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In the  
**Michigan Supreme Court**

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PEOPLE OF THE STATE OF MICHIGAN,

*Plaintiff-Appellee,*

v.

RAYMOND CURTIS CARP,

*Defendant-Appellant.*

Lower Court No. 06-001700-FC  
Court of Appeals No. 307758  
Supreme Court No. 146478

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PEOPLE OF THE STATE OF MICHIGAN,

*Plaintiff-Appellee,*

v.

CORTEZ ROLAND DAVIS,

*Defendant-Appellant.*

Lower Court No. 94-002089-01-FC  
Court of Appeals No. 314080  
Supreme Court No. 146819

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PEOPLE OF THE STATE OF MICHIGAN,

*Plaintiff-Appellee,*

v.

DAKOTAH WOLFGANG ELIASON,

*Defendant-Appellant.*

Lower Court No. 2010-0015309-FC  
Court of Appeals No. 302353  
Supreme Court No. 147428

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**BRIEF OF *AMICUS CURIAE***  
**VICTIMS & VICTIMS' RIGHTS ORGANIZATIONS**

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## STATEMENT OF INTEREST OF AMICUS CURIAE

*Amici* are individual Michigan citizens and organizations whose members include individuals who have lost family members to murder committed by or aided and abetted by youth, and that are opposed to mandatory life sentences for youth without the possibility of parole. *Amici* are united in their belief that, if given the chance, individuals incarcerated as children can change and become positive contributors to society. Thus, *amici* urge the Court to uphold and apply retroactively to all youth the principles of *Graham v. Florida*, 130 S. Ct. 2011 (2010) (hereinafter "*Graham*"), *Miller v. Alabama*, 132 S. Ct. 2455 (2012), *decided together with Jackson v. Hobbs*, Pet. No. 10-9647 (hereinafter "*Miller/Jackson*" or "*Miller*"). *Amici* come together to urge this court to apply *Miller/Jackson* retroactively to Petitioner and other Michigan juvenile offenders imposed with mandatory life sentences prior to the Supreme Court's decision.

The *amici* signed on this brief are representatives of family members of victims of the youth, whose opportunity for resentencing are at issue before this court and organizations of victims who are in support of these individuals who have generously shared their stories here. They include the following: Families of Murdered Children Support Group; Journey of Hope; Prison Fellowship Ministries; and Chance for Life. The statements of interest for these *amici* are attached hereto as Exhibit 1.

## SUMMARY OF ARGUMENT

While our justice system assigns the ultimate duty of sentencing offenders to judges, the perspectives of victims and their families are a recognized and important part of the criminal trial proceedings. In examining what is just and fair for those youthful offenders convicted of homicide crimes in Michigan and resulting in mandatory life sentences without parole, *amici* urge this Court to similarly consider the perspective of these individual *amici* who, as victims and the family members of victims, have been directly and drastically affected by the crime. *Amici* are thus in a unique position to weigh and balance the fairness and equities of these tragedies and after due consideration, and urge the Court to apply *Miller/Jackson* retroactively and provide these youthful offenders the individualized sentencing that *Miller* requires. *Amici* fully understand that this will eliminate the mandatory life sentences without the possibility of parole, which have since been held to constitute cruel and excessive punishment. Furthermore, *amici* support providing an opportunity for individualized sentences that take youth and its attendant characteristics, including a unique capacity for rehabilitation, into account: “[A] penalty may be cruel and unusual because it is excessive and serves no valid legislative purpose.” *Furman v. Georgia*, 408 U.S. 238, 331 (1972) (Marshall, J., concurring).

*Graham*’s “meaningful opportunity for release based on demonstrated maturity and rehabilitation,” is not a guarantee of release to youth offenders; rather, it merely offers youth offenders a review and the opportunity to demonstrate that they are capable of making responsible decisions and that they do not pose a threat to society. A life sentence without possibility of parole, for a crime committed at fourteen, does not provide that opportunity. Those sentenced prior to the *Miller* decision are deserving of this opportunity for review, because the mandatory sentencing imposed on these children failed to account for children’s decreased culpability and increased capacity for reform. Whether they receive a second chance should not

be measured—or delineated—by the date of their offense. The same immaturity and rashness that clouds a youth's mind in current times, muddled the minds of juvenile offenders that perpetrated the same actions twenty years ago.

*Amici* rebut any presumption that all murder victims' families share a common perspective and oppose the retroactive application of *Miller/Jackson*. Despite their devastating losses, *amici* believe that past juvenile offenders should be offered the opportunity to demonstrate that they have rehabilitated, matured, and deserve a second chance at life in the community. Accordingly, *amici* support the application of *Miller* retroactively

*Miller/Jackson's* prohibition of mandatory life without parole sentences for crimes committed by children converts the defendant's age at the time of the crime into an element of the underlying offense, rendering the *Miller/Jackson* rule substantive for retroactivity purposes. Because Michigan's sentencing laws cannot be applied against children post-*Miller/Jackson* without the consideration of a child's age and its consequences, *Miller/Jackson* therefore modifies Michigan's substantive law by narrowing its application for children. Moreover, Mississippi, Massachusetts, Illinois, Iowa, Florida, and Nebraska courts have all applied *Miller/Jackson* retroactively. See *Jones v. State*, 122 So. 3d 698 (Miss. 2013); *People v. Williams*, 982 N.E. 181 (Ill. App. Ct. 2012); *Commonwealth v. Brown*, 466 Mass. 676 (Mass. 2013); *State v. Ragland*, 836 N.W.2d 107 (Iowa 2013); *Toye v. State*, No. 2D12-5605, 2014 Fla. App. LEXIS 535 (Fla. Dist. Ct. App. 2d Dist. Jan. 22, 2014); *State v. Castaneda*, 287 Neb. 289, 2014 Neb. LEXIS 14 (Neb. Feb 7, 2014).

**I. THE SUPREME COURT HAS ESTABLISHED THAT MANDATORY LIFE WITHOUT PAROLE FOR A CHILD CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT.**

On June 25, 2012, the U.S. Supreme Court issued a historic ruling in *Miller/Jackson* holding that mandatory life-without-parole sentences for all children seventeen or younger convicted of homicide are unconstitutional. The Court determined that Evan Miller and Kuntrell Jackson, sentenced to life in prison without parole at fourteen, were entitled to new sentencing hearings. The Court struck down statutes in twenty-nine states that provide for mandatory life-without-parole sentences for children, reasoning that mandatory imposition of life-without-parole sentences on children “contravenes *Graham’s* (and also *Roper’s*) foundational principle: that imposition of a State’s most severe penalties on juvenile offenders cannot proceed as though they were not children.” *Miller v. Alabama*, 132 S. Ct. 2455, 2458 (2012); *see also Roper v. Simmons*, 543 U.S. 551, 125 S. Ct. 1183 (2005).

The *Miller* Court recognizes the fundamental unfairness of mandatory life sentences that prohibits courts from considering the unique status of children and their potential for change:

*Roper* and *Graham* emphasized that the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes. Because “[t]he heart of the retribution rationale” relates to an offender’s blameworthiness, “the case for retribution is not as strong with a minor as with an adult.” Nor can deterrence do the work in this context, because “the same characteristics that render juveniles less culpable than adults”—their immaturity, recklessness, and impetuosity—make them less likely to consider potential punishment. Similarly, incapacitation could not support the life-without-parole sentence in *Graham*: Deciding that a “juvenile offender forever will be a danger to society” would require “mak[ing] a judgment that [he] is incorrigible” - but “incorrigibility is inconsistent with youth.” And for the same reason, rehabilitation could not justify that sentence. Life without parole “forswears altogether the rehabilitative ideal.” It reflects “an irrevocable judgment about [an offender’s] value and place in society” that is at odds with a child’s capacity for change.



*Miller*, 132 S. Ct. at 2465 (internal citations omitted). The *Miller/Jackson* decision requires the lower courts to conduct new sentencing hearings where judges will have to consider the character of individual children and their life circumstances, including age, as well as the circumstances of the crime. The Supreme Court's decisions in *Roper*, *Graham*, *Miller*, and *Jackson* all recognize that children cannot appreciate consequences, risk, and harm the way adults can, in part because their brains continue to develop through their teen years. Given these attributes of adolescent behavior, *amici* believe punishing children to the same extent as adults is wrong now, and was wrong when imposed in the past.

