

Case No. 10-3426

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

CHAZ BUNCH,	:	
	:	
Petitioner-Appellant,	:	
	:	
v.	:	§ 2254 HABEAS CASE
	:	
KEITH SMITH, Warden;	:	
	:	
Respondent-Appellee.	:	

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**ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO, EASTERN DIVISION**

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**BRIEF IN SUPPORT OF APPELLANT’S MERIT BRIEF OF *AMICUS  
CURIAE* JUVENILE LAW CENTER**

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## **CORPORATE DISCLOSURE STATEMENT**

No counsel for a party authored this brief in whole or in part. No person or entity, other than *Amicus*, their members, or their counsel made a monetary contribution for the preparation or submission of this brief. *Amicus*, Juvenile Law Center, is not a subsidiary or affiliate of a publicly-owned corporation, nor does any publicly-owned corporation have an interest in the appeal of this case.

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## I. INTRODUCTION

The Petitioner in the instant case received a sentence of eighty-nine years upon his conviction for a non-homicide offense. He will not be eligible for release until the age of approximately 106. This sentence<sup>1</sup> is the functional equivalent of life without parole.<sup>2</sup> The United States Supreme Court's decision in *Graham v. Florida*, 130 S. Ct. 2011 (2010) requires that this sentence be vacated.

The Supreme Court ruled in *Graham* that juvenile offenders cannot be sentenced to life without a meaningful and realistic opportunity for re-entry into society *prior to the expiration of their sentence* for non-homicide offenses. *Id.* at 2010. The Court explained:

The juvenile should not be deprived of the opportunity to achieve maturity of judgment and self-recognition of human worth and potential. . . . Life in

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<sup>1</sup>Under the Supreme Court's Eighth Amendment jurisprudence, courts must consider the actual impact of the sentence upon the individual regardless of how that sentence is characterized. For example, in *Rummel v. Estelle*, 445 U.S. 263 (1980), the Court examined a challenge to a "mandatory life sentence." The Court upheld the sentence, based upon its view that "a proper assessment of Texas' treatment of Rummel could hardly ignore the possibility that *he will not actually be imprisoned for the rest of his life*. If nothing else, the possibility of parole, however slim, serves to distinguish Rummel from a person sentenced under a recidivist statute...which provides for a sentence of life without parole ..."*Id.* at 280-81 (emphasis added). Unlike Rummel, Bunch *will actually be imprisoned for the rest of his life*, a fact this court cannot ignore.

<sup>2</sup> Ohio law does not permit parole for anyone sentenced after 1996. *See Woods v. Telb*, 733 N.E. 2d 1103, 1106 (Ohio 2000); Ohio Rev. Code Ann. § 2967.13 (West 2011) ("parole eligibility").

prison without the possibility of parole gives no chance for fulfillment outside prison walls, no chance for reconciliation with society, no hope.

*Id.* at 2032. *Graham* therefore held that a sentence that provides no “meaningful opportunity to obtain release” before the end of the term is unconstitutional. *Id.* at 2033. Here, the Petitioner was sentenced to remain in prison until he is approximately 106 years old for nonhomicide offenses for which he was charged when he was a juvenile. Because this sentence means that Petitioner will unquestionably die in prison before any possibility of release, it is unconstitutional under *Graham*.

## **II. INTEREST OF *AMICUS CURIAE***

Founded in 1975, Juvenile Law Center is the oldest public interest law firm for children in the United States.<sup>3</sup> 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. Recognizing the critical developmental differences between youth and adults, Juvenile Law Center works to align justice policy and practice, including state criminal laws on sentencing, with modern understandings of adolescent development and time-honored constitutional principles of fundamental fairness. Juvenile Law Center participates as *amicus curiae* in state and federal courts throughout the country,

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<sup>3</sup>All parties have consented to Juvenile Law Center filing this brief as *Amicus Curiae*. See Fed. R. App. P. 29(a).

including the United States Supreme Court, in cases addressing the rights and interests of children. *Amicus* submits that the sentence imposed in this case violates the Eighth Amendment of the United States Constitution, and must be overturned. Furthermore, the legal issues presented to this Court are directly related to important and pressing judicial concerns regarding appropriate sentencing policies for youth in the justice system.

