighteen (18) were deemed immature, and therefore ineligible for the death penalty." *Commonwealth v. Bredhold*, No. 14-CR-161, 2017 WL 8792559 at *1 (Ky. Cir. Ct. Aug. 1, 2017), *vacated for lack of standing*, *Commonwealth v. Bredhold*, 599 S.W.3d 409 (Ky. 2020). Earlier this year, the Massachusetts Supreme Judicial Court held that imposing life without parole on youth who committed crimes under age 21 violates the Massachusetts Constitution, reasoning that:

> Supreme Court precedent, as well as our own, dictates that youthful characteristics must be considered in sentencing, that the brains of emerging adults are not fully developed and are more similar to those of juveniles than older adults, and that our contemporary standards of decency in the Commonwealth and elsewhere disfavor imposing the Commonwealth's harshest sentence on [individuals under age 21 at the time of the offense].

Commonwealth v. Mattis, 224 N.E.3d 410, 428 (Mass. 2024). Before that, the Washington and Michigan Supreme Courts, relying in part on the updated brain science research for older adolescents and young adults, abolished mandatory life without parole for youth under 21 and 18-year-olds, respectively. *In re Monschke*, 482 P.3d 276, 284-88 (Wash. 2021);

5921386, at *35 (S.D. Ga. Dec. 15, 2021) (denying habeas petition of petitioner who was almost 19 years old at the time of the offense).

People v. Parks, 987 N.W.2d 161, 173-76, 183 (Mich. 2022). In a related vein, six years prior to *Monschke*, the Washington Supreme Court barred application of the state's mandatory minimum sentencing provisions to a defendant over age 18. *State v. O'Dell*, 358 P.3d 359, 366 (Wash. 2015) (en banc). The Court held that the defendant's youthfulness could be a mitigating factor justifying a sentence below the standard sentencing range even when defendant is over 18, in part because brain development involving behavior control continues to develop into a person's twenties. *Id.* at 364-66. These decisions are further evidence of the trend toward extending constitutional sentencing protections to older adolescents.

3. The American Bar Association and the American Psychological Association condemn sentencing older adolescents to death

In February 2018, the American Bar Association ("ABA") passed a resolution urging states that have the death penalty to refrain from imposing it on young people who were under 21 at the time of their offense. *See* Am. Bar Ass'n, *Resolution 111 & Report to the House of Delegates* (2018), https://www.americanbar.org/content/dam/aba/administrative/death_penalty_representation/2018_my_111.pdf. The ABA's policy relied heavily on scientific research regarding the "newly-understood similarities between juvenile and late adolescent brains."[12] *Id.* at 3. As explained by the resolution:

> Regardless of whether one considers the death penalty an appropriate punishment for the worst murders committed by the worst offenders, it has

[12] The ABA defines "late adolescence" as individuals who are 18 to 21 years old. *See* Am. Bar. Ass'n, *supra*, at 1.

> become clear that the death penalty is indefensible as a response to crimes committed by those in late adolescence.

Id. at 11. The ABA relied on the scientific research to conclude that young adults "share a lesser moral culpability with their teenage counterparts," insufficient to justify imposition of the death penalty. *Id.* Like the ABA, the American Psychological Association ("APA") adopted a resolution in 2022 calling on courts and legislatures to ban the death penalty for people under age 21. In its resolution, the APA explicitly noted that "[t]he same scientific and societal reasons as given by the *Roper* court in banning death as a penalty for those under the age of 18 apply to the late adolescent class." Am. Psych. Ass'n, *APA Resolution on the Imposition of Death as a Penalty for Persons Aged 18 Through 20, Also Known as the Late Adolescent Class* 3 (2022), https://www.apa.org/about/policy/resolution-death-penalty.pdf.