## **II. MICHIGAN LAW RECOGNIZES THE UNIQUE PERSPECTIVE AND ROLE OF VICTIMS IN IMPOSING PUNISHMENT THE SENTENCING PROCESS.**

Michigan law expressly recognizes the importance of a crime victim's wishes during the sentencing process. Michigan's Crime Victim's Rights Act grants victims – or a member of the victim's family in the event the victim is deceased – the right to submit impact statements both during the pre-sentence investigation and during the sentencing hearing. MICH. COMP. LAWS § 780.751 *et seq.* Specifically, Section 780.765 of the Act states that “[t]he victim has the right to submit or make a written or oral impact statement to the probation officer for use by that officer in preparing a presentence investigation report concerning the defendant” and that “[a] victim's written statement shall upon the victim's request, be included in the presentence investigation report.”); That Section also grants the victim “the right to appear and make an oral impact statement at the sentencing of the defendant.”

Michigan courts have held that the right to provide impact statements is not limited exclusively to a defendant's direct victims. Instead, “a sentencing court is afforded broad discretion in the sources and types of information to be considered when imposing a sentence.” *People v. Albert*, 523 N.W.2d 825, 825 (Mich. Ct. App. 1994). Thus, Michigan courts regularly

take into consideration statements from non-victims or non-direct victims when imposing sentences. *See People v. Waclawski*, 780 N.W.2d 321 (Mich. Ct. App. 2009) (finding that the trial court properly considered statements from victims' mothers in connection with sentencing); *People v. Phillips*, 2011 Mich. App. LEXIS 1608 (Mich. Ct. App. Sept. 20, 2011) (finding that trial court properly considered statements from investigating police officer during sentencing); *People v. Pate*, 2006 Mich. App. LEXIS 3598, at \*20-22 (Mich. Ct. App. Dec. 12, 2006) (permitting a video statement from victim's mother during a sentencing hearing); *People v. Nowos*, 2001 Mich. App. LEXIS 1729 at \*8 (Mich. Ct. App. Feb. 20, 2001) ("Even though the victim's parents were not victims for purposes of the crime victim's rights act . . . the trial court was not precluded from considering their statements for purposes of sentencing").

A mandatory sentence thwarts the intent of the Michigan constitution by not allowing a victim to provide information. Mandatory sentencing is inconsistent with the spirit and intent of the constitutional rights of crime victims to be treated with fairness and dignity because it precludes all victims' voices from being heard and gives no weight to those victims who from a moral, religious and or philosophical perspective believe in restorative justice, forgiveness and second chances for youth. *See* MICH. CONST. art. I, § 24(1) ("Crime victims . . . shall have ... The right to make a statement to the court at sentencing....The right to information about the conviction, sentence, imprisonment, and release of the accused.") Only by retroactively applying the *Miller/Jackson* decision does the State of Michigan give full voice to all victims.

**III. DESPITE EXPERIENCING THE MURDER OF A LOVED ONE, MANY VICTIMS DO NOT BELIEVE LIFE WITHOUT THE POSSIBILITY OF PAROLE IS RIGHT FOR CHILDREN AND ADVOCATE FOR THE MILLER/JACKSON DECISION TO BE APPLIED RETROACTIVELY. THEY BELIEVE IT IS AN ONGOING VIOLATION OF THE 8TH AMENDMENT TO NOT APPLY THE DECISION RETROACTIVELY.**

In *Hill v. Snyder*, Judge O'Meara of the Eastern District of Michigan acknowledged that the Supreme Court's decision necessitates retroactive application. *Hill v. Snyder*, 2013 U.S. Dist. LEXIS 12160 (E.D. Mich. Jan. 30, 2013) ("[C]ompliance with *Miller* and *Graham* requires providing a fair and meaningful possibility of parole to each and every Michigan prisoner who was sentenced to life for a crime committed as a juvenile.").

The accounts of victims below demonstrate that sentencing must consider more than just proportionality—it is not just an eye for an eye. A reasoned sentence for children who committed an act that took a life should strive to incorporate additional principles of restorative justice for the victim, the community, and the criminal justice system, and which includes the defendant. In this vein, the accounts here are about reconciliation and rejuvenation, not vengeance. They are about finding a path to forgiveness and a newfound sense of peace where violence once reigned. These accounts demonstrate specific, documented efforts to overcome tragic loss and find peace between parties who were brought together as a result of violence.

"Not in my name." That is the message resounding from victims in this brief. Through their vivid accounts, *amici* illustrate that constitutional standards cannot be met by sentences that ignore science and fail to address the needs of victims and their communities. Science already presented to this Court in the merits brief shows that youth—even youth who murder—lack critical developmental maturity. The same lack of full development that makes them susceptible to bad acts is the basis of their ability to reform—they are not yet fully accountable adults. *Amici*

believe that the people at issue here, who were given a mandatory life without parole sentence as children, should be permitted an individualized review as required by *Miller*.

As discussed above, several of the *amici* in this case are primarily individuals who have lost family members as a result of murder committed by children. *Amici* provide the following statements and testimonials in an effort to persuade this Court to retroactively apply the Supreme Court's decision in *Miller/Jackson* and find that the sentence of life without the possibility of parole for a youth is excessive and unsupportable. As Michigan courts have repeatedly recognized, victim and victim family member testimonials are an important part of the sentencing process. Thus, this Court, under the discretion afforded to it by Michigan law, should take into consideration the accounts set forth below when reviewing the life sentences imposed upon youth offenders.

**A. Several *Amici* Believe Denying the Possibility of Parole For Children Sentenced to Life Leaves Them to Die in Jail and Serves No Functional Purpose or Benefit to Society.**

Sadly, the experience of many victims is that the children who committed crimes against their families were victims themselves before they became offenders. *Amici* recognize this disheartening truth, and empathize with juvenile offenders in their case after discovering these children matured, reformed, and became thoughtful adults. The accounts here reflect their experience and an understanding that these circumstances are worthy of the Court's consideration in sentencing and applying the United States Supreme Court's principled analysis in *Miller* to all youth.

**1. Barbara Henton**

On June 4, 1978, when Barbara was twenty-four years old, she went to her friend Pamela's house to play cards. While Pamela and Barbara were playing cards with their friends, three individuals with guns appeared: Quincy Robinson and Norman Burton, who were about

Barbara's age, and a fourteen-year-old boy named Timothy Kincaid. Quincy and Norman savagely shot each person in the room. Barbara witnessed Quincy shoot Pamela in the head right in front of her. Seconds later a bullet went in her back that permanently paralyzed her. As she crouched in a corner, pretending to be dead, she prayed for the violence to end.

Amidst the chaos, Barbara recalls that Timothy looked terrified, unsure how to respond to Quincy and Norman's demands. They instructed Timothy every step of the way, ordering him to kill Barbara's friend Stephanie. Afraid to resist, Timothy took Stephanie into the room next door. Unbeknownst to everyone else, Timothy shot into the wall instead of killing Stephanie, leaving Stephanie in hiding. When Quincy and Norman thought that they successfully killed everyone in the room, they fled. Stephanie attempted her escape, but Quincy and Norman saw her through the window. They returned to the scene and shot her until they were satisfied she was dead. Barbara lay in a state of paralysis, surrounded by dead bodies, until the ambulance arrived. She was the only person carried out of the room alive that night.

The events that occurred that evening made no sense to Barbara. Only after the incident did she learn that Quincy was under the impression that the group playing cards, which included Quincy's half-brother, knew about another murder Quincy committed, and intended to "snitch" on him. To avoid being turned in, he decided to kill everyone. In reality, Barbara had no knowledge of his other crime and doubts that her friends Stephanie or Pamela knew the details either.

When the police questioned Barbara about the event, she emphasized that the fourteen-year-old boy had not hurt anyone. She felt that Timothy had been a victim like her, caught up in the wrong circumstances with the wrong people. He looked so frightened during the gunfire and he tried to save her friend Stephanie. Barbara felt it was unjust to convict Timothy of this

horrendous crime. The detective responded that her views didn't matter. Because the police considered Timothy a participant, he was "going down."