### **III. PROCEDURAL HISTORY**

*Amicus* adopts the procedural history presented by Petitioner in his brief.

### **IV. STANDARD OF REVIEW**

*Amicus* adopts the standard of review articulated by Petitioner in his brief.



## V. ARGUMENT

### A. A Sentence That Is The Functional Equivalent Of Life Without Parole For A Juvenile Who Was Convicted of Non-Homicide Offenses Is Unconstitutional

#### 1. Social Science Research Confirms the Transitory Nature of Adolescence and the Capacity of Youth for Rehabilitation

In *Graham v. Florida*, the Court emphasized that the unique developmental characteristics of juveniles who do not kill or intend to kill require a distinctive treatment under the Constitution. The Court therefore categorically barred life sentences without parole for juvenile offenders convicted of non-homicide offenses, rather than adopt a rule requiring the consideration of the individual culpability of each juvenile offender. *Graham*, 130 S. Ct. at 2032. Youth's generally reduced culpability is at the center of the Court's reasoning. The Court emphasized that this categorical approach was necessary to ensure that a juvenile would not receive a sentence that classified him or her as "irredeemably depraved." *Id.* at 2031.

The *Graham* opinion built upon the Supreme Court's earlier analysis in *Roper v. Simmons*, 543 U.S. 551 (2005) which held the death penalty unconstitutional as applied to juveniles. The *Graham* Court echoed the reasoning in *Roper* that three essential characteristics distinguish youth from adults for

culpability purposes: they lack maturity and responsibility, they are vulnerable and susceptible to peer pressure, and their characters are unformed. *Id.* at 2026 (quoting *Roper*, 543 U.S. at 569-70). Accordingly, the *Graham* Court concluded that “[a] juvenile is not absolved of responsibility for his actions, but his transgression ‘is not as morally reprehensible as that of an adult.’” *Id.* (quoting *Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988)). As both *Roper* and *Graham* recognized, even for brutal and cold-blooded crimes – in fact *especially* for such crimes – a categorical rule *must* recognize juveniles’ reduced culpability. This is because “[a]n unacceptable likelihood exists that the brutality or cold-blooded nature of any particular crime would overpower mitigating arguments based on youth as a matter of course, even where the juvenile offender’s objective immaturity, vulnerability, and lack of true depravity” should require a less severe sentence. *Id.* at 2032 (*citing Roper*, 543 U.S. at 573).

Central to the *Graham* Court’s determination about juvenile culpability was its understanding that the personalities of adolescents are still developing and capable of change; an irrevocable penalty, with no opportunity for review, was developmentally inappropriate. The Court explained:

Juveniles are more capable of change than are adults, and their actions are less likely to be evidence of “irretrievably depraved character” than are the actions of adults. *Roper*, 543 U. S., at 570. It remains true that “[f]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor’s character deficiencies will be reformed.” *Ibid.*

*Id.* at 2026-27. The Court’s holding rested largely on the incongruity of imposing a final and irrevocable penalty on an adolescent, who had capacity to change and grow. The Court explained that “[t]hose who commit truly horrifying crimes as juveniles may turn out to be irredeemable, and thus deserving of incarceration for the duration of their lives.” *Id.* at 2030. However, the Eighth Amendment forbids States from “making the judgment at the outset that those offenders never will be fit to reenter society.” *Id.* Thus, “[w]hat the State must do . . . is give defendants like Graham some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.” *Id.* The 89 year sentence at issue here is wholly at odds with *Graham*’s rationale. Indeed, the sentencing court was express in its judgment that Petitioner Bunch would die in prison – at the outset:

I just have to make sure that you don’t get out of the penitentiary. I’ve got to do everything I can to keep you there, because it would be a mistake to have you back in society. It would be—then I’d be the one committing the crime.

(Resentencing Tr. Vol. V, 35, July 13, 2006.)