The ABA has also advocated for "second look" provisions to allow courts to review lengthy sentences. In 2022 the ABA adopted Resolution 502, urging federal, state, local, territorial, and tribal governments to authorize courts to review lengthy sentences after the defendant has served at least ten years. Am. Bar Ass'n, *Resolution 502 & Report to the House of Delegates* (2022), https://www.americanbar.org/content/dam/aba/directories/policy/annual-2022/502-annual-2022.pdf. In advocating for "second look" resentencing hearings, the ABA specifically acknowledged that "[t]hose sentenced while young merit second looks." *Id.* at 6. In coming to that conclusion, the ABA turned to the evolving neuroscientific research showing that "certain brain systems and

development of the prefrontal cortex that are involved in self-regulation and higher-order cognition, continue to develop into the mid-20s."[13] *Id.* at 5 (citing *O'Dell*, 358 P.3d at 364 n.5).

4. The same considerations relied upon by the U.S. Supreme Court in *Roper*, *Graham*, and *Miller* to limit the application of extreme sentences to youth under 18 have now propelled many states and the federal government to set the age of adulthood at 21 for the exercise of many adult rights and responsibilities

In striking the death penalty for youth under 18, the Supreme Court considered where states drew the line "between childhood and adulthood" for "many purposes" outside the context of the death penalty and noted that many states drew that line at 18. *Roper*, 543 U.S. at 574. Since then, many states have re-examined the appropriate age for the exercise of various adult rights and responsibilities and, looking to the

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[13] Prominent legal and policy organizations across the country also support second look provisions and sentence caps for youth and emerging adults. *See* Ashley Nellis & Niki Monazzam, The Sent'g Project, *Left to Die in Prison: Emerging Adults 25 and Younger Sentenced to Life Without Parole* 13 (2023), https://www.sentencingproject.org/app/uploads/2023/09/Left-to-Die-in-Prison-Emerging-Adults-25-and-Younger-Sentenced.pdf; Nazgol Ghandnoosh, The Sent'g Project, *A Second Look at Injustice* 9-10, 22-23, 34 (2021), https://www.sentencingproject.org/app/uploads/2022/10/A-Second-Look-at-Injustice.pdf; Marta Nelson et al., Vera Inst. of Just., *A New Paradigm for Sentencing in the United States* 26-28, 37-38, 43-44 (2023), https://www.vera.org/downloads/publications/Vera-Sentencing-Report-2023.pdf; Sent'g Reform Working Grp., Just. Roundtable, *Support a Second Look at Long Sentences Through S. 2146* (2019), https://assets.aclu.org/live/uploads/document/JR_Second_Look_Sign-on_Senate__002_.pdf; FAMM, *The Harms of Extreme Sentences and the Need for Second Look Laws* 3-4 (2021), https://famm.org/wp-content/uploads/2021/10/Second-Look-Principles-FINAL.pdf.

developmental attributes identified in *Roper* and other juvenile sentencing cases, as well as current neurological research, amended or passed new legislation raising the age of adulthood to 21.

For example, in December 2019, Congress raised the age of sale for tobacco products from 18 to 21 nationwide. Campaign for Tobacco-Free Kids, *States and Localities That Have Raised the Minimum Legal Sale Age for Tobacco Products to 21* 1 (2020), https://assets.tobaccofreekids.org/content/what_we_do/state_local_issues/sales_21/states_localities_MLSA_21.pdf. Prior to that, nineteen states and the District of Columbia had passed laws requiring people to be 21 to buy tobacco. *Id.*

Similarly, all fifty states require an individual to be 21 to purchase alcohol. *See* National Minimum Drinking Age Act, 23 U.S.C.A. § 158. The corresponding federal legislative history affirms that 21 was chosen out of concern for their propensity for reckless activities such as drinking and driving. *National Minimum Drinking Age: Hearing on H.R. 4892 Before the Subcomm. on Alcoholism & Drug Abuse of the S. Comm. on Lab. & Hum. Resources*, 98th Cong. 48 (1984). In step with that concern, most rental car companies require drivers to be at least 21 years old to rent a vehicle and may impose additional fees on renters under the age of 25. *See, e.g.*, *Can You Rent a Car Under 25 in the US and Canada?*, Enterprise, https://www.enterprise.com/en/help/faqs/car-rental-under-25.html (last visited July 19, 2024); *Age Requirements to Rent a Car*, Budget, https://www.budget.com/en/help/usa-faqs/age-to-rent (last visited July 19, 2024).

