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IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

EAP 2026 NO. 34

COMMONWEALTH OF PENNSYLVANIA,
Appellee

V.

JEROME COFFEY,
Appellant

BRIEF FOR AMICI CURIAE DEFENDER ASSOCIATION OF PHILADELPHIA AND THE PENNSYLVANIA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS IN SUPPORT OF APPELLANT JEROME COFFEY

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STATEMENT OF INTEREST OF THE AMICUS CURIAE

Pennsylvania Association of Criminal Defense Lawyers

The Pennsylvania Association of Criminal Defense Lawyers ("PACDL") is a professional association of attorneys admitted to practice before the Supreme Court of Pennsylvania who provide criminal defense representation. As *Amicus Curiae*, PACDL presents the perspective of experienced criminal defense attorneys who aim to protect and ensure by rule of law those individual rights guaranteed by the Pennsylvania and U.S. Constitutions. PACDL's membership includes more than 900 private criminal defense practitioners and public defenders throughout the Commonwealth. PACDL works to achieve justice and dignity for defense lawyers, defendants, and the criminal justice system itself.

Defender Association of Philadelphia

The Defender Association of Philadelphia is a private, non-profit corporation which represents a substantial percentage of the criminal defendants in Philadelphia County at trial, at probation and parole revocation proceedings, and on appeal. The Association is active in all of the trial and appellate courts, as well as before the Pennsylvania Board of Probation and Parole. The Association attempts to ensure a high

standard of representation and to prevent the abridgment of the constitutional and other legal rights of the citizens of Philadelphia and Pennsylvania.

Pursuant to Pa.R.A.P. 531(b)(2), *Amici* state that no other person or entity has paid for the preparation of, or authored this brief in whole or in part.

QUESTION PRESENTED

On September 29, 2026, this Court granted a petition for an allowance of appeal limited to the following question.

> Does this Court's decision in *Commonwealth v. Lee* finding mandatory life-without-parole sentences unconstitutional for second-degree murder convictions apply retroactively?

SUMMARY OF ARGUMENT

In *Commonwealth v. Lee*, 357 A.3d 356 (Pa. 2026), this Court held that mandatory life without parole (LWOP) sentences for felony murder violate Article I, Section 13 of the Pennsylvania Constitution. Because it is a state law ruling, the Court has discretion to decide whether to apply

it retroactively. Unless this Court abandons its prior retroactivity analysis, this case is an easy one. *Lee* should apply retroactively.

This Court has held that its retroactivity analysis for new constitutional rulings is coextensive with the federal framework because it appropriately balances the need for finality with the need to ensure that a person should not serve a constitutionally unauthorized sentence. Under the federal approach, new substantive rulings receive retroactive treatment. These involve decisions that alter the reach of the criminal law or the class of persons that the law punishes. A straightforward application of this test inexorably should lead the Court to hold that its ruling in *Lee* must be applied retroactively.

In *Montgomery v. Louisiana*, 577 U.S. 190 (2016), the United States Supreme Court held that a prior ruling holding that mandatory life sentences for murders committed by juveniles was substantive. Accordingly, the Court held that category of juveniles was entitled to have their mandatory LWOP sentences vacated, and to receive individual consideration of whether the penalty is warranted. *Id.* at 211–12.

The only difference between this Court's ruling in *Lee* and *Montgomery* is the category of people an improper reach of the criminal law

affects: those serving sentences for felony murder, rather than juveniles. This is a distinction without a legal difference for retroactive application of this Court's substantive ruling in *Lee*.

Fundamental fairness also requires retroactivity so that individuals do not die in prison while serving an illegal sentence that is now void under the law. Without retroactive relief, the cruelty *Lee* sought to eliminate would be perpetuated.

ARGUMENT

This Court Should Hold That *Lee* Applies Retroactively.

A. This Court's decision in *Lee* should apply retroactively because it is a substantive ruling that is fully retroactive under the federal scheme that the Court has adopted.

In *Commonwealth v. Lee*, 357 A.3d 356 (Pa. 2026), this Court held that the statutes providing a mandatory LWOP sentence for felony murder violates the Pennsylvania Constitution's Article I, Section 13 prohibition against cruel punishments because it offers broader protections than those afforded under the Eighth Amendment. *Id.* at, 372, 395. The Court explained that under Pennsylvania law, mandatory LWOP is disproportionate and cruel because it treats all felony murder defendants

alike, without regard to individualized circumstances and relative culpability. The statute does not discern between those that killed or intended to kill versus those that did not. *Id.* at 395–97. The scheme "prevents the sentencer from considering whether this harshest of sentences proportionally punishes the offender." *Id.* at 396.[1]