After the events that transpired, Norman and Quincy were themselves murdered. Quincy was murdered in prison before his trial commenced. Barbara was too petrified to testify against Norman, who people in the neighborhood called "Treacherous." A notorious killer, rumors alleged that once someone got into a car with Norman, they might not leave alive. She knew that testifying against Norman would endanger her family and she feared for their lives in addition to her own. At trial, she claimed she never saw Norman with a gun in his hand. Later, she received calls from Norman's friends offering her money or favors in return for her testimony. Barbara rejected the money and asked to be left alone. Norman was not convicted at trial and walked away a free man. Years later, Norman was murdered in the streets of Detroit.

The gruesome violence of that night drove Timothy west, where he fled to San Francisco. During his time there, he found a girlfriend, married her, and had a beautiful son. His happiness would not last long though; the police identified him and arrested him a few years after his escape. Once in custody, Timothy was sentenced to life without parole for his role in the crime. Despite the condition she was left in, Barbara never found the punishment fair or just, and she felt sorry for Timothy.

About three years ago, Barbara's friend called and told her that Timothy would like to speak with her. Apparently, Timothy had wanted to reach out to her for many years, but he was afraid of her response. Barbara's other friends had told Timothy and his family to leave Barbara alone because re-opening her wounds would be painful. To their surprise, Barbara responded that she wanted to talk to him. Barbara and Timothy connected during their first conversation and

continued to communicate via phone and letters. Barbara, who lives in Los Angeles, even visited him in prison while on a trip to Detroit.

Without hesitation, Barbara explains that Timothy is a wonderful human being. She describes him as a warm, gentle, kind, spiritual and loving person. He incurred a lot of struggles while in prison, yet he managed to persevere and become a better person. His mother died of cancer while he was incarcerated and his wife and son seldom visit. A few years ago, his son came to visit for the first time. Timothy told Barbara that everyone in the visitation room cried that day. Timothy expressed gratitude that he was reunited with his family, albeit briefly. "If I were Timothy", Barbara says, "I would be angry and upset for being put through this for something I didn't even do. But Timothy is not angry. He has found a deep belief in God. He has a peacefulness about him that just blows me away." Timothy's thoughtful letters inquire how her daughters are doing and send well wishes that always uplift Barbara. She cannot grasp how he finds the strength to be such a positive person, when he is living his life in prison without hope of leaving. Despite living in prison for over thirty-five years, Barbara has never heard Timothy curse, not even once. He has become a strong, positive, confident person, who found the means to make the best of his circumstances.

Barbara recognizes that Timothy's upbringing contributed to his involvement with Norman and Quincy. Timothy's mother raised him alone in the projects. His brother was in and out of prison, and he grew up with his mother and younger sister. Timothy's mother asked Quincy to watch over Timothy like a big brother would, oblivious to the type of person that Quincy actually was. Barbara occasionally ran into Timothy before the incident and would always ask him why he ditched school or spent time with such older friends. Years later,

Barbara spoke to Timothy's mother, who explained that her son was a good person. Barbara agreed and concluded "he was just a kid."

Barbara is disappointed that Timothy remains incarcerated for his role as a fourteen-year-old child. As a victim of the crime he was convicted for, she still wishes whole-heartedly that he had a chance to experience life outside of prison. Timothy did not hurt anyone, and it appeared he was coerced into being involved. Norman and Quincy could have easily targeted Timothy and killed him that night. In Barbara's eyes, both Timothy and Pamela were victims.

Timothy has apologized to Barbara on multiple occasions, although she never considered him at fault. Even if he had killed her friends, she still would have speculated that Norman and Quincy forced Timothy to commit the acts through various threats and intimidation tactics. Barbara never broached the topic with Timothy, but she wonders what those two did to him after Stephanie tried to escaped.

The challenges of disability made Barbara a stronger person, inspiring her to develop a nonprofit organization called Henton Transitional Homes for the Disabled. The organization developed a re-entry program for people who are released from prison after lengthy sentences. She acknowledges the challenges of assimilating to regular life after extended periods of incarceration, especially for individuals without sufficient skills for employment or the means for living after life in prison.

Barbara believes teenagers like Timothy do not possess the mental capacity and life experience to understand the gravity or consequences of their actions. She completely disagrees with the Prosecution's position on retroactivity of the *Miller/Jackson* decision, and its contention that it represents the victims at issue here. Barbara is one of those victims the Prosecution



purports to represent, but an individual sentencing review prescribed by *Miller/Jackson* for Timothy would actually make her incredibly happy.

A life sentence without parole is a cruel punishment to assign someone for actions committed as a child. Timothy has been in prison for thirty-six years now and will be turning fifty this year. He has reformed and presents no danger to society. Denying him the chance for a parole hearing would further ascribe a punishment that Barbara argues Timothy did not deserve in the first place.

## **2. Bill Pelke**

On June 7, 2013, Paula Cooper was released from prison after being incarcerated for nearly thirty years. Paula went to jail at the age of fifteen for brutally murdering Ruth Pelke, a seventy-eight-year-old grandmother fondly known as "Nana." Paula was one of four teenage girls that broke into Ruth's home on May 14, 1985. Armed with the knowledge that Ruth gave Bible lessons in her home to children in the neighborhood, the girls arrived at her front door under the pretext of wanting a Bible lesson. As Ruth reached for her Bible teaching materials, one girl hit Ruth over the head with a vase. Paula proceeded to stab Ruth to death, inflicting thirty-three stab wounds. Once they had killed Ruth, the girls absconded with a mere ten dollars and the keys to Ruth's old car.

Bill Pelke, Ruth's grandson, had children of similar ages to these girls. Shocked by this senseless murder, he found it particularly difficult to comprehend how these children could egregiously harm a defenseless older woman. Prosecutors sought the death penalty for Paula and one other girl. In the cloud of shock and confusion, Bill's family did not question the recommendation. At the time, Bill thought that the death sentence was appropriate because, as long as it was the law, his grandmother deserved full retribution. If the perpetrators of his

grandmother's violent and unprovoked murder did not receive the death penalty, then, Bill wondered, when would such a punishment would be appropriate?

However, one and a half years after Ruth's death, and three and a half months after Paula was sentenced to death, Bill realized that the death penalty was not the right response to the murder of his grandmother who held a tremendous faith in God. He became convinced that she would have wanted him to show more compassion, even to her murderers. In fact, Bill was so certain of this that he wrote to Paula the next day and immediately began petitioning to remove Paula's death penalty sentence. After three years of campaigning and gathering the support of two million petitioners, Paula's sentence was reduced to sixty years, with an early release after thirty years for good behavior.

During her time in prison, Bill maintained regular contact with Paula. In fact, he wrote to her every ten days while she was on death row. Although he wanted to visit Paula immediately, he was not permitted to do so until Thanksgiving of 1994, eight years after Ruth's murder. He described the meeting as wonderful; "[w]onderful to have been able to face Paula, and not have the hate, anger and desire for revenge that it would have been so easy to have had, but to have the kind of love and compassion that I feel God wants us to have for all of His creation."

Bill Pelke had not given any thought to the issue of sentencing juveniles to life in prison without parole prior to the death of his grandmother. But, his experience with Paula was life-changing. He now knows that life without parole is not the answer for juvenile defendants. He has seen Paula mature over the years; she has received a GED and a college degree and wants to help others who have suffered an ordeal like hers. She expressed remorse to Bill in many of her letters and in their meetings. Bill knows of Paula's abusive childhood and is still saddened by the fact that neither of her parents were in court on the day that she was sentenced. However,

Bill does remember that Paula's grandfather was in court, struggling to keep his composure as his grandchild was sentenced to death.

Bill's convictions led him to co-found the Journey of Hope, an organization of families of murder victims who oppose the death penalty. Bill has written and appeared in several books and magazines and speaks in a variety of forums. In large part because of his experience with Paula, Bill strongly believes that youth can be reformed, and that, accordingly, their eligibility for parole should apply retroactively. While the decision to grant parole should be on a case-by-case basis, Bill believes that these youth sentenced to life without parole were denied a first chance, let alone a second chance, at life. He feels that the key to forgiveness is compassion - compassion for those people who made mistakes and have the ability to reform.

