

No. 16-0468

IN SUPREME COURT OF TEXAS

IN THE MATTER OF J.G.,
Petitioner

On Petition for Review of No. 01-15-01025-CV
in the Court of Appeals, First District of Texas

Trial Court Case No. 2012-00331J
314th District Court of Harris County, Texas
Honorable John Phillips, Presiding

BRIEF OF AMICUS CURIAE JUVENILE LAW CENTER IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

IDENTITY OF PARTIES AND COUNSEL.....ii

INDEX OF AUTHORITIESiv

INTEREST AND IDENTITY OF AMICUS CURIAE1

SUMMARY OF THE ARGUMENT.....1

ARGUMENT.....2

 I. Application of the Waiver of Jurisdiction Standard in Texas Family Code
 § 54.02(j) to J.G. Violates His Right to Meaningful Appellate Review..... 5

 II. Texas’s Waiver of Jurisdiction Statute Violates Due Process by Denying
 Certain Juvenile Offenders the Right to an Individualized Determination
 of Amenability to Treatment in the Juvenile Court. 8

 A. Youth Are Fundamentally Different from Adults in Constitutionally
 Relevant Ways..... 9

 B. Transfer Determinations that Prevent Consideration of a Juvenile
 Offender’s Individual Characteristics Violate Due Process..... 12

 III. Texas’s Waiver of Jurisdiction Statute Violates Equal Protection by
 Arbitrarily Depriving Certain Juvenile Offenders of the Benefits and
 Protections of Juvenile Court. 16

PRAYER 18

CERTIFICATE OF SERVICE

CERTIFICATE OF COMPLIANCE

INDEX OF AUTHORITIES

	Page(s)
Cases	
<i>Bell v. Burson</i> , 402 U.S. 535 (1971)	13
<i>Cain v. State</i> , 947 S.W.2d 262 (1997)	6
<i>City of Cleburne v. Cleburne Living Ctr., Inc.</i> , 473 U.S. 432 (1985)	16
<i>Cleveland Bd. of Educ. v. LaFleur</i> , 414 U.S. 632 (1974)	14
<i>Douglas v. California</i> , 372 U.S. 353 (1963)	7
<i>Eddings v. Oklahoma</i> , 455 U.S. 104 (1982)	9
<i>Graham v. Florida</i> , 560 U.S. 48 (2010)	8, 10, 14
<i>Guerrero v. State</i> , 471 S.W.3d 1 (Tex. Ct. App., 14th Dist. 2014)	4, 15
<i>Hidalgo v. State</i> , 983 S.W.2d 746 (Tex. Crim. App. 1999).....	3, 6, 7, 13
<i>M.L.B. v. S.L.J.</i> , 519 U.S. 102 (1996)	5
<i>Marin v. State</i> , 851 S.W.2d 275 (1993)	6
<i>Miller v. Alabama</i> , 132 S. Ct. 2455 (2012)	<i>passim</i>

<i>Montgomery v. Louisiana</i> , 136 S. Ct. 718 (2016)	9, 10
<i>Moon v. State</i> , 451 S.W.3d 28 (Tex. Crim. App. 2014).....	<i>passim</i>
<i>Moore v. State</i> , 446 S.W.3d 47 (Tex. Ct. App. 1st Dist. 2014).....	4
<i>Morgan v. State</i> , 688 S.W.2d 504 (Tex. Crim. App. 1985).....	7
<i>Stanley v. Illinois</i> , 405 U.S. 645 (1972)	15
<i>Sullivan v. Univ. Interscholastic League</i> , 616 S.W.2d 170 (Tex. 1981)	16
<i>Vlandis v. Kline</i> , 412 U.S. 441 (1973)	14
<i>Whitworth v. Bynum</i> , 699 S.W.2d 194 (Tex. 1985)	16, 17
Statutes	
Tex. Fam. Code § 51.02	3
Tex. Fam. Code § 51.04	3
Tex. Fam. Code § 54.02	4, 5, 8, 17
Tex. Fam. Code § 56.01	6
Other Authorities	
Martin Guggenheim, <i>Graham v. Florida and a Juvenile’s Right to Age-Appropriate Sentencing</i> , 47 HARV. C.R.-C.L.L. REV. 457 (2012).....	14

