No. 07-8436

In the
Supreme Court of the United States

CHRISTOPHER PITTMAN, *Petitioner*,

v.

STATE OF SOUTH CAROLINA, *Respondent*.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

BRIEF OF JUVENILE LAW CENTER IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

MISCELLANEOUS

INTEREST OF THE *AMICI*

Amici Juvenile Law Center, *et al.*[1] represent fifteen organizations throughout the country who work with and on behalf of children on issues of child welfare, juvenile justice, mental health, and children's rights generally. *Amici* are advocates and researchers who bring a unique perspective and a wealth of experience in providing for the care, treatment, and rehabilitation of youth in the child welfare and juvenile justice systems. *Amici* know from experience that the immaturity of children often manifests itself in numerous ways that implicate culpability, including diminished ability to assess risks, make good decisions, and control impulses. Furthermore, *Amici* know from experience that youth who enter these systems need extra protection and special care, clearly necessitated by their status as youth, if they are to return as productive members of society. It is precisely for these reasons that *Amici* believe that imposing adult mandatory minimum sentences on children without considering whether their age justifies less severe forms or terms of punishment violates the Eighth Amendment's ban against cruel and unusual punishment. *Amici* therefore respectfully ask this Court to accept this

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[1] *Amici* file this brief with the consent of the parties. Counsel of record for the parties received notice at least 10 days prior to the due date of the *amicus curiae*'s intention to file this brief. No counsel for a party authored this brief in whole or in part. No person or entity, other than *Amici*, their members, or their counsel made a monetary contribution for the preparation or submission of this brief. A list and brief description of all *Amici* appears at Appendix A.

case to clarify that age is constitutionally relevant to trying and sentencing children as adults.

SUMMARY OF ARGUMENT

This case involves a question of exceptional importance regarding whether the age of the offender is relevant to assessing the constitutionality of a lengthy mandatory sentence without the possibility of parole under the cruel and unusual punishment clause of the Eighth Amendment to the United States Constitution. In *Roper v. Simmons*, 543 U.S. 551 (2005), this Court established that the Eighth Amendment requires that punishment be proportionate to an offender's culpability, and that age is a determinant factor in assessing the culpability of juvenile offenders in capital cases. This case provides a vehicle for this Court to clarify that the same analysis is required in non-capital cases. It is widely understood that children, especially children as young as the 12-year-old petitioner in this case, are categorically different from adults in ways that bear on their blameworthiness. Both this Court's jurisprudence and state statutes reflect this understanding. Moreover, this law is complemented by an emerging body of developmental and neurobiological research attesting to the developmental differences between youth and adults. This recent research demonstrates that children are less capable of evaluating consequences and controlling their impulses than adults, and that children are thus less culpable than adults. Given juveniles' diminished culpability, this Court should grant *certiorari* to clarify that imposing lengthy mandatory minimum adult sentences on children without regard for their age constitutes

disproportionate sentencing in violation of the Eighth Amendment.

The petition for writ of *certiorari* argues that the imposition of a 30-year sentence without the possibility of parole on a 12-year-old child violates the Eighth Amendment to the United States Constitution because such a sentence is grossly disproportionate to the offender given the offender's youth. *Amici* support Petitioner's argument that the imposition of such a lengthy mandatory sentence on a 12-year-old child is inconsistent with evolving standards of decency based upon indicia of a national consensus. *Amici* also support and further build upon Petitioner's argument that imposing a lengthy mandatory adult sentence on a 12-year-old child serves no valid penological purpose. In this brief, *Amici* argue that this Court should grant *certiorari* to establish that imposing such a lengthy, mandatory sentence with no possibility of parole on a 12-year-old violates the Eighth Amendment because the punishment serves no retributive purpose, serves no deterrent purpose, and runs the risk of incapacitating the child longer than necessary to promote public safety.

ARGUMENT

Amici respectfully request this Court's clarification that age is constitutionally relevant to whether the imposition of a lengthy mandatory minimum sentence without the possibility of parole constitutes cruel and unusual punishment. The Supreme Court of South Carolina's decision upholding a 30-year mandatory minimum sentence with no possibility of parole for a 12-year-old child, imposed *with no opportunity to consider the child's*

age, contradicts this Court's precedents acknowledging that the special characteristics of youth are constitutionally relevant in sentencing young offenders. The South Carolina Supreme Court's decision also runs counter to recent developmental and neurobiological research showing that reasoning and impulse control are not fully developed in children, and that children are therefore less culpable than adults. For the same reasons that children are less culpable than adults, the penological purposes of deterrence, retribution, and incapacitation are not served by imposing lengthy adult mandatory sentences with no possibility of parole on children. This Court should grant *certiorari* to establish that mandatory sentencing schemes that *require* judges to sentence children to lengthy terms of incarceration without considering their age violate the Eighth Amendment.

I. THIS COURT'S PRECEDENT, STATE LAWS, AND DEVELOPMENTAL AND NEUROBIOLOGICAL RESEARCH CONFIRM THAT 12-YEAR-OLD CHILDREN ARE CATEGORICALLY DIFFERENT FROM ADULTS.

That minors are different is a principle that permeates our law. As Justice Frankfurter so aptly articulated, "[C]hildren have a very special place in life which law should reflect. Legal theories and their phrasing in other cases readily lead to fallacious reasoning if uncritically transferred to determination of a State's duty towards children." *May v. Anderson*, 345 U.S. 528, 536 (1953) (Frankfurter, J., concurring).