Paula left prison after serving a sentence of twenty-eight years and two months. She left as a woman with an education and a new perspective on life. Bill is confident that she will be a positive addition to society and will do everything she can to be a better person.

### **3. Tammi Smith**

Robert Sellon was the beloved, good humored half-brother of Tammi Smith who would often play good-natured pranks on Tammi and her twin sister. So when seventeen-year-old twin brothers David and Michael Samel brutally murdered eighteen-year-old Robert on October 26, 1981, just four days after Tammi's fifteenth birthday, she was filled with hatred.

Stoned, drunk and looking to steal marijuana and cash, David and Michael set out to rob Robert. When Robert put up a fight, the two brothers strangled him with nunchucks and beat him to death with a hammer. At his trial, Michael pled guilty to second degree murder and was sentenced to thirty-five to fifty-five years in prison. Meanwhile, David's counsel believed that because Michael had pled guilty, David would likely receive a reduced sentence. Instead,

David's case not only proceeded to trial on first degree murder, but also resulted in a sentence of life in prison without parole for David.

For twenty-one years, Tammi Smith vehemently despised Michael and David for taking her brother's life. She was enraged by what these boys had done to Robert, and she hoped that David and Michael would be imprisoned for the rest of their lives for their crime. She had recurring nightmares about the attack, and prior to David being transferred from pre-trial detention to permanent incarceration, Tammi visited him to express her hatred of him face-to-face, and to curse him for destroying her family. But this did nothing to provide her closure.

In 2001, Tammi realized that Michael would soon be released from prison, and that there was a key unresolved question that prevented her from achieving closure: what kind of adults had David and Michael become in prison? Tammi reached out to Michael and David, and the three of them started to correspond. As Tammi learned more about David and Michael, she saw that they were no longer drug-addicted, naïve teenagers, but mature adult men who felt extreme remorse over a crime they committed in their youth. She learned that David would honestly give his own life to bring her half-brother back.

It took Tammi 21 years to step back and observe the bigger picture. Once she initiated communication and expressed her forgiveness, she could see the two assailants as children that made a mistake many years ago. Tammi grew up in a dysfunctional home herself and made questionable decisions as a teenager. These mistakes did not warrant prison time, but they are moments of her life of which she is not proud. The more that she spoke with Michael and David, the more she was convinced that they were truly regretful of their actions. The tears, stories, and emotions they expressed were heartfelt and genuine. Talking to them in person, she could sense the pain and guilt that they lived with every day of their lives.

Michael was released in 2009, after serving twenty-seven years. David remains in prison and Tammi corresponds with him weekly. They discuss hobbies, her love life, and how they are both feeling physically and emotionally. David still apologizes for what he did, even though Tammi has repeatedly told him that it is not necessary to apologize anymore. It is apparent that he is still haunted by his past actions. Identical twins, the same victim, and yet very different outcomes.

Tammi favors and wants to secure David's release because he is now in a position to positively contribute to society. During his time in prison, David earned a degree in horticulture, studied for a law degree before the program was canceled, and works in the prison hospice system.

Tammi is not only seeking David's release but believes that the Supreme Court's decision should apply retroactively to all juveniles sentenced to life without parole. She does not believe it is right to sentence a teenager in prison for the rest of their life thinking that they will never change. David is not the same person that he was as a teenager, and should not continue to be punished for the mistakes of his youth.

Tammi thinks her brother Robert, who himself got into trouble for drugs as a youth, would have wanted a second chance for David. Tammi believes society is better served by releasing youthful offenders who have sufficiently demonstrated remorse for their crimes and who have applied themselves during incarceration. She is inspired by David's commitment to educate himself while in prison. She is gratified to hear David say that, should he ever be released, he wants to help youths who have been convicted of crimes. Unfortunately, that time may never come, because almost thirty years after being convicted for killing Robert, David is still confined to his jail cell and faces the possibility that he will die in prison.

When Tammi now looks at the two men, she doesn't see two people that committed a murder. Instead, she sees two men who made a tremendously stupid mistake as teenagers, two men that are filled with remorse, and sincerely apologize for their actions, and most importantly, she sees two men that deserve a second chance at life. What seems black and white, can emerge as gray. Each child accused is somebody else's daughter or son and they deserve not to be thrown away.

#### **4. Carl Heichel**

At six years old, Carl Heichel would walk five miles just to get to his grandparents' house. He looked up to them, especially his grandfather, and their house provided security and affection when he felt alone. A compassionate and hardworking man, Carl's grandfather, Elmer Heichel, provided an incredible compass to his family of what it meant to be a good person, and how to find the good in others. Generous and dedicated, Elmer was involved in numerous volunteer programs. He led underprivileged children on a yearly fishing trip to Canada and helped with Christmas events at the American Legion. Carl eventually bought a house just one street over from his grandfather's, and the two remained close until Elmer's death on August 29, 1992.

It was on that night that two young girls knocked on Elmer's door, planning to rob him for drug money. One of them was Jennifer Pruitt, a down-and-out teen who had been abused and began running away from home at age ten. Jennifer had found shelter with Donnell Miracle, an older girl and drug addict who would let errant teens stay at her place. Earlier that day, when Miracle needed money, Jennifer told her that Elmer had some, and took Miracle to his house to find cash.

When Miracle and Jennifer knocked on Elmer's door that night, he let them in without question. Jennifer had known Elmer since she was six, and everyone knew the Pruitt family had

more than their share of troubles. Jennifer wandered through the house to look for money. When she returned, she saw Miracle brutally stabbing seventy-five year old Elmer. Jennifer locked herself in the bathroom until the murder was over, and then left with Miracle. She later returned to clean the house from fingerprints at Miracle's direction. Later that night, when Miracle was asleep, Jennifer ran to the police to tell them what happened. Shortly thereafter, she was arrested and charged with first degree murder. She is now serving a mandatory life sentence, and has spent over twenty years behind bars.

Upon hearing of his grandfather's death, Carl was devastated. He was closer to Elmer than anyone. But despite the incredible pain he felt, he had a sense of sorrow for Jennifer: "I figured she was one of those kids who had gotten mixed up with the wrong people. She was so young."

Thereafter, Carl's own life spiraled out of control. He became consumed by drugs and alcohol. Ten years later, high on cocaine and caught in a violent argument, Carl murdered his friend Dereck Flescher. He is now serving a life sentence for second degree murder. Twelve years later and now sober, Carl works to maintain the positive outlook that he says his grandfather taught him. Carl knew his grandfather believed in second chances. And so Carl believes in a second chance for juvenile offenders who have transformed their lives and desire to make a positive contribution to society.

Thumb Correctional Facility, where Carl is held, is just across from the juvenile detention center where the youthful offenders start integrating with adults as they get older. Carl witnesses firsthand the profound change that a child once prone to violence and crime can make behind bars. Upon entering the prison system, they do not seem to understand what they are doing. They seem lost. After a while, reality starts to sink in and they start to realize that they have to

change. Carl has seen many youth work at turning their lives around by becoming involved with the various training and education opportunities offered at the facility.

Carl recognizes that a large number of the children in the detention facility have come from violent and underprivileged backgrounds. Considering his own mistakes, Carl understands how these children could have turned to a life of crime. He knows that for a kid on the streets, someone who never had a roof over his head, violence is a means survival. Carl explains, "[t]hey haven't had any structure, or anyone who has been a positive influence in their life. Me, at least I had my grandparents, my parents, a roof over my head, and hot meals to eat. And look at the mistakes that I made. I could only imagine what it is like for a kid on the streets."

Carl knows that this is part of what led to Jennifer's decisions that terrible night in 1992. With no stability, a youth on the street seeks whatever comfort she can grasp. Jennifer got mixed up with this older girl because she needed a place to live and sought her approval. They needed money, and she knew that Elmer had it. Carl never agreed with her sentence and his father, uncle, and mother feel the same. Today, Carl admires and is inspired by Jennifer's courage.

One of the most difficult things to overcome for both Jennifer and himself, Carl notes, is recognizing the pain that they caused through their crimes. He once received a letter from Jennifer "pouring her heart out" and expressing deep remorse. After his own mistakes, Carl is empathetic and understands that the greatest pain Jennifer faces stems from the events of August 29, 1992. Carl says "[i]f you have a heart, there is no way you cannot look at the hurt that you have caused. You try to make it through each day, but when you go to bed at night, you cry."