Because the Court's ruling in *Lee* rests entirely on Article I, Section 13 of the Pennsylvania Constitution, the holding in *Lee* is a matter of state law. "When questions of state law are at issue, state courts generally have the authority to determine the retroactively of their own decisions." *Alcatel-Lucent USA Inc. v. Commonwealth*, 326 A.3d 816, 827 n.55 (Pa. 2024) (quoting *Am. Trucking Assn's v. Smith*, 496 U.S. 167, 177 (1990) (plurality opinion)). "Retroactive application of a new rule of state law is a matter of judicial discretion." *Office of Disciplinary Counsel v. Surrick*, 749 A.2d 441, 444 (Pa. 1990). That discretion, as before, should be exercised in accord with federal retroactivity rulings.

In cases involving a new federal constitutional ruling this Court must at a minimum apply the retroactivity framework of *Teague v. Lane*,

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[1] The Court vacated *Lee's* mandatory LWOP sentence and remanded for individual consideration of an appropriate sentence. Because the case was on direct appeal the Court did not have to decide whether *Lee*, a new constitutional ruling, applies retroactively to PCRA proceedings. *Id.* at 397 n. 20.

489 U.S. 288 (1989). Under *Teague*, new procedural federal constitutional rulings are not given retroactive effect for post-conviction review while substantive rulings must be applied retroactively by the state.[2] *See, e.g., Montgomery v. Louisiana*, 577 U.S. 190, 197–99 (2016) (explaining the *Teague* framework and its applicability to state post-conviction law). "Rules that regulate only the *manner of determining* the defendant's culpability are procedural." *Schriro v. Summerlin*, 542 U.S. 348, 353 (2004) (emphasis in original). "A rule is substantive rather than procedural if it alters the range of conduct or the class of person that the law punishes." *Id.* The Court has explained that "where the conviction or sentence in fact is not authorized by substantive law, then finality interests are at their weakest." *Welch v. United States*, 578 U.S. 120, 131 (2016) (holding that the Court's prior decision holding that the residual clause of the Armed Career Criminal sentencing provision was void for vagueness was a

[2] The Unites States Supreme Court for many years stated that the bar on collateral federal habeas relief for new procedural rules contained a potential exception for "watershed" ones implicating fundamental fairness. However, the exception was applied only one time for the right to counsel ruling of *Gideon v. Wainwright*, 372 U.S. 335 (1963). In 2021 the Court eliminated this exception. Now, if a new rule is procedural, even if "watershed", it does not receive federal retroactive application. *Edwards v. Vanoy*, 593 U.S. 255, 272 (2021) (holding that the watershed rule is to "be regarded as retaining no vitality").

substantive ruling that must be applied retroactively to reduce Welch's prison sentence by at least five years).

This Court has applied the federal *Teague* framework when considering retroactivity issues with new constitutional rulings. *See, e.g., Commonwealth v. Bracey*, 986 A.2d 128, 143–44 (Pa. 2009) (for retroactivity issue here that "does not fit so neatly into traditional retroactivity doctrine", . . . "we find further guidance by looking to the High Court's new ruling jurisprudence. . . .").

When a new ruling is procedural, and thus will not receive federal collateral review, this Court as a matter of state law, as in other matters, may choose to grant more rights for collateral review than federally required. *Danforth v. Minnesota*, 552 U.S. 264, 282 (2008) ("*Teague* does not in any way limit the authority of a state court, when reviewing its own state criminal convictions, to provide a remedy for a violation that is deemed 'non-retroactive' under *Teague*").

In *Commonwealth v. Washington*, 142 A.3d 810 (Pa. 2016), this Court decided whether the federal constitutional ruling announced in *Alleyne v. United States*, 570 U.S. 99 (2013), should be applied retroactively. *Alleyne* held that where there are factual determinations necessary for

the imposition of a mandatory minimum sentence, defendants are entitled to a jury trial and proof beyond a reasonable doubt. This Court concluded, as did all other courts, that *Alleyne* announced only procedural rights, and did not fit within a very narrow *Teague* exception for watershed procedural rules. *See supra* at n. 2. Applying the governing *Teague* framework this Court held that the defendant was not entitled to the retroactive application of *Alleyne*. *Washington*, 142 A.3d at 818–19.

Perhaps acknowledging the weakness of his *Teague* argument in *Washington*, "Appellant primarily urges this Court to recognize an independent state-level jurisprudence, per *Danforth*." *Id.* at 816. This Court declined to afford greater retroactivity rights than *Teague* as a matter of state law.