INTEREST AND IDENTITY OF AMICUS CURIAE ¹

Juvenile Law Center, founded in 1975, is the oldest public interest law firm for children in the United States. Juvenile Law Center advocates on behalf of youth in the child welfare and criminal and juvenile justice systems to promote fairness, prevent harm, and ensure access to appropriate services. Juvenile Law Center works to align juvenile justice policy and practice, including state laws on transfer, with modern understandings of adolescent development and time-honored constitutional principles of fundamental fairness. Accordingly, Juvenile Law Center participates as *amicus curiae* in state and federal courts throughout the country, including the United States Supreme Court, in cases addressing the rights and interests of children. In the instant matter, Juvenile Law Center writes to urge this honorable court to ensure that application of Texas's waiver of jurisdiction statute does not offend basic principles of due process and equal protection by denying juvenile offenders an individualized determination of their immaturity and capacity for change before transferring them to adult criminal court.

SUMMARY OF THE ARGUMENT

Amicus respectfully argues that the statutory standard in Texas Family Code § 54.02(j), which permits a court to transfer a juvenile offender to adult criminal court without an individualized determination of the youth's maturity, culpability, and

¹ Pursuant to Rule 11, TEX. R. APP. PROC., no person or entity, other than *Amicus Curiae*, its members, or its counsel made a monetary contribution for the preparation or submission of this brief.

capacity for change, is constitutionally infirm in light of United States Supreme Court jurisprudence. Both the Texas Court of Criminal Appeals and the United States Supreme Court have made clear that transfer determinations must comply with basic standards of due process and fair treatment. More specifically, transfer decisions must take account of the characteristics that distinguish youthful offenders from adults and from one another—namely, their level of maturity, decision-making capacity, culpability, and capacity for change. Consideration of these factors is integral to the determination of whether an individual child is amenable to treatment in the juvenile court, and thus a transfer mechanism that excludes consideration of these factors violates due process.

Petitioner J.G. has never received an individualized determination of his amenability to treatment in juvenile court, as is constitutionally required. Although he successfully obtained a reversal of his original transfer order because it was based solely on a finding of probable cause, when he returned to juvenile court he was subjected to a new transfer standard that again excluded consideration of his particular background and characteristics. This application of the transfer standards in the Texas Family Code violates J.G.’s right to appeal and fails to comply with basic constitutional protections of due process and equal protection under the law.

ARGUMENT

In its landmark decision in *Moon v. State*, 451 S.W.3d 28 (Tex. Crim. App. 2014), the Texas Court of Criminal Appeals made clear that “any statutory mechanism for

waiving juvenile-court jurisdiction must at least ‘measure up to the essentials of due process and fair treatment,’” including “the opportunity for meaningful appellate review.” *Id.* at 36-37 (quoting *Kent v. United States*, 383 U.S. 541, 560-62 (1966)). Reaffirming its prior holding in *Hidalgo v. State*, 983 S.W.2d 746 (Tex. Crim. App. 1999), the court articulated the “operative principle” that, “whenever feasible, children and adolescents . . . should be ‘protected and rehabilitated rather than subjected to the harshness of the criminal system.’” *Moon*, 451 S.W.3d at 36 (quoting *Hidalgo*, 983 S.W.2d at 754) (alteration omitted). To that end, there must be an “individualized assessment of the propriety of waiver of juvenile jurisdiction” before a juvenile offender can be transferred to the adult criminal court. *Id.* at 50 n.87.

Less than two years after that decision, petitioner J.G. has been denied the individualized assessment and fair treatment required under *Moon*. J.G. was 16 years old when he participated in the robbery from which this case originates. The juvenile court had “exclusive original jurisdiction” over the proceedings, as J.G. was clearly a child under the Texas Family Code “at the time [he] engaged in the conduct.” Tex. Fam. Code § 51.04(a); *see also id.* § 51.02(2) (defining “child”). He therefore had “the right . . . to remain outside the jurisdiction of the criminal district court” unless “certain conditions [were] met”—namely, an individualized judicial determination, after a “full investigation and hearing,” that the welfare of the community required adult criminal proceedings. *Moon*, 451 S.W.3d at 38 (quoting Tex. Fam. Code § 54.02) (internal quotation marks omitted). J.G. has never meaningfully received those fundamental due

process protections. Indeed, his original transfer decision was reversed by the court of appeals because the transfer order was based solely on a finding of probable cause to believe J.G. committed the underlying offense. *Guerrero v. State*, 471 S.W.3d 1, 4 (Tex. Ct. App., 14th Dist. 2014). Once back in the juvenile court, J.G. was subjected to a transfer standard that again focused almost exclusively on the probable cause determination, ignoring all of the transfer factors relevant to a juvenile offender's amenability to treatment, which the court considered essential in *Moon*. *See Moon*, 451 S.W.3d at 38.