Through the difficult times, Carl found peace in his conviction that young people were capable of turning their lives around, regardless of their past actions. Carl says that several of the older inmates take it upon themselves to provide mentorship and encouragement to the



juveniles that are eventually transferred to Thumb as they reach adulthood. These seasoned prisoners believe that children are special and should not be disregarded by society. From growing up with his grandfather, Carl knows that Elmer would want a second chance for Jennifer and similarly situated youth. As Elmer states, "he believed in second chances. He believed in everybody."

#### **5. Jonathan Shivers**

1980, Larnell Johnson shot Anthony Thomas to death with an automatic rifle because Anthony's brother allegedly slapped Larnell's sister. Sixteen-year-olds Henry Hill and Dennis Johnson had accompanied Larnell to Wick Park in Saginaw, Michigan, where Larnell confronted Anthony. Everyone in the group, including Anthony, possessed a gun. When the argument became heated, Henry and Dennis fled the scene and shortly thereafter, Larnell carried out the retaliatory act. Henry, Dennis and Larnell turned themselves in to police custody. Despite Dennis and Henry's age, the judicial process had little sympathy for the juvenile accomplices and the judge sentenced them both to life without parole in prison.

Jonathan Shivers grew up in the same neighborhood as his cousin Anthony Thomas. But unlike Jonathan's family, which set demanding guidelines at home, Anthony's home life lacked structure and stability. Jonathan's parents required him to come home before dark and attend school every day, while Anthony's family rarely monitored his whereabouts. Because of their different upbringings, Jonathan seldom spent time with his cousin. Given Anthony's and his siblings' reckless lifestyles, Jonathan predicted his cousins would not live past twenty years of age. Anthony fell victim to the violence of the streets at twenty-two, and in the eighteen months following Anthony's murder, three of his siblings were also killed in acts of senseless violence.

By supposedly slapping Larnell's sister, Anthony's brother provoked the incident leading up to his murder. Larnell's family was notorious for drug dealing. A powerful family of drug

dealers, everyone in the neighborhood knew not to mess with Larnell or his family. Although Larnell was an adult and the one who pulled the trigger, he and Henry, a minor charged with aiding and abetting, were given identical sentences.

An evaluation by a court-appointed psychologist determined that Henry functioned at the academic level of a third grader and had the maturity of a nine-year-old child, who did not fully grasp distinctions between right and wrong. The prosecutor and Henry's attorney discussed a plea agreement with a fifteen year sentence, but Henry had no knowledge or understanding of the agreement. Nor did Henry comprehend the implications of a waiver hearing, oblivious to the possibility that he could be charged as an adult or convicted of a mandatory life sentence if found guilty on the charges. Henry naively believed that he had already left the park when Larnell pulled the trigger and assumed that the judicial process would recognize this crucial detail. Despite the circumstances, the jury found Henry guilty of first-degree murder, which pursuant to state sentencing guidelines mandated a life imprisonment without parole. He has now been in jail for thirty-four years.

Jonathan was shocked when he discovered that the judge sentenced Henry to life without parole for aiding and abetting in Anthony's murder. Henry's cousin Larnell was the driving force behind the altercation and Jonathan knew that the sixteen-year-old was caught up in the wrong situation at the wrong time. Henry and his two cousins wrote letters to Jonathan from prison apologizing for their actions. Jonathan was especially moved by Henry's apologies and the two communicated throughout the years. Henry matured tremendously while in prison, obtaining a GED, becoming a kitchen leader, and finding resolve in faith.

Jonathan knows people can change, especially when they find religion. Jonathan recalls bringing a gun to school as a senior and having little regard for human life at that time. When he

turned twenty-one, he found faith in God and eventually became a minister. He is grateful that as a teenager, he managed to avoid a situation similar to Henry's. Jonathan has since forgiven Henry and knows that Anthony's mother has forgiven him too. Anthony's mother advised her other children not to hold hatred in their hearts.

Jonathan believes that the *Miller/Jackson* decision should be applied retroactively because juveniles like Henry rehabilitate while in prison, maturing into thoughtful and educated men. Henry strives to be a better person every day and through the changes he has made, ensures he will never directly or indirectly be responsible for such a senseless act. To not consider parole for a man that was convicted as a sixteen-year-old child with the understanding of a nine-year-old would be unjustified and offensive to the principles of our justice system. An individual like Henry should be given the opportunity to prove that he is worthy of being released and becoming a contributing member of our society.

Jonathan suspects that there are some who are not remorseful for their actions, but regret being caught. He believes these people are unable to demonstrate rehabilitation and upon a consideration of parole, courts should determine they are not worthy of release. But Jonathan believes that Courts must consider each individual and their circumstances in determining whether the sentence is proportional. Denying even the possibility of parole for juvenile offenders with life sentences leaves reformed prisoners such as Henry to die in their jail cells. Henry has made incredible strides in prison, earning a GED, enrolling in college courses, and finding a profound faith in God. Most importantly, he is deeply remorseful for his role in the murder of Anthony Thomas thirty-four years ago. Henry is now fifty-years old and continuing to imprison him serves no purpose. Jonathan believes that Henry has done everything in his capacity to become a better person and therefore deserves a second chance at life.

**B. *Amici Oppose the Mandatory Imposition of Life Sentences for Youth, Because Many Victims Believe Youth Offenders Deserve Special Considerations Affording Them Different Sentences.***

No two victims are alike as no two people are alike. To paint all victims with the same broad brush and assume they would take the same position with regard to the sentencing of youth who took their loved ones, unfairly assumes victims are interchangeable and of one mind. That is not the case, as the many telling examples below illustrate.

**1. *Betty Strunk***

Betty Strunk knows personally of the incredible transformation that a once violent child can make. She knows because she has seen it firsthand in her son Karl's life. A deeply troubled teenager, Karl was just sixteen years old when he killed Rudi Strunk, his father and Betty's husband. At the time of Rudi's murder, Betty described herself as "a black and white person with no shades of gray," that firmly believed in the principle of "an eye for an eye." But since that event, Betty has realized that "there are many shades of gray." Her journey to heal following her husband's death and her son's conviction has been a difficult one, but through it Betty has come to discover a new found hope and admiration for Karl. She now advocates for him to have a second chance at life.

Prior to his conviction, Betty described Karl as a child who was not pleasant to be around. Indeed, Karl's actions paint the all-too-common picture of a youth lashing out to cover a deep personal struggle. He was failing several classes and consistently creating trouble. Karl looted his school, broke into homes, and purchased alcohol for friends to garner acceptance. But unbeknownst to those closest to him, much of Karl's bad behavior was rooted in a desire to erase a traumatizing molestation that he suffered at the hands of two peers in the rural fields of his hometown. After this incident, Karl's life spiraled out of control, until, one day, in a fit of anger

and fear, he and his father got into an argument over a car loan. That argument ended with Karl taking his father's life.

Shocked and devastated, Betty at first wanted police to lock up her son and throw away the key. She attended Karl's trial but sat outside of the courtroom, and only at the behest of Karl's attorney. It took her a significant amount of time to visit Karl in prison. But in the twenty-seven years that have passed since Karl's conviction, Betty has begun to heal. "Karl is still my son," she says. "I have come to love and respect him for the person that he has become."

Now forty-three years old, Karl is a very different person than the boy he was once. He has received his GED, passed many classes with flying colors, and made friends (something, Betty notes, "he never had before"). After many years at Kinross Correctional Facility, Karl was chosen as one of thirty throughout the state for a special faith-based program that lasts three years. He works through a friend to write the blog "Sixteen and Life," with the hope that other troubled youth will hear his story and not make the same mistakes that he did. Betty says that she is impressed with Karl's maturity and the accomplishments he has made while incarcerated. Having seen her son's incredible strides in becoming a generous, intelligent, and dedicated man, Betty now supports Karl's release.

Betty says that she first believed that Karl was the only prisoner who made such a drastic change. But, after attending hearings on Second Chance Legislation, she realized there are others who have turned their lives around. And though some prisoners should never be released, there are certain individuals who deserve a second chance.