Accordingly, for the last sixty years, this Court has consistently considered the developmental and social differences of youth in measuring the scope and breadth of minors' constitutional rights. For example, this Court has repeatedly noted that minors and adults are different for the purpose of determining the voluntariness of juvenile confessions during custodial interrogation.[2] This Court's protective stance toward youth in confession cases parallels its stance in other areas of criminal procedure. For instance, this Court has repeatedly held that Fourth Amendment strictures may be relaxed when dealing with youth in public schools because youth as a class are in need of adult guidance and control.[3] Although

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[2] *See, e.g., Kaupp v. Texas*, 538 U.S. 626 (2003) (per curiam) (holding that under the Fourth and Fourteenth Amendments, a 17-year-old's confession must be suppressed following an illegal arrest absent a showing that the confession was an act of free will); *In re Gault,* 387 U.S. 1, 55 (1967) (extending many key constitutional rights to minors subject to delinquency proceedings in juvenile court and reiterating earlier concerns about youths' special vulnerability regarding confessions); *Gallegos v. Colorado*, 370 U.S. 49, 54 (1962) (finding a statement taken from a 14- year-old boy outside the presence of his parents or any other adult representative to be involuntary because as a minor, the boy was not "knowledgeable of the consequences of his admissions," and had a diminished capacity to understand and exercise his rights); *Haley v. Ohio*, 332 U.S. 596, 599-600 (1948) (holding that the confession given by a 15-year-old boy after he was interrogated outside the presence of an attorney was involuntary because minors are generally less mature than adults, and are thus more vulnerable to coercive interrogation tactics).

[3] *See, e.g., Bd. of Educ. of Indep. Sch. Dist. No. 92 of Pottawatomie County v. Earls*, 536 U.S. 822, 838 (2002) (upholding random, suspicionless drug testing of high school students engaged in extracurricular activities); *Vernonia Sch.*

the constitutional analyses differ, this Court has also endorsed constitutional distinctions between minors and adults by curtailing the liberty interests of minors in various other contexts.[4]

Dist. 47J v. Acton, 515 U.S. 646, 654, 664-65 (1995) (upholding random, suspicionless drug testing of student athletes); *New Jersey v. T.L.O.,* 469 U.S. 325, 341-42 (1985) (sustaining the constitutionality of warrantless searches by school officials of students' belongings upon reasonable suspicion that a student has violated school rules or the law).

[4] *See., e.g., Ashcroft v. ACLU*, 542 U.S. 656, 666-67 (2004), 675 (Stevens, J., concurring), 676 (Scalia, J., dissenting), 683 (Breyer, J., dissenting) (unanimously agreeing that protecting minors from harmful images on the Internet, due to their immaturity, is a compelling government interest and splitting only on whether the statute used the least restrictive means, consistent with adults' First Amendment freedoms, for achieving that interest); *Hodgson v. Minnesota*, 497 U.S. 417, 444 (1990) (holding that a state may choose to require women under 18 to consult with one of their parents before obtaining an abortion provided that a judicial bypass procedure is available because "[t]he state has a strong and legitimate interest in the welfare of its young citizens, whose immaturity, inexperience, and lack of judgment may sometimes impair their ability to exercise their rights wisely."); *Parham v. J.R.*, 442 U.S. 584, 603 (1979) (rejecting a constitutional challenge to Georgia's civil commitment scheme that authorized parents and other third parties to involuntarily commit minors under the age of 18 given that "[m]ost children, even in adolescence, simply are not able to make sound judgments concerning many decisions"); *Bellotti v. Baird*, 443 U.S. 622, 635, 639 (1979) (holding that a state may require minors to obtain parental consent or an alternative form of authorization before undergoing an abortion because "minors often lack the experience, perspective, and judgment to avoid choices that could be detrimental to them" as well as "the ability to make fully informed choices that take account of both immediate and long-range consequences"); *Ginsburg v. New York*, 390 U.S. 629, 637, 649-50 (1968) (Stewart, J., concurring) (footnotes omitted) (upholding a state statute restricting the sale

Most recently, in *Roper v. Simmons*, this Court recognized that 16-and 17-year-old juvenile offenders are generally less culpable than adults who commit similar crimes. *See Simmons*, 543 U.S. at 569-576. Relying on developmental research and state laws that distinguish between 16-and 17-year-old teenagers and adults, the *Simmons* Court concluded that there are at least three differences between 16- and 17-year-old teenagers and adults that render 16- and 17-year-old offenders less culpable than adults who commit similar crimes. First, 16- and 17-year-old offenders are relatively less blameworthy because they exhibit "a lack of maturity and an underdeveloped sense of responsibility," which "often result in impetuous and ill-considered actions and decisions." *Id.* at 569 (internal quotations omitted) (quoting *Johnson v. Texas,* 509 U.S. 350, 367 (1993)). Second, even a serious crime committed by a 16-or 17-year-old offender is not evidence that the child will continue to maintain a depraved character as an adult because "the character of a juvenile is not as well formed as that of an adult." *Id.* at 570. Third, 16-and 17-year-old offenders "have a greater claim than adults to be forgiven for failing to escape the negative influence in their whole environment" because "juveniles are more vulnerable or susceptible to negative influences and outside pressures." *Id.* at 569-570.

Although the *Simmons* Court focused on the immaturity and vulnerability of 16-and 17-year-old

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of obscene material to minors because "a child—like someone in a captive audience—is not possessed of that full capacity for individual choice which is the presupposition of First Amendment guarantees").

teenagers, experience as well as research confirms that 12-year-old children are obviously less mature and much more likely to be impetuous and fail to appreciate the consequences of their conduct. The culpability of 12-year-old offenders is therefore markedly less than their adult counterparts.

Because 12-year-olds are relatively less mature than older adolescents, the law grants even fewer privileges and responsibilities to 12-year-olds than to older adolescents. In *Simmons*, the Court recognized that almost every state prohibits youth under 18 from engaging in certain adult activities—including, voting, serving on juries, or marrying without parental consent—"[i]n recognition of the comparative immaturity and irresponsibility of juveniles." *Id.* at 569. These legislative judgments about the immaturity of youth under 18 reflect a view of adolescents' limited decision-making capacity. State statutes impose even greater restrictions on 12-year-olds, reflecting legislative judgments that 12-year-olds are less capable of sound decision-making than teenagers, let alone adults.