J.G.'s situation is the result of the application of two different discretionary transfer standards in the Texas Family Code. The first standard, articulated primarily in Subsections 54.02(a) and (f) of the Code, requires the juvenile court to consider whether "the welfare of the community requires criminal proceedings" using a non-exhaustive list of factors, including "the sophistication and maturity of the child," the child's record and previous history, and "the likelihood of rehabilitation of the child" through the juvenile court. Tex. Fam. Code § 54.02(a), (f). This standard applies to someone who meets the definition of a "child" at the time of the transfer. Tex. Fam. Code § 54.02(a); *see also Moore v. State*, 446 S.W.3d 47, 52 (Tex. Ct. App. 1st Dist. 2014) ("[S]ection 54.02(a) applies only to a 'child' at the time of the transfer."). The second standard, found in Subsection 54.02(j), does not include any youth-specific considerations regarding maturity, culpability, or capacity for change. Rather, it provides that the juvenile court may waive its exclusive jurisdiction if the alleged offender was a child at

the time of the offense but is now “18 years of age or older,” as long as the youth has not yet been adjudicated, there is an acceptable explanation for the delay in the transfer decision, and the “juvenile court determines there is probable cause to believe” the youth committed the offense alleged. Tex. Fam. Code § 54.02(j). One of the acceptable delay explanations provided for in the statute is that “a previous transfer order was reversed by an appellate court or set aside by a district court.” *Id.*

Because he turned 18 during the pendency of his appeal of the first transfer decision under Subsection 54.02(a), J.G. faced a renewed transfer motion when he returned to juvenile court, this time under the more expansive standard in Subsection 54.02(j). Although he had successfully argued that he had been wrongfully denied an individualized determination of his amenability to treatment in the juvenile court, he was denied that determination yet again, because consideration of maturity, culpability, or capacity for change are not part of the Subsection 54.02(j) transfer standard. This application of Texas’s waiver of jurisdiction statute violates J.G.’s right to meaningful appellate review of his original transfer order, offends the basic due process principles, and violates his right to equal protection under the law.

I. Application of the Waiver of Jurisdiction Standard in Texas Family Code § 54.02(j) to J.G. Violates His Right to Meaningful Appellate Review.

Although the Federal Constitution guarantees no right to appellate review, once a State provides a right to appeal, it must provide meaningful access to that judicial remedy. *M.L.B. v. S.L.J.*, 519 U.S. 102, 110 (1996) (citing *Griffin v. Illinois*, 351 U.S. 12,

24 (1956)); *see also Marin v. State*, 851 S.W.2d 275, 278 (1993) (“[T]he right to appeal is not of constitutional magnitude, but is conferred by the Legislature.”) (en banc) (overruled on other grounds by *Cain v. State*, 947 S.W.2d 262 (1997)). Texas has extended the right to appeal to juvenile offenders challenging transfer decisions. *See* Tex. Fam. Code § 56.01(c)(1)(A) (providing right to immediate appeal from an order “respecting transfer of the child for prosecution as an adult”); *see also Moon*, 451 S.W.3d at 39 (describing the statutory grants of the right to appeal prior to the passage of § 56.01(c)(1)(A)). In fact, in *Moon*, the Texas Court of Criminal Appeals emphasized “the primacy of appellate review” of transfer decisions. *Id.* at 49 (citing *Kent v. United States*, 383 U.S. 541 (1966)). Yet, for youth in J.G.’s position, the right to appeal is rendered meaningless, as the outcome of the initial transfer decision is the same regardless of the result of the appeal.