Betty feels that this chance must be given to those prisoners incarcerated as juveniles under prior mandatory sentencing guidelines. She finds it senseless to not allow youth sentenced under the previous guidelines the same opportunities that *Miller* provides for other convicted children

going forward, because she supports a real chance at parole for those who have demonstrated change and maturity. She notes that the retroactive application of *Miller* is not a get out of jail free card, and that it will not have this effect. Rather, the retroactive application of *Miller* and its requirement of an individualized sentencing review provides a second chance at life for those deserving of it.

## **2. Frieda Bacca**

The most painful event of Frieda's life occurred on June 14, 1990, when she lost three grandchildren at the hands of thirteen year-old arsonist Jacinto Rico and his sixteen year-old accomplice, Michael Perry. That morning, Frieda awoke to a frantic phone call from her daughter, Cynthia Rollie. "Mommy, they burned my house . . . my babies are dead," her daughter's voice trembled. At first, Frieda didn't understand what was happening: she thought it was her other daughter, who was prone to nightmares. She gently told her to go back to bed, but Cynthia persisted. Frieda only then realized that something horrible had happened.

Thirteen-year-old Rico had been jealous that Frieda's grandson, Ryan Rollie, was better at retrieving golf balls from the neighborhood golf course pond than he was. Angry, he threatened to bomb the Rollie's house. He enlisted the help of sixteen year-old Michael Perry, who had been drinking that night, to assist him in throwing Rico's homemade molotov cocktails into the Rollie's house.

The ensuing fire killed the three youngest Rollie children. Cynthia, her husband, and Ryan were able to escape by jumping from a second story window. Frieda still remembers the traumatizing state of each of her beloved family members. Cynthia suffered severe burns all over her body and was hospitalized for weeks. Frieda had to identify the body of her granddaughters, Nicole and LaRonda. "The sheet was still warm," she remembers, "their skin had completely split." Isaak Rollie, the youngest, was burned beyond recognition. The funeral

home would not allow an open casket, and the services had to be held while Cynthia was still recovering in the hospital.

After the fire, the Rollie family struggled to recover, and Frieda did the best that she could to help. Cynthia, her husband Will, and their son Ryan all stayed at Frieda's house. Ryan Rollie slept downstairs, afraid of going upstairs after the fire, because it reminded him of having to jump from the window when his house had become engulfed in flames. Cynthia and her husband divorced, each struggling to recover from the loss of their children in different ways. Cynthia battled to address her pain. She became addicted to drugs and found herself in harmful relationships. But Frieda recognized that Cynthia never escaped the emptiness she felt from the loss of her three youngest children. That emptiness, Frieda says, remained with Cynthia until her death in 2008.

Frieda attended every day of the trial and sentencing for Rico. She was "shocked" that Rico was convicted only of arson, especially when his accomplice, Michael, received a mandatory life sentence for first degree murder. Frieda felt that under the circumstances Michael's sentence was unfair, because he did not plan the crime and was intoxicated for the duration of his involvement. Though his punishment required a prison sentence, life without parole seemed harsh and excessive. She now advocates for Michael's release because she believes that he no longer deserves to be in prison.

Michael still does not understand why he assisted the thirteen-year-old with such a heinous and stupid act.<sup>1</sup> He also does not remember who lit the wicks of the molotov cocktails. Frieda feels that Michael's age was a factor in his decisions that night, and Michael himself

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<sup>1</sup> Andy Hoag, "Truthfully, I don't know:" Juvenile lifer who firebombed Saginaw home admits guilt but can't remember his intentions, Michigan Live (Nov. 7, 2011) available at [http://www.mlive.com/news/saginaw/index.ssf/2011/11/truthfully\\_i\\_dont\\_know\\_juvenil.html](http://www.mlive.com/news/saginaw/index.ssf/2011/11/truthfully_i_dont_know_juvenil.html)

would likely agree; as he told *Michigan Live* in 2011, he now realizes how easily influenced he was in his youth. "As I look at myself, I realize how very immature I was. I probably acted younger than my age. I was easily swayed."<sup>2</sup>

Frieda has written Michael during his incarceration and developed a sense of the person that he has become today. Michael is active in the prison religious community and has impressed Frieda with all that he has accomplished there. She does not know if he would be the same person and pursued these opportunities otherwise, but she feels that Michael is a man deserving of a second chance. Significantly, she notes that Cynthia had forgiven him too: "She was that kind of person," Frieda says, "always looking for the good in people."

Frieda cannot find the purpose in a refusal to apply the *Miller* holding to reformed youth such as Michael. She feels that teenagers like Michael, who did not grasp the severity of their actions, were not the main actors in the crime, and who have demonstrated themselves as redeemable and mature adults, should be reconsidered for parole. And while not every juvenile offender should be eligible for parole, there are those that deserve a second opportunity at life.

Frieda admits that she may not have always felt this way. But as she continues to heal from the loss of her grandchildren, she acknowledges that there is liberation in forgiveness and only pain in holding a grudge.

### 3. Ron Callen

On his return home from a wonderful Thanksgiving gathering, Ron Callen received a voicemail that would haunt him for the rest of his life. He knew from the coroner's message that something had gone terribly awry with his mother. His mother, Leona Callen, had just spent the holiday by his side and was in good health, despite her eighty-six years of age. Ron soon

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<sup>2</sup> *Id.*



discovered that a man broke into his mother's house to commit a robbery and in the process beat the elderly woman to death. Ron and his family were devastated by the tragedy that struck them and wanted the killer punished for his actions. For months, they lived in the agony of the unknown, while his mother's killer remained at large. Eventually with the allure of a reward, the police department obtained the killer's whereabouts.

The prosecutor pushed for the death penalty, but as much as Ron wanted the killer to be in prison for beating his mother to death, he could not support a death penalty judgment. A man of religious conviction, Ron and his family did not believe that atonement for the loss of his mother would come from the death of another. They knew that no amount of punishment inflicted upon the assailant would bring his mother back. Instead, he heeded the advice of Nelson Mandela, "to not forgive is to live in hatred willfully." Ron joined victim organizations that advocated against the death penalty, and shared stories with other victims' families. While involved in these organizations, he encountered empathy and compassion that moved him to communicate with his mother's killer. The various stories he heard of relationships between assailants and their victims' families reinforced his view that for some criminals, prison was actually a place for introspection, rehabilitation, and change.

His mother's killer was sentenced to life without parole for the crime because Ron and his family appealed to the county prosecutor to not pursue the death penalty. Ron and his family did not find the punishment disturbing or unjust. Pushing aside the hurt and grief, Ron found the strength to forgive the twenty-two-year-old man who caused his mother's death. This forgiveness was given during a mediation offered at the prison where the assailant was incarcerated. The assailant expressed deep remorse for his actions while answering Ron's questions about the murder, and the emotional exchange that ensued had both parties in tears.

Ron was disturbed when he discovered that certain state courts refused to apply *Miller* retroactively and apply individualized sentencing review to those serving mandatory life without parole sentences for crimes committed as children. He had read extensively and heard many stories firsthand of the rehabilitation of these young people. The statistics and studies concerning children consistently showed that there was room for a transformation. As part of his involvement with victim family organizations, he began speaking out against sentencing children to die in a jail cell. Other family members of victims accompanied him and shared their experiences.

On many occasions, the victims' families expressed surprise with the degree of change that a child offender underwent in the prison system. Often, victims' families that established a relationship with the individual found that the juvenile was unrecognizable as an adult and had changed into an entirely different person than the reckless child that had killed their family member. Children that commit crimes earning them life sentences conduct their actions without a fully formed mind and under the haze of complicated or dysfunctional childhood experiences.

As a Michigan resident, Ron continues to volunteer and contribute his experiences as a victim's family member, with hopes that Michigan applies the U.S. Supreme Court's decision retroactively so that children are not sentenced to life without parole based on the year they were convicted of their crime. The Supreme Court has already decided that such a harsh punishment is only suitable for adults. Ron argues that denying children the possibility of parole is inconsistent and unfair. The very adolescent and impulsive behavior that hazes youthful judgment now, swayed youthful offenders twenty or thirty years ago.