No state legislature permits children as young as 12 to drive an automobile with a provisional driver's license or permit.[5] Similarly, virtually no

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[5] *See* Ala. Code § 32-6-8(b) (2007) (must be at least 15); Alaska Stat. § 28.15.051(a) (2007) (must be at least 14); Ariz. Rev. Stat. Ann. § 28-3153.A.1(b) (2007) (must be at least 15); Ark. Code Ann. § 27-16-604(a)(1) (West 2007) (must be at least 14); Cal. Vehicle Code § 12513(a) (West 2007) (must be at least 14); Colo. Rev. Stat. Ann. § 42-2-106(1)(a)(I) (West 2007) (must be at least 16); Conn. Gen. Stat. Ann. § 14-36(c)(1) (West 2007) (must be at least 16); Del. Code Ann. tit. 21, § 2710(a) (2007) (must be at least 16); D.C. Code § 50-1401.01(a)(2) (2007) (must be at least 16); Fla. Stat. Ann. § 322.05(1) (West 2007) (must be at least 15); Ga. Code Ann. § 40-5-24(a)(1) (West 2007) (must be at least 15);

Haw. Rev. Stat. Ann. § 286-104(5)(A) (2007) (must be at least 15½); Idaho Code Ann. § 49-110(6)(b) (2007) (must be at least 14½); 625 Ill. Comp. Stat. Ann. 5/6-103 (West 2007) (must be at least 15); Ind. Code Ann. § 9-24-7-1 (West 2008) (must be at least 15); Iowa Code Ann. § 321.180B (West 2007) (must be at least 14); Kan. Stat. Ann. § 8-239(a) (2006) (must be at least 14); Ky. Rev. Stat. Ann. § 186.450(1) (West 2007) (must be at least 16); La. Rev. Stat. Ann. § 32:422 (2007) (must be at least 15); Mass. Gen. Laws Ann. Ch. 90, § 8B (West 2008) (must be at least 16); Me. Rev. Stat. Ann. tit. 29-A, § 1304 (2007) (must be at least 15); Md. Code Ann., Transp. § 16-103(c)(1) (West 2007) (must be at least 15¾); Mich. Comp. Laws Ann. § 257.310e(3)(West 2007) (must be at least 14¾); Minn. Stat. Ann. § 171.05 (West 2007) (must be at least 15); Miss. Code Ann. § 63-1-9(2)(a) (West 2007) (must be at least 15); Mo. Ann. Stat. § 302.130 (West 2007) (must be at least 15); Mont. Code Ann. § 61-5-106(2) (2007) (must be at least 14½); Neb. Rev. Stat. § 60-480(10) (2007) (must be at least 14); Nev. Rev. Stat. Ann. § 483.250 (West 2005) (must be at least 14); N.H. Rev. Stat. Ann. § 263:25 (2008) (must be at least 15½); N.J. Stat. Ann. § 39:3-13.1 (West 2007) (must be at least 16); N.M. Stat. Ann. § 66-5-5 (West 2007) (must be at least 15); N.Y. Vehicle and Traffic Law § 502 (McKinney 2007) (must be at least 16); N.C. Gen. Stat. Ann. § 20-11(b) (West 2007) (must be at least 15); N.D. Cent. Code § 39-06-04 (2007) (must be at least 14); Ohio Rev. Code Ann. § 4507.05(A)(1) (West 2007) (must be at least 15½); Okla. Stat. Ann. tit. 47, § 6-105 (West 2007) (must be at least 16); Or. Rev. Stat. Ann. § 807.280(2)(a) (West 2007) (must be at least 15); 75 Pa. Cons. Stat. Ann. § 1503(c) (West 2007) (must be at least 16); R.I. Gen. Laws § 31-10-6(b)(1) (2007) (must be at least 16); S.C. Code Ann. § 56-1-50(A) (2007) (must be at least 15); S.D. Codified Laws § 32-12-11 (2007) (must be at least 14); Tenn. Code Ann. § 55-50-311(a)(1) (West 2007) (must be at least 15); Tex. Transp. Code Ann. § 521.222(a)(1) (Vernon 2007) (must be at least 15); Utah Code Ann. § 53-3-210.5(1) (West 2007) (must be at least 15); Vt. Stat. Ann. tit. 23, § 617(a) (2007-2008) (must be at least 15) Va. Code Ann. § 46.2-335 (West 2007) (must be 15½); Wash. Rev. Code Ann. § 46.20.055(1)(b) (West 2007) (must be at least 15); W. Va. Code Ann. § 17B-2-3a(c) (West 2007) (must be at least 15); Wis. Stat. Ann. § 343.07(1g) (West 2007) (must be at least 15½); Wyo. Stat. Ann. § 31-7-110(a) (2007) (must be at least 15).

state legislature exempts children as young as 12 from enrolling in school or some form of home-schooling.[6] Twelve-year-old children also face