As the *Moon* court explained, “the opportunity for meaningful appellate review” is “[a]mong the requisites of a minimally fair transfer process.” *Moon*, 451 S.W.3d at 36-37 (citing *Kent*, 383 U.S. at 560-62). The court emphasized, as it did fifteen years earlier in *Hidalgo*, that the critical importance of a transfer proceeding demands strong due process protections. *See id.* at 36; *Hidalgo*, 983 S.W.2d at 754. In fact, in *Hidalgo*, the court “found transfer to criminal district court for adult prosecution” to be “the single most serious act the juvenile court can perform.” 983 S.W.2d at 755 (quoting *State v. R.G.D.*, 527 A.2d 834, 835 (N.J. 1987) (internal quotation marks omitted)). The court noted that, once transferred, a juvenile offender is “subject to the retributive punishment of the

criminal justice system instead of the rehabilitative goal of the juvenile justice system,” and that “loss of juvenile status results in the personal degradation and restriction of legitimate opportunity that often follow a criminal conviction.” *Id.* (internal quotation marks omitted); *see also Moon*, 451 S.W.3d at 38-39 (describing the advantages to remaining in the juvenile system). Furthermore, juvenile courts typically have broad discretion to determine which juveniles lose their protected status and are exposed to the harsh consequences of adult criminal court. *Moon*, 451 S.W.3d at 49. Because of that broad discretion over a “normative judgment” of tremendous significance, the *Moon* decision followed the Supreme Court’s guidance in *Kent* and insisted upon a meaningful appeal process for a transfer order. *Id.* (noting “*Kent*’s insistence upon the primacy of appellate review,” and requiring the juvenile court to provide “a sure-footed and definite basis from which an appellate court can determine that its decision was in fact appropriately guided by the statutory criteria, principled, and reasonable”).

To be meaningful, an appellate review process must include the possibility of a meaningful remedy. Absent the theoretical possibility of a change in outcome, an appeal becomes a “meaningless ritual.” *See Douglas v. California*, 372 U.S. 353, 358 (1963) (describing how lack of counsel for indigent defendants on appeal can make the appeal process a “meaningless ritual,” in violation of the equal protection clause of the Fourteenth Amendment); *see also Morgan v. State*, 688 S.W.2d 504, 507 (Tex. Crim. App. 1985) (en banc) (concluding that, where the Legislature grants the right to an appeal, it “surely contemplated a meaningful appeal—one that addresses and decides each issue

on its merits”). Here, although J.G. won his appeal of his original transfer order, that review has been utterly meaningless. J.G.’s basis for appeal was that he had been denied the individualized determination required by Texas law and due process. Now that the court of appeals has agreed with him, however, he is no longer entitled under Texas law to that individualized determination, simply due to the passage of time during the course of his appeal. *See* Tex. Fam. Code § 54.02(j). The appeal process was therefore a “meaningless ritual,” as the state was all but assured a victory; regardless of the outcome of the appeal, J.G. would be transferred to adult court without an individualized assessment of his particular characteristics and background.

II. Texas’s Waiver of Jurisdiction Statute Violates Due Process by Denying Certain Juvenile Offenders the Right to an Individualized Determination of Amenability to Treatment in the Juvenile Court.

As discussed above, a decision to transfer a juvenile offender to adult criminal court must comply with “the essentials of due process and fair treatment.” *See Moon*, 451 S.W.3d at 36 (quoting *Kent*, 383 U.S. at 560-62) (internal quotation marks omitted). These “essentials” include an individualized determination of a juvenile offender’s amenability to treatment in the juvenile court. As the United States Supreme Court has repeatedly recognized, children and adolescents differ from adult offenders in ways that must be reflected in our laws of criminal procedure. *See, e.g., Graham v. Florida*, 560 U.S. 48, 76 (2010) (“[C]riminal procedure laws that fail to take defendants’ youthfulness into account at all would be flawed.”). The Court has focused in particular on several categorical differences between children and adults—namely, the lower level of

maturity, decision-making capacity, and culpability of minors as compared to adults, as well as their greater capacity for change. *See Miller v. Alabama*, 132 S. Ct. 2455, 2464-65 (2012). Transfer determinations must take account of these characteristics, which vary significantly among individual youth, in order to accurately determine which youth are amenable to treatment in the juvenile court. *See Moon*, 451 S.W.3d at 50 n.87 & 51 (describing the need for an individualized assessment and “case-specific findings”). J.G. never received that type of individualized determination, in violation of basic due process principles.