#### **4. Ronald Simpson**

On Father's Day 2001, a fourteen year old boy murdered Ronald Simpson's only son. Ronald's son was twenty-one at the time, and his girlfriend's mother was opposed to their

relationship. She was under the impression that the young couple had a serious argument. In response, she asked her fourteen-year-old son to find Ronald's son and confront him about the argument. The young boy left his mother with clear instructions to "defend his sister." The teenager, who was young and impressionable at the time, did as he was told. He went to the apartment and initiated a confrontation that ended with a lethal gunshot to Ronald's son.

Ronald and his ex-wife were devastated. Ronald's ex-wife was so upset that she wanted the murderer to be incarcerated for life. But Ronald, who knows from firsthand experience what it means to be in prison and how people can turn their lives around, convinced her that no amount of punishment would bring their son back to life. Finally, influenced by their personal experiences as well as their religious beliefs, Ronald and his ex-wife advocated against a sentence of life without parole for their son's killer, and the court agreed.

Ronald initiated communication with the murderer, who was remorseful from the start. According to Ronald, he was a fourteen-year-old child striving to please his mother. The boy's mom asked him to "defend his sister," and so he acted impulsively with little grasp for the severity of his actions. He was immature, and did not fully understand the implications of pulling the trigger. After about seven years, the court reviewed the case, and asked Ronald and his ex-wife for their opinion on the prisoner's release. The review gave rise to many conflicting emotions and Ronald's ex-wife struggled tremendously during that time, but they had made peace with the fact that this review for parole was coming up. They realized that their son's murderer underwent significant changes during his incarceration, and deserved a second chance at life. It was futile to confine a rehabilitated young man to a jail cell, and extending his sentence would not bring their son back to life. The court released him, and Ronald remains in touch with the young man.

As a former prisoner, Ronald witnessed people transform during incarceration. When Ronald himself was imprisoned at the age of twenty-seven, he explains, he was angry: angry at the world, and at himself. He had experienced many disappointments in his life. When he arrived in prison, the two most important things in his life were drugs and cars. But the idle time gave him an opportunity to reflect on what was really important to him. This introspection shifted his perspective on life and he eventually realized that drugs and cars meant nothing to him anymore. His priorities and concerns became his family and community.

While in prison, Ronald worked as a staff paralegal in the criminal law division of the former Prison Legal Services of Michigan. He headed up numerous organizations, developing and facilitating many prisoner self-help programs and activities ranging from juvenile at-risk youth deterrence programs, to parenting from prison training, and parole for older prisoners projects.

Ronald is a co-founder of the Chance For Life (CFL) organization and currently serves as a CFL board member. He has attended Eastern Michigan University, Mott Community College, and Jackson Community College. As a diemaker, he holds a United Automobile Workers journeyman's card, working for almost ten years at General Motors' A.C. Spark Plug Division. Ronald is currently publishing a book on his experiences and has published a book about relationships. He currently operates a small auto repair business with his brother. One recent development he spearheads is the "Lifer Intern Project" at the American Friends Service Committee, a restorative justice project that integrates the community with the rehabilitation process of former prisoners.

Ronald absolutely believes that prisons are necessary. A person who committed a crime has to be punished. But he explains that after five to ten years, most prisoners either "get it" or

they don't. Following his lengthy sentence in jail, Ronald started looking at the world and himself differently. Prison life was horrible, and he realized there had to be a better world out there. As he started reading, he matured and gained a better attitude towards life, shaping his interactions with other people. Ronald's conviction was reversed by the federal courts in 2009 and he was released in 2012, after twenty-seven years in prison.

Ronald disagrees with the prosecution, and believes that *Miller/Jackson* should apply retroactively. He did not want the murderer of his son to be automatically incarcerated for life because there was a chance that child would rehabilitate himself. Ronald recognizes that youth are salvageable and his son's killer exemplified this notion by changing his life to become a productive member of society. Similar to Ronald, he has been given a second chance at life, and now strives to give back to the community.

Despite the loss of his son, Ronald thinks that parole should be reconsidered for past juvenile offenders that were issued mandatory life sentences without parole. He feels that it does not make sense to draw a distinction as to whether the crime was committed before, or after the *Miller/Jackson* decision. Either way, a mandatory life without parole sentence is just as cruel and unusual punishment for the approximately 350 juvenile delinquents who are currently incarcerated in Michigan, as it is for juveniles going forward. Initially young and impressionable, children age and mature to become adults. As they do, they deserve a fair opportunity to make something out of their lives. The analysis and reasoning that drove the Supreme Courts to its finding in *Miller/Jackson* should be applied uniformly to all juvenile offenders in the state of Michigan.

**C. *Amici* Agree With the Supreme Court's Decision in *Miller v. Alabama* and Support Its Retroactive Application, Because the Sentencing of Youth Cannot Be Fueled By Revenge.**

As the U.S. Supreme Court realized, youth have a capacity for rehabilitation that stems from their continued brain development. *Amici* know this is especially important in the sentencing process when punishment for lethal offenses is delivered with undertones of revenge and anger. Just punishment should be proportionate to the crime and allow the offender to learn from his actions. Conversely, revenge is about inflicting suffering on the offender irrespective of the goal of restoration for the community, victim and offender. As such, revenge does not serve justice. Revenge serves emotion. Victims who suffer terrible losses are able to filter through the haze of emotion and advocate for justice, because they strongly believe that there is no place for revenge in the imprisonment of children.

**1. Reverend Cathy Harrington**

Reverend Cathy Harrington ("Cathy") is an ordained parish minister who served Ludington, Michigan's Unitarian Universalist Congregation from 2004-2012. Today, Cathy works as a Defense Victim Outreach specialist helping murder victim families through the difficult and painful judicial process. In addition to her education in theology, Cathy holds a professional certificate in Conflict Analysis and Engagement. Cathy's doctoral thesis, "Transforming Violence; a Compassionate Response," focused on the principles of restorative justice. Ms. Harrington does not offer her account lightly here in support of retroactivity. She works with victim families every day and knows the challenge it can be for victims to re-experience the hard crimes through a review of an offender's case. She acknowledges that the victims' families are affected by giving youth offenders another review but it is the right thing to do.

While Cathy recognizes that the punishment system is integral to the criminal system's function to render justice to society, including the families of victims, she knows from her own personal experience with the murder of her daughter that such justice does not heal the broken hearts of these families. On the contrary, what Cathy found is that the process holds the victims in endless trauma, compounds the tragedy, and creates more victims and more pain. The path to healing a broken heart is a long and crooked journey fraught with tears, fear, anger, darkness, and despair. However, the human spirit is remarkably resilient and with that resilience comes the need for meaning-making, hope, and even the possibility of forgiveness. This path of healing is not paved with revenge or the hopelessness of mandatory life without the possibility of parole sentences for youth.

Just as the imposition of the death penalty does not bring the victim back to life, a sentence of life without parole does little to address the journey that families face in finding meaning out of senseless tragedy. Through Cathy's extensive journey to find solace, she discovered that the anger and vengefulness she felt against the person who took her daughter's life holding her hostage in a state of despair. She ultimately realized that she needed to move out of the angry victim space in order to heal herself. Cathy now helps families come to terms with the pain they may feel when the person who committed a crime against their family member is released on parole. The same journey she went through to find solace after her daughter was murdered is helpful to address the very normal pain and anger that envelops families when faced with such release.

Cathy shares her story to illustrate how most healing comes in stages, through levels of compassion and in recognizing that the families of the offenders are also victims, and that there is something liberating about choosing life for the perpetrator. While a sentence of life without

parole is a more humane alternative to the death penalty, life without parole for juvenile offenders makes permanent prisoners of everyone touched by the crime. It does this by eliminating all sense of hope for these juvenile offenders and those that believe rehabilitation is possible. The punishment system for juvenile offenders should advance restorative justice instead of eliminating the opportunity for juvenile offenders to reform and one day contribute to society in positive and productive ways.