The *Graham* Court relied upon an emerging body of research confirming the distinct emotional, psychological and neurological status of youth. The Court clarified that, since *Roper*, “developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through

late adolescence.” *Id.* at 2026. Thus, the Court underscored that because juveniles are more likely to be reformed than adults, the “status of the offender” is central to the question of whether a punishment is constitutional. *Id.* at 2027.

Graham explicitly recognized that imposing a life without parole sentence on an adolescent who is still in the process of maturing is contrary to this growing body of developmental and scientific research. *Id.* In particular, research demonstrates that because adolescence is a transitory stage, an irrevocable sentence is inherently disproportionate. “Contemporary psychologists universally view adolescence as a period of development distinct from either childhood or adulthood with unique and characteristic features.” Elizabeth S. Scott & Laurence Steinberg, *Rethinking Juvenile Justice* 31 (2008). A central feature of adolescence is its transitory nature. *Id.*

Studies show that youthful criminal behavior can be distinguished from permanent personality traits. Rates of impulsivity are high during adolescence and early adulthood and decline thereafter. *See* Steinberg, Cauffman, Banich & Graham, *Age Differences in Sensation Seeking and Impulsivity as Indexed by Behavior and Self-Report: Evidence for a Dual Systems Model*, 44 *Dev. Psych.* 1764 (2008). As youth mature, so do their self-management skills, long-term planning, judgment and decision-making, regulation of emotion, and evaluation of risk and reward. *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 (2003). As a result, “[t]he typical delinquent youth does not grow up to be an adult criminal. . . .”

Elizabeth S. Scott & Laurence Steinberg, *Rethinking Juvenile Justice* at 54. Thus, not only are youth developmentally capable of change, research also demonstrates that when given a chance, youth with histories of violent crime can and do become productive and law abiding citizens, even without any interventions. These findings are consistent with neuroscientific research, showing that areas of the brain associated with impulse control, judgment, and the rational integration of cognitive, social, and emotional information do not fully mature until early adulthood. *Id.* at 46-68.

## 2. Bunch’s 89 year Sentence for a Nonhomicide Offense Is Unconstitutional Because It Serves No Legitimate Penological Purpose

According to *Graham*, a sentence “lacking any legitimate penological justification is by its nature disproportionate to the offense” and therefore unconstitutional. The Court concluded that no penological justification warrants a sentence of life without parole as applied to juveniles convicted of nonhomicide offenses. *Id.* As in *Graham*, the 89 year sentence meted out to Bunch, which ensures he will die in prison, does not serve any of the traditional penological goals – deterrence, retribution, incapacitation, or rehabilitation.

Relying on the analysis set forth in *Roper*, the *Graham* Court concluded that the goal of deterrence did not justify the imposition of life without parole sentences on juveniles:

*Roper* noted that “the same characteristics that render juveniles less culpable than adults suggest ... that juveniles will be less susceptible to deterrence.” *Ibid.* ..... they are less likely to take a possible punishment into consideration when making decisions.

*Graham*, 130 S. Ct. at 2028-2029. Because youth would not likely be deterred by the fear of a life without parole sentence, this penological goal did not justify the sentence.

The *Graham* Court also concluded that retribution does not justify the imposition of life without parole sentences for juveniles. The Court echoed *Roper*'s assessment that “the case for retribution is not as strong with a minor as with an adult.” *Id.* at 2028 (citing *Roper*, 543 U.S. at 571). As the *Roper* Court had explained, such a severe retributive punishment was inappropriate in light of juvenile immaturity and capacity to change. The *Graham* Court recognized that these same considerations applied to “imposing the second most severe penalty on the less culpable juvenile.” *Id.*

The *Graham* Court also held that incapacitation could not justify the sentence of juvenile life without parole. To justify incapacitation for life “requires the sentencer to make a judgment that the juvenile is incorrigible. The characteristics of juveniles make that judgment questionable.” *Id.* at 2029. Indeed,

at core, the developmental research proves the opposite – adolescents’ natures are transient and adolescents must be given “a chance to demonstrate growth and maturity.” *Id.* As a result, a child sent to prison should have the opportunity to rehabilitate and qualify for release after some term of years. Mechanisms such as parole boards can provide a crucial check to ensure that the purposes of punishment are satisfied without unnecessarily incapacitating fully rehabilitated individuals and keeping youth “in prison until they die.” *Naovarath v. State*, 779 P.2d 944, 948 (Nev. 1989).