A. Youth Are Fundamentally Different from Adults in Constitutionally Relevant Ways.

That children are “different” is a principle that permeates our law. Time and again, the Supreme Court has reminded us of what every parent knows: that “youth is more than a chronological fact”—it is a “time and condition of life” marked by particular behaviors, perceptions, and vulnerabilities. *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982). Indeed, as developmental research and neuroscience have deepened our understanding of the defining characteristics of youth, the Supreme Court has repeatedly emphasized that children differ from adults in their maturity, susceptibility to outside influences, and capacity for change. *See Montgomery v. Louisiana*, 136 S. Ct. 718, 733 (2016). These traits make children “constitutionally different from adults,” and they necessitate an individualized assessment of “an offender’s age and the wealth of

characteristics and circumstances attendant to it” before exposing youth to the harsh consequences of the adult criminal justice system. *See Miller*, 132 S. Ct. at 2464, 2467.

Over the last decade, the Supreme Court has focused on several constitutionally relevant distinctions between children and adults that are grounded in developmental psychology and neuroscience research. “First, children have a ‘lack of maturity and an underdeveloped sense of responsibility,’ leading to recklessness, impulsivity, and heedless risk-taking.” *Montgomery*, 136 S. Ct. at 733 (quoting *Miller*, 132 S. Ct. at 2464). Youth are also highly susceptible to external pressures. As the Supreme Court has explained, “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.” *Miller*, 132 S. Ct. at 2464 (quoting *Roper v. Simmons*, 543 U.S. 551, 569). Finally, youthful offenders have a greater capacity for change than adults because adolescence is a transitional phase. “[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*, 132 S. Ct. at 2464 (quoting *Roper*, 545 U.S. at 570). As a result, “a greater possibility exists that a minor’s character deficiencies will be reformed.” *Graham*, 560 U.S. at 68.

In addition to identifying these categorical differences between children and adults, the Supreme Court’s sentencing decisions also recognize that children differ

from one another. The mental traits and developmental characteristics of adolescents are not just “distinctive”—they are also transient. *Miller*, 132 S. Ct. at 2464-65; *see also id.* at 2467 (noting that youth’s “signature qualities’ are all ‘transient’”) (quoting *Johnson v. Texas*, 509 U.S. 350, 368 (1993)). As “the years go by and neurological development occurs,” a youth’s rashness, proclivity for risk, and ability to assess consequences are highly likely to improve. *Id.* at 2465. Thus, “[j]ust as the chronological age of a minor is itself a relevant mitigating factor of great weight, so must the background and mental and emotional development of a youthful defendant be duly considered’ in assessing his culpability.” *Id.* at 2467 (quoting *Eddings*, 455 U.S. at 116).

These individualized considerations were integral to the Supreme Court’s rejection of mandatory life without parole for juveniles in *Miller*. As the *Miller* Court explained, “mandatory penalties, by their nature, preclude a sentencer from taking account of an offender’s age and the wealth of characteristics and circumstances attendant to it.” *Id.* In particular, the Court objected to sentencing schemes that treat juvenile offenders uniformly, giving the same sentence to “the 17-year-old and the 14-year-old, the shooter and the accomplice, the child from a stable household and the child from a chaotic and abusive one.” *Id.* at 2467-68. Indeed, the Court explained that the mandatory sentencing scheme at issue violated the Constitution because it “preclude[d] consideration” of the “hallmark features” of a youthful offender, including “immaturity, impetuosity, and failure to appreciate risks and consequences”; “the family

and home environment that surrounds” the youth; the extent of the youth’s participation in the offense “and the way familial and peer pressures may have affected him”; and “the possibility of rehabilitation.” *Id.* at 2468.

In short, the Supreme Court has repeatedly emphasized the importance of the hallmark features of youth to our laws of criminal procedure, and it has demanded individualized consideration of those features before children can be exposed to the harshest consequences of the adult criminal justice system.

B. Transfer Determinations that Prevent Consideration of a Juvenile Offender’s Individual Characteristics Violate Due Process.