Leslie Ann Mazzara was Cathy's youngest child. On November 1, 2004, Leslie's beautiful and promising life was stolen in an act of terror when she was only twenty-six years old. Leslie and her roommate were brutally murdered in a gruesome act of selfish anger and rage by someone later determined to be an acquaintance of Leslie's roommate. The eleven months following the murder were an unspeakable nightmare as the police investigation failed to identify the killer, misguided by an assumption that the murderer targeted Leslie. Cathy fumbled through each day in a broken-hearted daze, confused and unconvinced that anyone would want to hurt her beautiful daughter, the light of her life. She embarked on her journey through hell, seemingly without end, on a mother's mission to make meaning out of the meaningless.

When Eric Copple, a friend of Leslie's roommate, turned himself in after the police revealed that the killer smoked a rare blend of Camel cigarettes, everyone was stunned. Cathy gasped for air like a victim of a near-drowning accident, not realizing until that moment that she had essentially been holding her breath, and waiting for answers ever since she received the devastating call that Leslie had been murdered. While she had been hostage by this unspeakable trauma for almost a year, this murderer married Leslie's roommate's best friend and went about his life as if nothing had happened. Cathy braced herself for the next phase of her nightmare—



dealing with the prosecution of the murderer and continuing her journey to make sense out of the meaningless.

The California prosecutor consulted with the families of Leslie and her roommate before deciding whether to seek the death penalty. Eric ultimately plead guilty and was sentenced to life without parole. Eric was not a juvenile when he premeditated and committed these senseless murders. At the time of the murders, he was an adult in his late twenties. When Cathy later met Eric's mother, she learned about his childhood and his violent father. What role Eric's abusive and violent childhood played in forming his adult mind is unknown but it surely impacted his callousness for life.

Unlike the adult environment from which Eric lurched in a fit of rage, juveniles sentenced to life without parole are still functioning in an environment where their minds are being molded based on the life circumstances to which they are exposed—they are not fully formed adults. During her time as Miss South Carolina, Leslie immersed herself in community outreach programs dealing with abused children and acknowledged these challenges. Her perspective on life was shaped by the sadness of the victims' stories. Leslie told her mom that she could not comprehend how adults could be so cruel and unloving to their own children and juxtaposed their circumstances against her own experience of always feeling so loved by her family. Leslie had great compassion for these children and saw from experience how these children seek acceptance and direction from others, often from peers who are not grounded in moral or mature judgment. Because of Leslie's compassion and concern for abused children, Cathy's compassion gradually grew to include Eric as an abused child. Cathy knows that Leslie would not support a sentence of life without parole for juveniles who have committed crimes while impaired by their state of immaturity. Cathy honors the integrity of Leslie's

compassion for abused children as she takes a stand against life without parole sentences imposed against juvenile offenders.

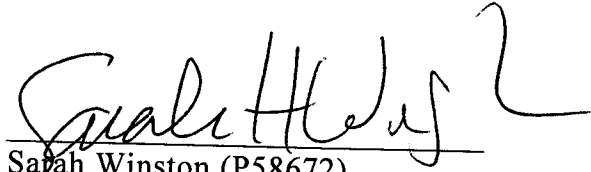
Cathy strongly believes that our retributive system of justice does not serve its victims. Instead, the current system inflicts revenge against the offender through a severe punishment mandated by law to be humane and to fit the circumstances. The system does not function in any meaningful way to help or support victims in their journey to find meaning and comfort. If there is no chance that the imposed revenge will end, not even when the offender has significantly redeemed himself, the justice system fails to serve society. We do not have to throw these children away. If they are worthy of parole, we must provide an avenue to achieve the rehabilitation necessary for release.

Michigan should make a powerful statement of hope by choosing a path of restorative justice for children who were sentenced to life without parole before the Supreme Court of the United States ruled such punishment inhumane and unconstitutional. Even adults who have committed heinous crimes are eligible for parole. Life without parole for children is a tragedy that should be ended retroactively, not just prospectively. Each case requires individual consideration and review. The system for review and release must include proof of reform and a structure to ensure these individuals return to society as fully contributing and productive citizens. To take any other path is inequitable and compounds the senseless tragedy by creating more victims simply based on when the crime was committed.

### CONCLUSION

Sentencing requires thoughtful decision-making on the proper sanction for a youth who committed a serious offense. All points of view should be considered in individual cases as well as general application of how the laws apply. In determining how to apply laws retroactively, *amici* offer their collective opinions to illustrate that there is no monolithic victim's voice. This Court's review of the proper standard for sentencing youth after *Miller/Jackson* must consider this perspective which falls in favor of applying *Miller* retroactively.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Sarah Winston', is written over a horizontal line.

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## **EXHIBIT 1**

### **Statement of Interest By Journey of Hope**

From Violence to Healing is an organization led by murder victim family members began in 1993, and incorporated in 1998. Journey of Hope shares stories about the process of healing through reconciliation. They call for alternatives to the death penalty and an end to the cycle of violence that capital punishment perpetuates in our society. Joining with these speakers are death row family members, family members of the executed, death row survivors, activists and friends from around the world. Every year Journey of Hope...From Violence to Healing travels to spread the message of nonviolence and forgiveness. Journey of Hope similarly challenges the sentence of life without the possibility of parole for youth for non-violent offenses and for murder when it is a mandatory and not individualized basis as is the issue in the matter before this court.

### **Statement of Interest By Chance For Life**

Chance for Life is a non-profit community service organization that has provided a successful prison-based program since 1999. Proven to reduce violent incidents, Chance for Life also provides victim sensitivity counseling to bring about healing for both the victim and the offender. The prison-based program selects prisoners to participate in a long term training program which consists of mediation and conflict resolution, critical thinking, communication skills building, etc. Proven to reduce prison incidents by almost 40%, Chance for Life also provides skill training to prisoners re-entering society to enhance the ability of ex-offenders to be successful after leaving prison.

### **Statement of Interest By Families of Murdered Children Support Group**

Families of Murdered Children Support Group (FMCSG) in Flint, Michigan is a collection of families who have lost their children to violence. Believing no parent should ever

have to bury their child, FMCSG has support meetings for families, runs a safe kids junior and senior program for children who have lost their victim siblings, and provide a forum for families to come together to grieve and heal. FMCSG's aim is to provide support, crisis intervention, information, contact with similarly bereaved persons, communication with professionals, and contact with other survivors. FMCSG works every day to sensitize society-at-large to the problems faced by survivors.

#### **Statement of Interest By Prison Fellowship Ministries**

Prison Fellowship Ministries, founded by the late Chuck Colson, believes no one is beyond the reach of God's power and that every life can be transformed through the love and grace of Jesus Christ. This transformation and the road to restoration require offenders to accept responsibility for the wrongs they have committed and the resulting harm. When offenders' experience in the justice system is simply a game of legal maneuvering and victims are treated as onlookers, it can undermine this sense of responsibility. It is the state that provides justice, but only the victim who has the ability to meaningfully bestow mercy. The life without parole sentences mandatorily imposed on juveniles prior to Miller effectively made victims' "impact statements" lip-service. No possibility for actual impact exists when there is only one possible sentence predetermined by the state. Prison Fellowship Ministries believes it is due time to remove the muzzle and control imposed by the state and allow all victims to have a meaningful voice.

**IN THE MICHIGAN SUPREME COURT**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAYMOND CURTIS CARP,

Defendant-Appellant.

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Lower Court No.: 06-001700-FC

Court of Appeals No.: 307758

Supreme Court No: 146478

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CORTEZ ROLAND DAVIS,

Defendant-Appellant.

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Lower Court No.: 94-002089-01-FC

Court of Appeals No.: 314080

Supreme Court No: 146819

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAKOTAH WOLFGANG ELIASON,

Defendant-Appellant.

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Lower Court No.: 2010-0015309-FC

Court of Appeals No.: 302353

Supreme Court No: 147428

**PROOF OF SERVICE**

**RECEIVED**

FEB 18 2014

APPELLATE DEFENDER OFFICE

The undersigned attorney certifies that on February 14, 2014, she caused the **Brief of Amicus Curie Victims and Victims' Rights Organizations as well as the Motion For Leave To File The Brief of Amicus Curie** to be served, via Federal Express, upon the following:

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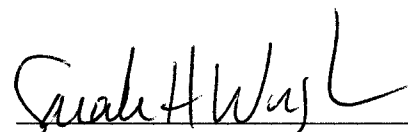
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