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[6] *See* Ala. Code § 16-28-3 (2007) (must attend through 16); Alaska Stat. § 14.30.010 (2007) (must attend through 16); Ariz. Rev. Stat. Ann. § 15-803 (2007) (must attend through 16); Ark. Code Ann. § 6-18-201 (West 2007) (must attend through 17); Cal. Educ. Code § 48200 (West 2007) (must attend through 18); Colo. Rev. Stat. Ann. § 22-33-104 (West 2007) (must attend through 16); Conn. Gen. Stat. Ann. § 10-184 (West 2007) (must attend through 17); Del. Code Ann. tit. 14, § 2702 (2007) (must attend through 16); D.C. Code § 38-202 (2007) (must attend through 17) Fla. Stat. Ann. § 1003.21 (West 2007) (must attend through 16) Ga. Code Ann. § 20-2-690.1 (West 2007) (must attend through 15); Haw. Rev. Stat. Ann. § 302A-1132 (LexisNexis 2007) (must attend through 17); Idaho Code Ann. § 33-202 (2007) (must attend through 16); 105 Ill. Comp. Stat. Ann. 5/26-1 (West 2007) (must attend through 17); Ind. Code Ann. § 20-33-2-6 (West 2008) (must attend through 17); Iowa Code Ann. § 299.1A (West 2007) (must attend through 15); Kan. Stat. Ann. § 72-1111 (2006) (must attend through 17); Ky. Rev. Stat. Ann. § 159.010 (West 2007) (must attend through 15); La. Rev. Stat. Ann. § 17:221 (2007) (must attend through 18); Me. Rev. Stat. Ann. tit. 20-A, § 3271 (2007) (must attend through 16); Md. Code Ann., Educ. § 7-301 (West 2007) (must attend through 15); Mich. Comp. Laws Ann. § 380.1561(West 2007) (must attend through 16); Minn. Stat. Ann. § 120A.22 (West 2007) (must attend through 16); Miss. Code Ann. § 37-13-91 (West 2007) (must attend through 16); Mo. Ann. Stat. § 167.031 (West 2007) (must attend through 15); Mont. Code Ann. § 20-5-102 (2007) (must attend through 15); Neb. Rev. Stat. § 79-201 (2007) (must attend through 17); Nev. Rev. Stat. Ann. § 392.040 (West 2005) (must attend through 18); N.H. Rev. Stat. Ann. § 193:1 (2008) (must attend through 15); N.J. Stat. Ann. § 18A:38-25 (West 2007) (must attend through 16); N.M. Stat. Ann. § 22-12-2 (West 2007) (must attend through 18); N.Y. Educ. Law § 3205 (McKinney 2007) (must attend through 16); N.C. Gen. Stat. Ann. § 115C-378 (West 2007) (same); N.D. Cent. Code § 15.1-20-01 (2007) (must attend through 15); Ohio Rev. Code Ann. § 3321.01 (West 2007)

extensive restrictions on their ability to work. For example, most state legislatures allow children as young as 12 to work in only a very limited number of occupations.[7] Moreover, this Court acknowledged the

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(must attend through 17); Okla. Stat. Ann. tit. 56, § 230.66 (West 2007) (must attend through 17); Or. Rev. Stat. Ann. § 339.010 (West 2007) (must attend through 17); 24 Pa. Cons. Stat. Ann. § 13-1327 (West 2007) (must attend through 16); R.I. Gen. Laws § 16-19-1 (2007) (must attend through 15); S.C. Code Ann. § 59-65-10 (2007) (must attend through 16); S.D. Codified Laws § 13-27-1 (2007) (must attend through 15); Tenn. Code Ann. § 49-6-3001 (West 2007) (must attend through 17); Tex. Educ. Code Ann. § 25.085 (Vernon 2007) (must attend through 17); Utah Code Ann. § 53A-11-101 (West 2007) (must attend through 17); Vt. Stat. Ann. tit. 16, § 1121 (2007-2008) (must attend through 16); Va. Code Ann. § 22.1-254 (West 2007) (must attend through 17); Wash. Rev. Code Ann. § 28A.225.010 (West 2007) (must attend through 17); W. Va. Code Ann. § 18-8-1 (West 2007) (must attend through 15); Wis. Stat. Ann. § 118.15 (West 2007) (must attend through 18); Wyo. Stat. Ann. § 21-4-102 (2007) (must attend through 15). *But see* Mass. Gen. Laws Ann. Ch. 76, § 1 (West 2008) (authorizing education boards to set the age).

[7] *See, e.g.* Alaska Stat. § 23.10.335 (2007) (prohibiting children under 14 from working except in domestic employment, baby-sitting, handiwork in private homes, newspaper delivery or sales, or canneries in warehouse work casing cans); Ind. Code Ann. § 20-33-3-31(a) (West 2008) (prohibiting children under 14 from working except as farm laborers, domestic service workers, caddies, or newspaper carriers); Minn. Stat. Ann. §§ 181A.04 & 181A.07 (West 2007) (prohibiting children under 14 from working except in agricultural operations, acting, modeling, performing, newspaper carrying, babysitting and refereeing); Mont. Code Ann. §§ 41-2-104 & 41-2-105 (2007) (prohibiting children under 14 from working except in agriculture, acting, modeling, performing, serving as a legislative aide, newspaper carrying, and refereeing).

distinction between children and adults in this area in *Prince v. Massachusetts,* 321 U.S. 158, 168 (1944), in which the Court upheld a state's right to restrict when a minor can work on the premise that "[t]he state's authority over children's activities is broader than over like actions of adults."

Furthermore, in recent years, advances in the field of neurobiology, including improvements in the safety of Magnetic Resonance Imaging (MRI) brain scans, have enabled scientists to demonstrate that the frontal lobe—the area of the brain associated with reasoning, planning, judgment, and impulse control—begins to develop rapidly during the teen years and continues to develop into the early 20s. Jeffrey Fagan, *Adolescents, Maturity, and the Law: Why Science and Development Matter in Juvenile Justice*, *The American Prospect, Aug. 14, 2005,* at A5, A6-A7; Arthur Toga, Paul Thompson & Elizabeth Sowell, *Mapping Brain Maturation*, 29 *Trends in Neuroscience* 148-59 (2006). Neurobiological research shows that during this period, the gray matter in the frontal lobe thins in a process known as "pruning" that allows for tighter connections between the remaining neurons, "in effect completing the circuitry that ties together impulsivity, control, and judgment." Fagan, *supra*, at A6-A7; *see* Toga, Thompson & Sowell, *supra*. The pruning process generally begins in females at age 11 and in boys at age 12, and continues into the early to mid-20s. Fagan, *supra*, at A6-A7. Thus, the area of the brain associated with reasoning and impulse control is just beginning its path toward maturation in a 12-year-old. Neurobiological research therefore further supports the view that 12-year-old offenders are significantly

less capable of mature decision making than adults who commit similar crimes.