Finally, *Graham* concluded that a life without parole sentence cannot be justified by the goal of rehabilitation. The penalty forswears altogether the rehabilitative ideal. By denying the defendant the right to reenter the community, the State makes an irrevocable judgment about that person’s value and place in society.

*Graham*, 130 S Ct. at 2030. The Court also underscored that the denial of rehabilitation was not just theoretical: the reality of prison conditions prevented juveniles from growth and development they could otherwise achieve, making the “disproportionality of the sentence all the more evident...” *Id.* at 2030. During a lengthy adult sentence, youth lack an incentive to try to improve their character or skills. Indeed, many juveniles sentenced to spend the rest of their lives in prison commit suicide, or attempt to commit suicide. *See* Wayne A. Logan, *Proportionality and Punishment: Imposing Life Without Parole on Juveniles*, 33 Wake Forest L. Rev. 681, 712, nn.141-47 (1998).

Because this 89 year sentence, which is equivalent to life without parole, serves no legitimate penological purpose, it is unconstitutional.

**B. A Sentence Which Forecloses, At the Outset, Any Opportunity For The Juvenile To Re-Enter Society Is Unconstitutional**

According to *Graham*, the sentence of life without parole does “share some characteristics with death sentences that are shared by no other sentences” because it is “irrevocable” and “deprives the convict of the most basic liberties without giving hope of restoration...” *Graham*, 130 S. Ct. at 2027. The *Graham* majority was unequivocal that irrevocable judgments about the character of juvenile offenders are impermissible under the Constitution – at least where they deny juveniles any opportunity to prove their rehabilitation and their eligibility to re-enter society. *Id.* at 2030. As described above, both *Graham* and *Roper* are explicit in their belief that juvenile offenders’ capacity to change and grow, combined with their reduced blameworthiness and inherent immaturity of judgment, set them apart from adult offenders in fundamental – and Constitutionally relevant – ways. *Graham* prohibits a judgment of irredeemability to be made “at the outset,” *id.* at 2029, yet Bunch’s 89 year sentence for a nonhomicide offense makes precisely this prohibited judgment. The sentence allows for no determination of his fitness to re-enter society prior to the expiration of the sentence.



As the record of the sentencing court makes clear, *see e.g.*, Resentencing Tr. Vol. V, p. 35, July 13, 2006, the sentencing court condemned Bunch to die in prison, with no “meaningful opportunity to obtain release based on demonstrated maturity or rehabilitation.” *Graham*, 130 S. Ct. at 2030. Whether or not Bunch technically received a life without parole sentence is hardly relevant to the Court’s analysis. The court’s declaration of his irredeemability at sentencing by precluding any meaningful opportunity for review before the expiration of his sentence renders the sentence functionally identical to one that specifically prohibited the opportunity for parole.<sup>4</sup> Any contrary analysis ignores the central holding of *Graham*.<sup>5</sup>

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<sup>4</sup>See e.g., *People v. Mendez*, 114 Cal. Rptr. 3d 870, 883 (Cal. Ct. App. 2011). In striking juvenile’s 84 year sentence with no opportunity for parole for nonhomicide offenses, the court, quoting *Graham*, concluded that “common sense dictates that a juvenile who is sentenced at the age of 18 and who is not eligible for parole until after he is expected to die does not have a meaningful, or as the Court also put it, ‘realistic,’ opportunity of release. Mendez’s sentence essentially ‘guarantees he will die in prison without any meaningful opportunity to obtain release, no matter what he might do to demonstrate that the bad acts he committed as a teenager are not representative of his true character, even if he spends the next half century attempting to atone for his crimes and learn from his mistakes.’”(internal citations omitted)