> From our perspective balancing fairness and finality is essential in considering the appropriate retrospective effect of a new rule of constitutional procedure. *Accord Welch v. United States*, 578 U.S. 120, 131 (2016) ("The *Teague* framework creates a balance between, first, the need for finality in criminal cases, and second, the countervailing imperative to ensure that criminal punishment is imposed only when authorized by law."). Appellant's arguments, however, touch on only one side of this equation. Unless and until developed arguments are advanced which persuade this Court that a better equilibrium can be achieved, the *Teague* construct shall remain the default approach, in

> Pennsylvania, to the retrospective application of new constitutional procedural rules pronounced by the Supreme Court of the United States.

Id. at 820 (cleaned up).

This Court further entrenched its attachment to *Washington's* adoption of the *Teague* framework in *Commonwealth v. DiMatteo*, 177 A.3d 182 (Pa. 2018). "Declining to adopt a state-level rule for retroactivity analysis in *Washington*, we observed that *Teague* remained the default approach to the issue of retrospective application of new rules of constitutional law in the collateral attack posture. *See id.* at 819. Thus, we held that Washington was not entitled to relief based on *Alleyne*. *Id*. at 820." *Id.* at 189.

In sharp contrast to the procedural rule situation in *Washington*, *Lee* does not receive full retroactive effect only if this Court now adopts a state level rule for retroactivity that affords **less rights** than the *Teague* retroactivity framework. *Lee*'s ruling invalidating mandatory life without parole for those convicted of felony murder is indisputably a substantive ruling.

In *Montgomery v. Louisiana*, 577 U.S. 190 (2016), the Court had to consider whether a prior decision invalidating mandatory life without

parole sentences for juveniles as a constitutionally infirm cruel and unusual punishment, *Miller v. Alabama*, 567 U.S. 460 (2012), should apply retroactively. The Louisiana Supreme Court had denied the collateral relief claim Montgomery had made after the *Miller* decision, holding that *Miller* did not apply retroactively. The United States Supreme Court reversed, holding that Montgomery, who had been in custody over 50 years on his Louisiana murder conviction for a killing when he was 17 years old, was constitutionally entitled to resentencing. *Id.* at 194–97, 213.

The Court concluded that *Miller* was a substantive ruling because it "rendered a certain penalty unconstitutionally excessive for a category of offenders." *Id*. at 212. It held that its retroactivity ruling was thus in conformity with its *Teague* framework for evaluating the retroactivity of new constitutional rulings. *Id*. at 210–12.

Lee, like *Miller*, is substantive. At their bottom, both invalidate mandatory LWOP sentences for an entire category of offenders, here those convicted of second degree murder and in *Miller*, juveniles. *Montgomery*, therefore, would necessarily require retroactive effect under *Teague*. In fact, this Court has already held that the ruling, successful

now in *Lee* for all those serving mandatory LWOP sentences, is a substantive one.

In *Scott v. Pennsylvania Board of Probation and Parole*, 284 A.3d 178 (Pa. 2022), plaintiff criminal defendants raised identical cruel punishment constitutional claims to those in *Lee* in a declaratory judgment action in the Commonwealth Court. *Id.* at 181. This Court did not reach the merits. It held that jurisdiction did not lie in the Commonwealth Court, since the claim sought relief from the mandatory LWOP sentences, and therefore required a PCRA petition. *Id.* at 181, 198. However, it discussed United States Supreme Court cases, including *Montgomery*, and concluded that "Appellants lodge a categorical challenge to a term-of-years sentence." *Id.* at 194 (footnote omitted). The claim involves "a mandatory LWOP sentence, which renders the Appellants categorically ineligible for parole." *Id.* at 194–95. Categorical ineligibility is, under *Teague*, a substantive holding.

This Court has held that its rules governing retroactivity for new constitutional rulings are co-extensive with the federal *Teague* framework. *Lee* is a substantive ruling that requires that it be applied retroactively. That should be the end of the matter.

B. Justice and fundamental fairness support a finding that *Lee* is retroactive for all of those serving a cruel mandatory LWOP sentence.

"[D]ue process requires that the post-conviction process be fundamentally fair." *Commonwealth v. Bennett*, 930 A.2d 1264, 1273 (Pa. 2007). Due process rights also underly this Court's *void ab initio* doctrine. The Court has invoked that doctrine to grant relief on a belated PCRA claim challenging a sentence as illegal because it was imposed on a criminal conviction under a statute that has now been declared unconstitutional. *Commonwealth v. McIntyre*, 232 A.3d 609, 617–19 (Pa. 2020). It is "a fundamental principle of our criminal justice system of jurisprudence, that an unconstitutional law cannot serve as the foundation of a court's authority to try and imprison an individual, and, thus, criminal convictions and sentences based upon such unconstitutional laws must not be permitted to stand." *Id.* at 618. *See also, e.g., Kendrick v. District Attorney Of Philadelphia County*, 916 A.2d 529, 539 (Pa. 2007) (holding that it would apply a prior decision narrowing the construction and application of a criminal law retroactively, and noting that the Commonwealth's contrary position "fails as a matter of justice and logic").