II. THIS COURT SHOULD GRANT *CERTIORARI* TO ESTABLISH THAT IMPOSING A 30-YEAR MANDATORY MINIMUM SENTENCE WITHOUT THE POSSIBILITY OF PAROLE ON A 12-YEAR-OLD CHILD CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT.

Amici support Petitioner's argument that the imposition of a 30-year sentence without the possibility of parole on a 12-year-old child is inconsistent with evolving standards of decency based upon indicia of a national consensus. *Amici* also support and build upon Petitioner's argument that the imposition of such a lengthy mandatory adult sentence on a 12-year-old child does not serve any valid penological purpose. Specifically, *Amici* argue that sentencing a 12-year-old to a mandatory 30-year term of incarceration without the possibility of parole serves no retributive purpose, serves no deterrent purpose, and runs the risk of runs incapacitating the child longer than necessary to promote public safety. *Amici* therefore request that the Court grant *certiorari* in this case to clarify that imposing unduly harsh mandatory sentencing schemes on children constitutes cruel and unusual punishment.

A. The Imposition of a 30-Year Mandatory Sentence Without the Possibility of Parole Exacts Disproportionate Retribution from a 12-Year Old Child.

Imposing a 30-year mandatory sentence without the possibility of parole on a 12-year-old child does not serve the retributive purpose of punishment. As this Court explained in *Simmons*, retribution may be "viewed as an attempt to express the community's moral outrage or as an attempt to right the balance for the wrong to the victim." *Simmons*, 543 U.S. at 571. Retribution is premised on the principal of proportionate punishment. *See id*. The punishment of a particular offender cannot express the level of the community's outrage toward the offender, or right the balance for the offender's wrong unless the punishment is proportionate to the *culpability of the offender*.

Simmons made clear that the Eighth Amendment requires that capital sentences be proportionate for "a particular class ... of offenders." *Id*. at 575. *See also Thompson v. Oklahoma*, 487 U.S. 815, 834 (1988) (punishment must be "directly related to the personal culpability of the criminal defendant") (citation and internal quotation marks omitted). In *Simmons*, this Court held that age was a fundamental determinant of culpability of an offender. *Simmons*, 543 U.S. at 569-572. However, as Petitioner details in Section I.A.1 of his petition, this Court has not yet provided any guidance on the issue of whether the age of the offender is relevant to the Eighth Amendment proportionality analysis *in non-capital cases*. For this reason, *Amici* also request that this Court grant *certiorari* to clarify whether the

culpability of the offender, which is influenced by the offender's age, should be considered in the proportionality analysis in non-capital cases. Given that this issue is likely to arise in numerous juvenile cases each year, by clarifying this issue, the Court would provide guidance to lower courts in a broad range of juvenile justice cases.

As discussed more fully in section I above, 12-year-old children are significantly less mature, and thus less culpable than adults committing similar crimes. Given the reduced culpability of children, imposing a 30-year sentence with no possibility of parole on a child without considering the child's age runs the risk of imposing a punishment that is disproportionate to the culpability of the offender. All mandatory sentencing schemes create a risk of disproportionate punishment by prohibiting judges from modifying sentences based on the extenuating circumstances or characteristics of particular offenders. However, as applied to 12-year-old children, the risk of disproportionate punishment posed by mandatory sentencing schemes is especially pernicious.

As this Court recognized in *Simmons*, juveniles as a class are less capable than adults of resisting or escaping negative pressures in their environment. *See Simmons*, 543 U.S. at 569-570. Similarly, they are less capable of coping with internal pressures, such as emotional trauma and mental illness. Thus, almost any pressure that mitigates the culpability of an adult offender—whether it arises from the offender's environment or originates in his psyche—further mitigates the culpability of a child offender. As Petitioner's case illustrates, children as young as 12 are particularly vulnerable to external and

internal pressures. For example, Petitioner suffered from depression. As a 12-year-old child, his ability to cope with his illness was compromised. Moreover, as a 12-year-old in South Carolina, he did not even have a legal right to refuse the antidepressant prescribed for his depression, which appeared to cause severe negative side effects that may have contributed to his criminal behavior. Furthermore, Petitioner's mother, who had abandoned Petitioner as an infant, suddenly reappeared in his life only to disappear again a few months before Petitioner's crime. As a 12-year-old child, Petitioner was particularly ill-equipped to cope with his traumatic relationship with his mother. While neither Petitioner's depression nor his mother's abandonment justify his crime, both are factors that likely contributed to his criminal behavior. As a result of his young age, Petitioner's capacity to cope with and control these circumstances was greatly impaired. The judge should have therefore had the opportunity to consider the essential role of age in evaluating his culpability and sentencing him.

Because 12-year-old children are significantly less mature and less capable of coping with internal and external pressures than adults, imposing harsh sentences on 12-year-old children without considering age creates a grave risk of disproportionate punishment. The retributive goal of punishment, which is premised on the principle of proportionate punishment, therefore cannot justify the imposition of a mandatory 30-year sentence without the possibility of parole on a 12-year-old child.

B. Subjecting a 12-Year-Old Child to a Mandatory 30-Year Sentence Without the Possibility of Parole Cannot Be Justified by the Deterrent Purpose of Punishment.