The unique characteristics of youth identified by the Supreme Court are highly relevant to transfer determinations. As the *Moon* Court explained, the core inquiry in a transfer decision is whether a particular youth can be “protected and rehabilitated” in the juvenile system “rather than subjected to the harshness of the criminal system.” *Moon*, 451 S.W.3d at 36 (quoting *Hidalgo*, 983 S.W.2d at 754). This determination cannot be made without individualized consideration of the “background and mental and emotional development of a youthful defendant.” *Miller*, 132 S. Ct. at 2467. The transfer standard applicable to J.G. precludes consideration of these material facts, and thus violates basic due process protections.

Consideration of the “distinctive attributes of youth” recognized by the Supreme Court is part-and-parcel to a transfer determination. *See Miller*, 132 S. Ct. at 2465. A decision to transfer a juvenile offender is effectively a determination that the youth is

either more culpable or less amenable to treatment than her peers—that, despite the transient immaturity that characterizes most juvenile crime, this particular youth requires “the retributive punishment of the criminal justice system instead of the rehabilitative goal of the juvenile justice system.” *See Hidalgo*, 983 S.W.2d at 755. As the court explained in *Moon*, in a transfer proceeding the juvenile court must balance “‘the potential danger to the public’ posed by the particular juvenile offender ‘with the juvenile offender’s amenability to treatment.’” 451 S.W.3d at 38 (quoting *Hidalgo*, 983 S.W.2d at 754). This inquiry necessitates individualized consideration of the same factors found to be essential in *Miller*, including the youth’s “mental traits and environmental vulnerabilities,” the extent of the youth’s participation in the offense, and “the possibility of rehabilitation.” *Miller*, 132 S. Ct. at 2465, 2468.

Because these age- and maturity-related characteristics are intimately related to the appropriateness of a transfer decision, a transfer process that excludes them from consideration runs afoul of basic due process protections. As the *Moon* court reaffirmed, waiver of juvenile court jurisdiction is a “critically important” action that necessitates, among other things, a hearing and a statement of reasons prior to exposing a juvenile offender to the harsh consequences of adult criminal court. *See Moon*, 451 S.W.3d at 36-37 (citing *Kent*, 383 U.S. at 560-62). Due process requires that such a hearing be “‘meaningful’ and ‘appropriate to the nature of the case,’” and “‘a hearing which excludes consideration of an element essential to the decision . . . does not meet this standard.’” *Bell v. Burson*, 402 U.S. 535, 541-42 (1971). A transfer standard that fails to

consider the youth’s individual characteristics does exactly that: it excludes any assessment of the youth’s level of maturity, decision-making capacity, culpability, and capacity for change—the very factors most relevant to whether a juvenile offender should be tried in adult criminal court. *See Miller*, 132 S. Ct. at 2468.

Indeed, transfer statutes that bar consideration of the key attributes of youth can in some circumstances amount to an unconstitutional irrebuttable presumption regarding a material fact. When statutory transfer schemes categorically determine that certain classes of youth must be tried in adult criminal court, they effectively create a “non-rebuttable presumption that the juvenile who committed the crime is equally morally culpable as an adult who committed the same act.” Martin Guggenheim, *Graham v. Florida and a Juvenile’s Right to Age-Appropriate Sentencing*, 47 HARV. C.R.-C.L.L. REV. 457, 490-91 (2012). This presumption conflicts with recent Supreme Court cases emphasizing the diminished culpability of juveniles, *see, e.g., Graham*, 560 U.S. at 68, as well as long-standing due process jurisprudence striking down statutes that create irrebuttable presumptions regarding material facts, *see, e.g., Vlandis v. Kline*, 412 U.S. 441, 446, 454 (1973). As the Court has explained in several different contexts, laws that conclusively presume certain critical facts, even when the evidence regarding a certain individual “might be wholly to the contrary,” have long been disfavored under the Due Process Clause. *See Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632, 644 (1974) (holding that school board maternity leave policies that require pregnant teachers to terminate employment at a particular point in pregnancy violate due process); *see also Vlandis*, 412

U.S. at 452 (concluding that due process forbids a state to deny an individual the resident tuition rate at a state university “on the basis of a permanent and irrebuttable presumption of nonresidence, when that presumption is not necessarily or universally true”); *Stanley v. Illinois*, 405 U.S. 645, 649 (1972) (ruling unconstitutional an Illinois law that authorized removal of children from the custody of their unwed fathers without requiring any showing of the father’s unfitness). Likewise, when a statute presumes a certain category of juvenile offenders to be identical to their adult counterparts by transferring their cases to adult court without permitting an individualized inquiry into culpability and capacity for change, that presumption violates due process.