The same rationale underpinning these restrictions for young people under 21 has also led states to update laws in many other areas.

For example, since *Roper*, 28 states and the District of Columbia have extended the age at which young people can remain in foster care to age 21 under a federal foster care program.[14] *See* John Kelly, *Bipartisan Bill Would Expand Federal Extended Foster Care Program,* Imprint (Feb. 7, 2024), https://imprintnews.org/youth-services-insider/bill-would-expand-federal-extended-foster-care-program/247435. The widespread adoption of this legislation is based on the notion that young people may not be prepared for independent living at 18, when their character is not yet fully formed and when propensity for risky behavior still exists. *See* Miriam Aroni Krinsky & Theo Liebmann, *Charting a Better Future for Transitioning Foster Youth: Executive Summary of Report From a National Summit on the Fostering Connections to Success Act*, 49 Fam. Ct. Rev. 292, 292 (2011) ("These studies confirm the wisdom of embracing policies and practices that can lengthen the window of support for these vulnerable and at-risk youth."); *cf. Roper*, 543 U.S. at 570 (identifying as a salient characteristic of youth an individual's "vulnerability and comparative lack of control over their immediate surroundings"). Outside of the federal extended foster care program, nearly every state provides services for foster care youth beyond age 18. Child Welfare Info. Gateway & Child.'s Bureau, *Extension of Foster Care Beyond Age 18* 2-4 (2022),

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[14] Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, §§ 201-02, 122 Stat. 3949, 3957-59 (continuing federal support for children in foster care after 18 based on evidence that youth who remain in foster care until 21 have better outcomes when they ultimately exit the foster care system and requiring child welfare agencies to help youth at 18, 19, 20, and 21 plan for their transition to independence from the foster care system).

https://www.childwelfare.gov/resources/extension-foster-care-beyond-age-18/.

Even the federal government designates individuals under the age of 24 as legal dependents of their parents for purposes of the Free Application for Federal Student Aid (FAFSA), and those under the age of 24 are dependents for tax purposes. *See Dependency Status*, Federal Student Aid, https://studentaid.gov/apply-for-aid/fafsa/filling-out/dependency (last visited July 19, 2024); *Filing Requirements, Status, Dependents*, IRS, https://www.irs.gov/faqs/filing-requirements-status-dependents-exemptions (last visited July 19, 2024); 26 U.S.C.A. § 152. Under the Affordable Care Act, individuals are able to remain on their parents' health insurance if they are 25 or younger as part of the government's recognition of continued dependence. 42 U.S.C.A. § 300gg-14. The Individuals with Disabilities Education Act (IDEA) permits individuals to continue to receive services through age 21 if they have a disability and have not earned a traditional high school diploma. 20 U.S.C.A. § 1412(a)(1)(A).

Similarly, the criminal justice system increasingly reflects the continuing developmental immaturity of older adolescents. In 47 states, juvenile court jurisdiction extends beyond age 18. *OJJDP Statistical Briefing Book: Extended Age of Juvenile Court Jurisdiction*, Off. of Juv. Just. and Delinq. Prevention (2021), https://ojjdp.ojp.gov/statistical-briefing-book/structure_process/faqs/qa04106. The majority of those states (34) extend juvenile court jurisdiction to 21. *Id.* In addition, an expanding number of states have raised the age of original juvenile court jurisdiction to include 18-year-olds. Some states have even adopted "youthful

offender" laws awarding a hybrid of special protections to individuals in late adolescence.[15] These laws may protect young people from the harshest penalties of the criminal justice system, such as heightened confidentiality and record sealing in their cases, even when they are not afforded the protections of the juvenile justice system.