Fairness due process notions were the underlying basis for this Court granting PCRA relief in *Commonwealth v. Cobbs*, 256 A.3d 1192 (Pa. 2021). The Court vacated a life without parole sentence imposed in 1979 on a charge of assault by a life prisoner, 18 Pa.C.S. § 2704. Cobbs was a 25 year old man when he committed that assault. The conviction and resulting life sentence for the Section 2704 offense were predicated on a mandatory life sentence he received for a murder conviction. Because he was 17 years old when he committed that murder in 1970 (*id.* at 1194), that sentence was now vacated because of the retroactive holding in *Montgomery*. *Id.* at 1194–96.

The Court stated that "critical to our analysis in this PCRA appeal is *Montgomery's* declaration that *Miller's* holding constitutes a substantive rule of law that applies retroactively on collateral review." *Id.* at 1213. The Court noted that the case was "somewhat similar" to *McIntyre*, *supra*, though here there was "an unconstitutional application of the statute, as the predicate life sentence upon which Appellant's Section 2704 conviction and sentence is based is illegal and thus void." *Id.* at 1213–14. "Section 2704 violates Appellant's due process rights as his conviction thereunder was predicated on an illegal sentence." *Id* at 1214.

Like *Cobbs*, here the substantive nature of the right established in *Lee* renders the life-without-parole sentence "void." It is thus a violation of Due Process to maintain these unconstitutional sentences.

All defendants under the *Teague* framework receive the benefit of retroactive application of a new substantive ruling of unconstitutionality even if the new decision only affects a few years of imprisonment, and regardless of the basis for the unconstitutional ruling. *See*, *e.g., Welch v. United States*, *supra* at 5. Two considerations here make a retroactive ruling for *Lee* particularly imperative.

First, the basis for the *Lee* ruling is that the statutes dictating mandatory LWOP sentences for all those convicted of felony murder are unconstitutionally cruel. Individual consideration of an appropriate sentence is required under *Lee*. To not apply *Lee* to all those suffering under a mandatory LWOP sentence that should be declared void is not only fundamentally unfair, but also perpetuating the cruelty that was the basis for *Lee's* constitutional ruling.

Second, *Lee* involved a "unique constitutional challenge" (397 A.3d at 391), because "[t]he gravity of a sentence of life without parole cannot be overstated." *Id*. at 393. "[I]mprisoning an offender until he dies shares

certain attributes with capital punishment that are dissimilar to any other sentence." *Id.*[3]

Finally, holding that *Lee* is retroactive provides no windfall for those now serving life without parole sentences for felony murder. This Court only eliminated the mandatory nature of life sentences without parole. A person convicted of felony murder whose culpability individually warrants it "may remain incarcerated for the duration of his natural life." *Lee*, 397 A.3d at 396 n. 18. The just result here is only that all individuals have the opportunity to try to show that their life sentence without parole is undeserved.

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[3] The possibility of dying in prison with a life sentence without parole is very real in Pennsylvania. A life sentence may only be commuted if first, all five members of the Pardons Board recommend commutation, and then the Governor approves the recommendation. Article IV, Section 9. In other words, any one member of the Board can block a commutation, and the Governor despite a unanimous recommendation from the Board. The vagaries of this system depending on the attitudes towards commutation of individuals can result in long periods where there are few or no commutations in Pennsylvania. For example, from 1995 through 2014, a period of 19 years, Governors granted a total of six (6) commutations of life sentences.

Board of Pardons official website. Https://www.pa.gov/agencies/bop/about-the-board/about-statistics/commutation-of-life-sentences.

CONCLUSION

Lee should be held to be retroactive, applying to all those serving mandatory LWOP sentences for felony murder. They are all entitled to this Court vacating their sentences, and receiving individual consideration on remand.

Respectfully submitted,

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CERTIFICATION OF COMPLIANCE WITH RULE 531

I do hereby certify on this 16th day of November, 2026, that the Brief of Amicus Curiae Defender Association of Philadelphia filed in the above captioned case on this day does not exceed 7,000 words. Using the word processor used to prepare this document, the word count is 3,043 as counted by Microsoft Word.

Respectfully submitted,

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CERTIFICATION OF COMPLIANCE WITH RULE 127, PA.R.A.P.

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Respectfully submitted,

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