In *Simmons*, this Court concluded that the deterrent goal of punishment is an insufficient justification for the juvenile death penalty.[8] This Court explained, "[I]t is unclear whether the death penalty has a significant or even measurable deterrent effect on juveniles." *Simmons, 543 U.S.* at 571. "The likelihood that the teenage offender has made the kind of cost-benefit analysis that attaches any weight to the possibility of execution is so remote as to be virtually nonexistent." *Id.* at 572 (internal quotations omitted) (quoting *Thompson*, 487 U.S. at 837).

Logic dictates that if the harshest penalty, death, is not an effective deterrent for teenagers who fail to accurately weigh consequences, a 30-year prison term without the possibility of parole is not apt to have any more deterrent value for 12-year-old children who are even less adept at evaluating consequences.[9] *See* Abigail Baird & Jonathan

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[8] *Amici* refer herein to the concept of 'general deterrence' – that is, inhibition from committing crime in advance by threat or example of consequence. *See* Herbert Packer, *Limits of the Criminal Sanction* 39-40 (1968).

[9] While *Amici* focus on general deterrence in this brief, there is some evidence that specific deterrence—the goal of deterring offenders from committing further crimes—is also ill-served by imposing lengthy adult sentences on children. Several studies show that transferring children to adult court so that they may receive harsher sentences, including longer prison terms,

Fugelsang, *The Emergence of Consequential Thought: Evidence from Neuroscience*, 359 Proceedings of the Royal Society B, Biological Sciences 1797-1804 (2004) (discussing neurobiological and developmental research suggesting that the capacity to evaluate consequences develops over the course of adolescence). The mandatory nature of Petitioner's sentence is also unlikely to serve as a deterrent for 12-year-old children. Mandatory minimum schemes may increase deterrence for adults. Adults may think twice before committing a crime that they know would result in a lengthy guaranteed minimum sentence if they are convicted of the crime. Adults are arguably capable of appreciating this increased consequence. Children, however, are unlikely to know about, let alone appreciate, both the severity of a lengthy sentence specified in a mandatory sentencing scheme and the mandatory nature of the sentence. This is particularly true for children as

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undermines the specific deterrent purpose of punishment by increasing recidivism. *See* Center for Disease Control, *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System* (Nov. 30, 2007), http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5609a1.htm (concluding that "the transfer of youth to the adult criminal justice system typically results in greater subsequent crime, including violent crime, among transferred youth" on the basis of a systematic review of research on the effectiveness of transfer policies). This is one of the primary reasons *Amici* are troubled by the increasing number of juvenile cases that have been transferred to adult court in recent years. Research on the recidivism rates of transferred youth further underscores *Amici's* view that the juvenile justice system is better equipped than the criminal justice system to respond to even the serious crimes of young offenders.

young as the Petitioner. Thus, subjecting a 12-year-old child to a mandatory sentence of 30 years without the possibility of parole is not justified by the deterrent purpose of punishment.

C. There is a Substantial Risk That a Mandatory 30-Year Prison Term without the Possibility of Parole Will Incapacitate a 12-Year-Old Child Far Longer Than Is Necessary for Purposes of Public Safety.

A mandatory sentencing scheme that requires a judge to impose a minimum 30-year sentence with no possibility of parole on a 12-year-old is likely to result in the imposition of a punishment that incapacitates the child far longer than is necessary for public safety purposes. In addition to deterrence and retribution, incapacitation often serves as a justification for severe forms of punishment. A particular punishment satisfies the goal of incapacitation if the punishment incapacitates an offender while he or she remains dangerous.

Child offenders, and particularly children as young as 12, are more amenable to reform than adults. This Court has long recognized that because youth are still developing, they are more amenable than adults to the individualized rehabilitative interventions and treatment provided by a juvenile court system. *See McKeiver v. Pennsylvania,* 403 U.S. 528, 547 (1971); *Gault*, 387 U.S. at 15-16 (1967). In *Simmons*, this Court noted that 16-and 17-year-old teenagers are still developing, and thus demonstrate a greater potential for rehabilitation than adults. *See Simmons*, 543 U.S. at 570. In particular, this Court

relied on developmental research indicating that only a "small proportion of adolescents who experiment in risky or illegal activities develop entrenched patterns of problem behavior that persist into adulthood." Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am. Psychologist 1009, 1014 (2003) (quoted in *Simmons*). This research finding is not surprising given that the area of the brain associated with reasoning, judgment, impulse control, and planning continues to develop in children during the teen years and into the early 20s. Fagan, *supra*, at A6-A7; Toga, Thompson & Sowell, *supra*. Even a heinous crime committed by a child is not evidence that the child will continue to maintain a cruel personality or a propensity to commit additional crimes as an adult. *See Simmons*, 543 U.S. at 570. This is why it is difficult for expert psychologists to distinguish between the small minority of juvenile offenders who are sociopaths, and the majority of juvenile offenders who exhibit sociopathic tendencies, but who are in fact passing through a stage of "unfortunate yet transient immaturity." *Simmons*, 543 U.S. at 573.

Twelve-year-old children, who are significantly less developmentally mature than adult offenders, obviously have a particularly strong potential for reform and rehabilitation. Thus, a 12-year-old child who is sentenced to a 30-year term of incarceration after committing a serious crime is substantially more likely than an adult who committed a similar crime to reform and cease to pose a danger to society before completing the 30-year sentence. Imposing a mandatory 30-year sentence on a 12-year-old child

without considering whether the child's age justifies a lesser sentence therefore creates a substantial risk that the punishment will incapacitate the child longer than necessary to promote public safety. This risk is even greater when, as in Petitioner's case, there is no possibility of parole. Foreclosing the possibility of parole ensures that a juvenile offender's term of incarceration will not be shortened even in the face of clear evidence years after the child has been sentenced that the child has matured, and no longer poses a public safety threat.