In keeping with this trend, specialty courts have been created across the country targeted specifically at young adults ages. *See* Connie Hayek, Nat'l Inst. of Just., *Environmental Scan of Developmentally Appropriate Criminal Justice Responses to Justice-Involved Young Adults* 6 (2016), https://www.ncjrs.gov/pdffiles1/nij/249902.pdf. These courts are hybrid juvenile/adult courts that provide accountability for young adults in the criminal justice system but also provide resources and protections necessary for the unique developmental needs of young adults. *See, e.g.*, *Young Adult Court*, Superior Ct. of Cal., Cnty. of S.F., https://www.sfsuperiorcourt.org/divisions/collaborative/yac (last visited July 19, 2024); Tim Requarth, *A California Court for Young Adults Calls on Science*, N.Y. Times, (Apr. 17, 2017), https://www.nytimes.com/2017/04/17/health/young-adult-court-san-francisco-california-neuroscience.html.

Additionally, states and the federal government have been responding to the new science and case law by affording greater protections over youth offenders into their early twenties. In 2016, a report was prepared for the Department of Justice ("DOJ") "to identify

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[15] *See, e.g.*, Fla. Stat. Ann. § 958.04; Mich. Comp. Laws Ann. § 762.11; S.C. Code Ann. § 24-19-10 *et seq.*; Vt. Stat. Ann. tit. 33, §§ 5102, 5280; N.Y. Crim. Proc. Law § 720.10; D.C. Code Ann. § 24-901 *et seq.*

those programs addressing the developmental needs of young adults involved in the criminal justice system." Hayek, *supra*, at 1. In the report, young adults were identified as "persons between the ages of 18 to 25 years." *Id.* at 2. The report discusses a variety of initiatives and innovations nationwide designed to protect late adolescents—for example, Young Adult Courts in San Francisco, California (begun in 2015 for ages 18 to 25), Omaha, Nebraska (begun in 2004 for up to age 25), Kalamazoo County, Michigan (begun in 2013 for ages 17 to 20), Lockport City, New York, and New York, New York (begun in 2016 for ages 18 to 20). *Id.* at 25-29. The report also details, *inter alia*, probation/parole programs, programs led by prosecutors, community-based programs, hybrid programs, and prison programs. *Id.* at 30-63. The report is exhaustive and demonstrates a nationwide, growing nonpartisan recognition of the need to protect late adolescents from the full brunt of criminal penalties. The DOJ also sponsored a Study Group on the Transitions between Juvenile Delinquency and Adult Crime. *See* Rolf Loeber et al., *From Juvenile Delinquency to Young Adult Offending (Study Group on the Transitions between Juvenile Delinquency and Adult Crime)* 1 (2013), https://www.ncjrs.gov/pdffiles1/nij/grants/242931.pdf. The authors conclude that "young adult offenders aged 18-24 are more similar to juveniles than to adults with respect to their offending, maturation, and life circumstances." *Id.* at 20.

These developments reflect this evolving understanding regarding the line between childhood and adulthood. Viewed alongside current scientific research demonstrating the ongoing development of the young adult brain, ongoing reforms to laws and practices affecting youth

offenders support exempting older adolescents like Ms. Pike from imposition of the death penalty.

CONCLUSION

For the foregoing reasons, *Amici Curiae* respectfully request that this Court vacate Ms. Pike's death sentence, or otherwise grant Ms. Pike permission to appeal and overturn the dismissal of her motion to reopen her post-conviction proceedings.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief consists of 7,495 words and complies with the requirements set forth in Tennessee Supreme Court Rule 46 3.02.

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CERTIFICATE OF SERVICE

I hereby certify that I served a true and exact copy of the foregoing document via the Court's e-file system upon the following:

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