<sup>5</sup> In *Angel v. Commonwealth of Virginia*, 704 S.E.2d 386, 401 (Va. 2011), the court found that three life sentences plus thirteen years for nonhomicide offenses complied with *Graham* because Virginia provides for “conditional release of prisoners who have reached a certain age and served a certain length of imprisonment.” Without this, the court noted that “the effect of these sentences is that Angel will spend the rest of his life confined in the penitentiary.” *Id.* Ohio has no comparable provision. *See* Ohio Rev. Code Ann. § 2967.13 (West 2011)(“parole eligibility”)

Chaz Bunch was 16 years old at the time of the offenses for which he has been convicted. While the offenses are quite serious, they are non-homicide crimes. According to actuarial data, a 16 year old African American boy can expect to only live an additional 54 years, to age 71. Elizabeth Arias, “United States Life Tables, 2003,” National Vital Statistics Reports, Vol. 54, No. 14, April 19, 2006, Centers for Disease Control and Prevention, [http://www.cdc.gov/nchs/data/nvsr/nvsr54/nvsr54\\_14.pdf](http://www.cdc.gov/nchs/data/nvsr/nvsr54/nvsr54_14.pdf) (last visited May 4, 2011). Because Ohio law bars parole for anyone sentenced after 1996, Bunch must live to 106 to qualify for release. *See e.g., Telb*, 733 N.E. 2d at 1106 (stating that the 1996 state legislation ensures that “the sentence imposed by the judge is the sentence that is served...[by] eliminating indefinite sentences and eliminating parole.”); Ohio Rev. Code Ann. § 2967.13 (outlining the limitations on parole). Bunch’s 89-year sentence is no less unconstitutional than Graham’s; with no meaningful opportunity for release during his natural life, the sentence “alters [Bunch’s] life by a forfeiture that is irrevocable.” *Graham*, 130 S. Ct. at 2027.

To comply with the Constitution, the *Graham* Court warned that a “juvenile should not be deprived of the opportunity to achieve maturity of judgment and self-recognition of human worth and potential[,]” as will surely happen if Bunch’s sentence stands *Id.* at 2032. Unless *Graham* is applied to the facts of this case, the court will reinforce the “perverse consequence” the *Graham* Court sought to avoid

through the establishment of a categorical rule—a circumstance in which “the lack of maturity that led to an offender’s crime is reinforced by the prison term.” *Id.* at 2033. Of course, as *Graham* recognizes, striking life without parole sentences does not guarantee that Graham *or* Bunch will ever actually be released. It simply means that these sentences violate the law because “that judgment [of irredeemability] was made at the outset.” *Id.* at 2029. Like Graham’s sentence, Bunch’s current sentence

guarantees he will die in prison. . . no matter what he might do to demonstrate that the bad acts he committed as a teenager are not representative of his true character, even if he spends the next half century attempting to atone for his crimes and learn from his mistakes.

*Id.* at 2033. Bunch must be given a meaningful opportunity for review before the expiration of his sentence.

## **VI. CONCLUSION**

For the foregoing reasons, *Amicus Curiae* Juvenile Law Center respectfully requests that this Court vacate Petitioner Bunch’s sentence and remand the case for sentencing in accordance with *Graham*.

Respectfully Submitted,

/s/ Marsha L. Levick

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State of Ohio, :  
 :  
 Appellee, : Case No. 06-MA-106  
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 v. : On Appeal from the Mahoning County  
 : Court of Appeals  
 Chaz Bunch, :  
 : Case No. 2001-CR-1024  
 Appellant. :

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**MEMORANDUM OF AMICUS CURIAE JUVENILE LAW CENTER  
IN SUPPORT OF APPELLANT CHAZ BUNCH**

**CERTIFICATE OF COMPLIANCE**

I certify that the foregoing brief conforms to Fed. R. App. P. 32(a)(7)(C), as it contains 3,226 words in 14-point Times New Roman font, as calculated by Microsoft Word 2010.

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## **CERTIFICATE OF SERVICE**

I certify a copy of the foregoing has been uploaded to the CM/ECF system for the US Court of Appeals for the 6<sup>th</sup> Circuit and that an electronic copy has been served on all counsel of record on this 10th day of May, 2011.

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