In sum, 12-year-old offenders are significantly less mature—and thus less culpable—than adults who commit similar crimes. Sentencing a 12-year-old child to a mandatory 30-year term of incarceration without the possibility of parole therefore runs the risk of disproportionate punishment. Moreover, for the same reason that 12-year-old offenders are less culpable than adult offenders, they are also less deterrable and more amenable to rehabilitation. Thus, imposing a mandatory 30-year-term without the possibility of parole on a 12-year-old child cannot be justified by retribution, deterrence, or incapacitation.

CONCLUSION

For the foregoing reasons, *Amici Curiae* Juvenile Law Center, *et al.*, respectfully request that this Court grant Christopher Pittman's petition for a *writ of certiorari*.

Respectfully Submitted,

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APPENDIX A

IDENTITY OF *AMICI CURIAE*

Juvenile Law Center (JLC) is the oldest multi-issue public interest law firm for children in the United States, founded in 1975 to advance the rights and well being of children in jeopardy. JLC pays particular attention to the needs of children who come within the purview of public agencies – for example, abused or neglected children placed in foster homes, delinquent youth sent to residential treatment facilities or adult prisons, or children in placement with specialized services needs. JLC works to ensure children are treated fairly by systems that are supposed to help them, and that children receive the treatment and services that these systems are supposed to provide. JLC also works to ensure that children's rights to due process are protected at all stages of juvenile court proceedings, from arrest through disposition, from post-disposition through appeal, and that the juvenile and adult criminal justice systems consider the unique developmental differences between youth and adults in enforcing these rights.

The **Center for Children's Law and Policy** (CCLP) is a public interest law and policy organization focused on reform of juvenile justice and other systems that affect troubled and at-risk children, and protection of the rights of children in such systems. The Center's work covers a range of activities including research, writing, public education, media advocacy, training, technical assistance, administrative and legislative advocacy,

and litigation. CCLP capitalizes on its Washington, DC location by working on juvenile justice and education reform efforts in DC, Maryland, and Virginia; partnering with other Washington-based system reform and advocacy organizations such as the Justice Policy Institute, National Juvenile Defender Center, and Campaign 4 Youth Justice; engaging in legislative advocacy with Congress; and associating with major Washington law firms which provide assistance on a pro bono basis. CCLP also works in other states and on national initiatives such as the John D. and Catherine T. MacArthur Foundation's Models for Change initiative, which promotes juvenile justice reforms, and the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative, which aims to reduce the use of locked detention and ensure safe and humane conditions of confinement for children.

The **Center on Children and Families** (CCF) at Fredric G. Levin College of Law is based at University of Florida, the state's flagship university. CCF's mission is to promote the highest quality teaching, research and advocacy for children and their families. CCF's directors and associate directors are experts in children's law, constitutional law, criminal law, family law, and juvenile justice, as well as related areas such as psychology and psychiatry. CCF supports interdisciplinary research in areas of importance to children, youth and families, and promotes child-centered, evidence-based policies and practices in dependency and juvenile justice systems. Its faculty has many decades of experience in advocacy for children and youth in a variety of

settings, including the Child Welfare Clinic and Gator TeamChild juvenile law clinic.

The Northwestern University School of Law's Bluhm Legal Clinic has represented poor children in juvenile and criminal proceedings since the Clinic's founding in 1969. The **Children and Family Justice Center** (CFJC) was established in 1992 at the Clinic as a legal service provider for children, youth and families and a research and policy center. Six clinical staff attorneys currently work at the CFJC, providing legal representation and advocacy for children in a wide variety of matters, including in the areas of juvenile delinquency, criminal justice, special education, school suspension and expulsion, immigration and political asylum, and appeals. CFJC staff attorneys are also law school faculty members who supervise second- and third-year law students in the legal and advocacy work; they are assisted in this work by the CFJC's social worker and social work students.

The **Child Welfare League of America** (CWLA) is the nation's oldest and largest membership-based child welfare organization. We are committed to engaging people everywhere in promoting the well-being of children, youth, and their families, and protecting every child from harm. CWLA is an association of more than 850 public and not-for-profit agencies devoted to improving life for more than 3.5 million at-risk children and youths and their families. Member agencies are involved with prevention and treatment of child abuse and neglect, and provide various services in addition to child protection -- juvenile justice, family foster care,

adoption, positive youth development programs, and residential group care. Over the past 7 years, CWLA has developed the Child Welfare and Juvenile Justice Systems Integration Initiative to focus more attention in state and local jurisdictions on the connection between maltreatment and delinquency and later involvement in violent and adult criminal conduct. CWLA's Juvenile Justice Division contributes to the work to reduce the reliance on incarceration for accused or adjudicated delinquent youth by developing community-based alternatives that promote positive youth development while ensuring public safety; and by developing and disseminating standards of practice as benchmarks for high-quality services that enhance positive youth development, strengthen families, neighborhoods, and communities and improve integration and coordination of the juvenile justice and child welfare systems. CWLA supports and advocates for a fair and effective juvenile justice system that treats children as children and focuses on prevention, treatment and rehabilitation.

The **National Association of Counsel for Children** (NACC) is a non-profit child advocacy and professional membership association dedicated to enhancing the well-being of America's children. Founded in 1977, the NACC is a multidisciplinary organization with approximately 2200 members representing all 50 states, DC, and several foreign countries. The NACC works to improve the delivery of legal services to children, families, and agencies; advance the rights and interests of children; and develop the practice of law for children and families as a sophisticated legal specialty. NACC programs

include training and technical assistance, the national children's law resource center, the attorney specialty certification program, the model children's law office project, policy advocacy, and the amicus curiae program. Through the amicus curiae program, the NACC has filed numerous briefs involving the legal interests of children in state and federal appellate courts and the Supreme Court of the United States.