In general, Texas law recognizes the importance of providing an individualized assessment of a youth’s characteristics and background prior to a transfer decision. Subsections 54.02(a) and (f) of the Texas Family Code require consideration by a court of a child’s age, developmental level, degree of culpability, and capacity for change prior to a youth’s prosecution in adult court, and the *Moon* decision described in detail “the kind of individualized assessment of the propriety of waiver of juvenile jurisdiction that both *Kent* and our statutory scheme expect of the juvenile court in the exercise of its transfer discretion,” 451 S.W.3d at 50 n.87. But J.G., and others like him who turn 18 during the course of their appeals, never receive the benefit of that protection. As was already established during J.G.’s first appeal, the original transfer order failed to make findings as to any facts beyond probable cause that J.G. committed the alleged aggravated assault. *See Guerrero v. State*, 471 S.W.3d at 4. Although J.G. won that appeal

and his case was returned to juvenile court, the court again ordered transfer to criminal court, this time under a transfer standard that does not include any individualized consideration of J.G.'s amenability to treatment in juvenile court. Therefore, despite being only 16 years old when he committed his offense, J.G. has never received a meaningful, individualized assessment of his amenability to treatment in juvenile court, in violation of due process.

III. Texas's Waiver of Jurisdiction Statute Violates Equal Protection by Arbitrarily Depriving Certain Juvenile Offenders of the Benefits and Protections of Juvenile Court.

Application of the waiver of jurisdiction standard in Subsection 54.02(j) also violates J.G.'s right to equal protection under the law. The Equal Protection Clause of the Fourteenth Amendment mandates that "all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 439 (1985). Thus, the threshold question of any equal protection challenge is whether the persons allegedly subjected to disparate treatment are in fact similarly situated. *Sullivan v. Univ. Interscholastic League*, 616 S.W.2d 170, 173 (Tex. 1981). Where no suspect class or fundamental right is at issue, a governmental classification must pass rational basis review to satisfy equal protection. *Whitworth v. Bynum*, 699 S.W.2d 194, 196-97 (Tex. 1985). That is, any differential treatment must be "rationally related to the statute's purpose" and cannot be arbitrary or discriminatory. *Id.*

Here, the Texas Family Code treated J.G. dramatically differently than his similarly situated peers. By including two different transfer standards, the Texas Family

Code exposes some youth to a protective standard that looks at the individual's particular circumstances and amenability to treatment, whereas other youth are transferred to criminal court without any assessment of those factors. *See* Tex. Fam. Code § 54.02(a), (f), and (j). Under that statutory scheme, two youth who engage in the same conduct and have identical backgrounds might experience entirely different outcomes; the one who receives the benefit of the individualized standard in Subsection 54.02(a) might be “protected and rehabilitated” through the juvenile system, while the youth who fell within Subsection 54.02(j) would be transferred and “subjected to the harshness of the criminal system.” *See Moon*, 451 S.W.3d at 36.

There is no rational basis for this differential treatment. The determination of which transfer standard applies is based entirely upon the offender's age at the time of the transfer hearing. The court may waive jurisdiction and transfer a “child” using the more individualized and protective standard in Subsection 54.02(a), but a juvenile offender who turns 18 before adjudication is subject to the transfer standard in Subsection 54.02(j). As is apparent from the facts of this case, the difference between these two individuals might just be the relative length of their court proceedings, which is an arbitrary distinction that has nothing to do with a youth's amenability to treatment or level of culpability. Accordingly, as the application of a different transfer standard to individuals like J.G. is not “rationally related to the statute's purpose,” the statute does not provide the equal protection under the law required by the Fourteenth Amendment. *See Whitworth*, 699 S.W.2d at 196-97.

PRAYER

For these reasons, J.G. respectfully requests that this Court reverse the juvenile court's order to waive jurisdiction and remand this case back to the juvenile court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of this brief was served on all parties by first class U.S. mail and/or electronic service on October 21, 2016.

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with Rules 9.2 and 11, TEX. R. APP. PROC. It was prepared on a computer using 14-point Garamond type. It contains 4,494 words.

/s/ Marsha L. Levick

Marsha L. Levick