The **National Center for Youth Law** (NCYL) is a private, non-profit organization devoted to using the law to improve the lives of poor children nation-wide. For more than 30 years, NCYL has worked to protect the rights of low-income children and to ensure that they have the resources, support and opportunities they need to become self-sufficient adults. NCYL provides representation to children and youth in cases that have a broad impact. NCYL also engages in legislative and administrative advocacy to provide children a voice in policy decisions that affect their lives. NCYL supports the advocacy of others around the country through its legal journal, *Youth Law News*, and by providing trainings and technical assistance. NCYL has participated in litigation that has improved the quality of foster care in numerous states, expanded access to children's health and mental health care, and reduced reliance on the juvenile justice system to address the needs of youth in trouble with the law. One of the primary goals of NCYL's juvenile justice advocacy is to ensure that youth in trouble with the law are treated as adolescents and not adults and in a manner that is consistent with their developmental stage and capacity to change.

National Council on Crime and Delinquency is the nation's oldest and most respected justice research and policy organizations. Founded in 1907, the NCCD has always advocated for the importance of a separate justice system for young people. As our former board chair and noted Harvard Law School dean, Roscoe Pound observed, the American Juvenile Court was the greatest step forward in Anglo- American jurisprudence since the Magna Carta.

Today the NCCD conducts research, training and provides assistance to dozens of states. We believe that a strong and effective juvenile justice system is far superior to handling young people in the criminal justice system. Our research has consistly shown that youth placed in adult facilities are at greater risk of victimization and suicide, and have higher rates of recidivism. We have recently conducted national public opinion polls that show that the citizenry overwhemingly rejects the routine transfer of youth to the criminal court system. The NCCD is happy to join in this amicus brief and will support this effort in whatever ways that are useful.

The **National Juvenile Defender Center** was created to ensure excellence in juvenile defense and promote justice for all children. The National Juvenile Defender Center responds to the critical need to build the capacity of the juvenile defense bar in order to improve access to counsel and quality of representation for children in the justice system. The National Juvenile Defender Center gives juvenile defense attorneys a more permanent capacity to address important practice and policy issues, improve

advocacy skills, build partnerships, exchange information, and participate in the national debate over juvenile justice.

The National Center provides support to public defenders, appointed counsel, child advocates, law school clinical programs and non-profit law centers to ensure quality representation and justice for youth in urban, suburban, rural and tribal areas. It also offers a wide range of integrated services to juvenile defenders and advocates, including training, technical assistance, advocacy, networking, collaboration, capacity building and coordination.

The **National Juvenile Justice Network** (NJJN) is a membership organization for state-based juvenile justice advocacy organizations. NJJN supports its members in their efforts to create more a just, human and equitable juvenile justice system. NJJN and its members believe that youth who come into conflict with the law should be treated in a developmentally appropriate manner, and should therefore be kept within the juvenile justice system, rather than being transferred into the adult system. NJJN believes that long mandatory sentences are unconstitutional when applied to youth, are inhumane and are adverse to public safety.

The Sentencing Project is a national non-profit organization engaged in research and education regarding criminal justice policy. The organization has produced a series of books, policy reports, and journal articles assessing the effects of sentencing policies and practices on public safety and individual defendants. Staff of The Sentencing Project are frequently called upon to testify before Congress and

other legislative bodies regarding the effects of mandatory sentencing and related policies, and to recommend alternative policy options. The organization has also been engaged in analyzing the effects of trying juveniles in the adult court system, and the impact of adult sentences on deterrence and recidivism.

The **Southern Juvenile Defender Center** (SJDC) works to ensure excellence in juvenile defense and secure justice for children in delinquency and criminal proceedings in the southeastern United States. SJDC provides training and resources to juvenile defenders, and advocates for systemic reforms designed to give children the greatest opportunities to grow and thrive. Through public education and advocacy, SJDC encourages attorneys and judges to rely upon scientific research concerning adolescent brain development in cases involving youthful defendants. SJDC is based at the **Southern Poverty Law Center** (SPLC) in Montgomery, Alabama. Founded in 1971, SPLC has litigated numerous civil rights cases on behalf of incarcerated children and other vulnerable populations.

The **W. Haywood Burns Institute for Juvenile Justice Fairness and Equity** works to protect and improve the lives of youth of color, poor children and their communities by ensuring fairness and equity throughout all public and private youth serving systems. A disproportionately high percentage of youth waived to adult court and sentenced to prison are youth of color. We join in calling for review in this case to address the fundamental unfairness visited upon the defendant.

The **Youth Law Center** is a San Francisco-based national public interest law firm working to protect the rights of at-risk children, especially those at risk of or involved in the juvenile justice or child welfare systems. Since 1978, Youth Law Center attorneys have represented children in civil rights and juvenile court cases in California and two dozen other states. The Center's attorneys are often consulted on juvenile policy matters, and have participated as amicus curiae in cases around the country involving important juvenile system issues. Youth Law Center attorneys have written widely on a range of juvenile justice, child welfare, health and education issues, and have provided research, training, and technical assistance on legal standards and juvenile policy issues to public officials in almost every State. The Center has long been involved in public policy discussions and litigation involving the criminal responsibility of juveniles, particularly, those who are very young. Center attorneys were involved in the MacArthur Foundation's national initiative on adolescent development, and have authored a forthcoming law review article on juvenile incompetence to stand trial that discusses juvenile capacity with respect to developmental issues as well as mental disabilities. This case, challenging the justice system's treatment of a twelve year-old as an adult, presents issues that fit squarely with in the Center's long-term interest and expertise.