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NO. 94556-0

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Petitioner,

v.

BRIAN BASSETT,

Respondent.

BRIEF OF FRED T. KOREMATSU CENTER FOR LAW AND EQUALITY, COLUMBIA LEGAL SERVICES, TEAMCHILD, AND WASHINGTON DEFENDER ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

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STATEMENT OF IDENTITY AND INTEREST OF *AMICI CURIAE*

The identity and interest of *Amici* are set forth in the Motion for Leave to File that accompanies this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

Our state constitution robustly protects against cruel punishment, *State v. Witherspoon*, 180 Wn.2d 875, 887, 329 P.3d 888 (2014), and implicit in that protection is the continuing duty of Washington courts to develop article I, section 14 jurisprudence to ensure that it remains more protective than the Eighth Amendment. Under the Eighth Amendment, life without the possibility of parole for a juvenile offender is constitutional only in the "rarest" of cases. *Montgomery v. Louisiana*, 577 U.S. __, 136 S. Ct. 718, 726, 193 L. Ed. 2d 599 (2016), *as revised* (Jan. 27, 2016). As the Court of Appeals rightly recognized, the identification of those "rare" cases is not only next to impossible, but creates an unconstitutional risk of cruel punishment: "[i]n light of the speculative and uncertain nature of the *Miller* analysis, the *Miller*-fix statute creates a risk of misidentifying juveniles with hope of rehabilitation for those who are irretrievably corrupt. That is unacceptable under our State's cruel punishment proscription." *State v. Bassett*, 198 Wn. App. 714, ¶ 61, 349 P.3d 430 (2017), *review granted*, 402 P.3d 827 (2017). The Court of Appeals'

adoption of a categorical bar against juvenile life without parole is both a necessary and logical progression of Washington's robust protection against cruel punishment.

This Court should affirm the adoption of the categorical bar against juvenile life without parole for two reasons, each of which is sufficient on its own to uphold the Court of Appeals. First, the Court of Appeals explicitly acknowledged that Washington's cruel punishment jurisprudence needs to evolve beyond the proportionality analysis under *State v. Fain*, 94 Wn.2d 387, 617 P.2d 720 (1980), which is ill-suited to the inquiry of whether juvenile life without parole is ever constitutional. Rather than continue to rely on the *Fain* proportionality analysis, which is a test designed to examine idiosyncratic facts on a case-by-case basis rather than consider the constitutionality of an entire category of punishment as it relates to juveniles, the Court of Appeals adopted the categorical bar to establish that juvenile life without parole is *never* constitutional.

Second, employing a *Gunwall*[1] analysis as an interpretive tool to aid development of state constitutional jurisprudence, *amici* demonstrate that the Court of Appeals' adoption of the categorical bar represents a

[1] *State v. Gunwall*, 106 Wn.2d 54, 720 P.2d 808 (1986).

principled development of Washington's cruel punishment jurisprudence.[2] A formal *Gunwall* analysis, although unnecessary, demonstrates that the categorical bar is the only meaningful way to ensure heightened protection against cruel punishment to juvenile offenders charged with homicide, and that this Court's extension of Eighth Amendment jurisprudence beyond its formal holdings supports the explicit adoption of the categorical bar under article I, section 14. These, as well as other factors, compel this Court to uphold the categorical bar against juvenile life without parole.

I. THE COURT OF APPEALS PROPERLY RECOGNIZED THAT A CATEGORICAL BAR ANALYSIS, RATHER THAN THE *FAIN* PROPORTIONALITY ANALYSIS, IS THE APPROPRIATE TEST FOR ASSESSING THE CONSTITUTIONALITY OF JUVENILE LIFE WITHOUT PAROLE.

Fain's proportionality test is neither the only nor the controlling cruel punishment analysis in Washington. Nor is the categorical bar an

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[2] In *State v. Ramos*, this Court declined to consider Mr. Ramos's arguments about the constitutionality of juvenile life without parole (and juvenile life without parole equivalents) under article I, section 14, due to inadequate briefing. 187 Wn.2d 420, 453–55, 387 P.3d 650 (2017), *as amended* (Feb. 22, 2017), *reconsideration denied* (Feb. 23, 2017), *cert. denied*, No. 16-9363, 2017 WL 2342671 (U.S. Nov. 27, 2017). *Amici* in *Ramos* requested this Court to consider a categorical bar against juvenile life without parole, but this Court similarly declined, because "they do not specifically analyze the factors we have established for determining whether a sentence violates the Washington Constitution." *Id.* ¶ 61. Importantly, however, this Court did "not foreclose the possibility that [it] may reach a similar conclusion [that the Washington Constitution categorically bars juvenile life without parole] in a future case, but the briefing here does not adequately explain why we must do so as a matter of Washington constitutional law." *Id.*

Here, the propriety of the categorical bar is squarely presented by the Court of Appeals' decision. And, even though the Court of Appeals did not conduct a formal *Gunwall* analysis, it functionally considered the *Gunwall* factors—and *amici* here frame the Court of Appeal's analysis into a formal *Gunwall* analysis.

analysis foreign to Washington that ignores binding precedent, as the State suggests. Suppl. Br. of Pet'r at 15-17; Pet. for Rev. at 11–12. As the Court of Appeals correctly noted, both article I, section 14 and the Eighth Amendment have dual analyses, as they "proscribe[] disproportionate sentencing *in addition to certain modes of punishment*." *Bassett*, 198 Wn. App. at 733 (quoting *State v. Manussier*, 129 Wn.2d 652, 676, 921 P.2d 473 (1996) (emphasis added by *Bassett* court); *see also Ramos*, 187 Wn.2d at 455 (declining to address the categorical bar on juvenile life without parole, but noting "[w]e do not foreclose the possibility that this court may reach [that] conclusion in a future case").

Fain proportionality analysis considers whether a particular punishment is disproportionate to the crime. 94 Wn.2d at 397–401. That four-factor test examines 1) the nature of the offense, 2) the legislative purpose behind the statute, 3) the punishment the defendant would have received in other jurisdictions for the same offense, and 4) the punishment meted out for other offenses in the same jurisdiction. *Id.*; *cf. State v. Rivers*, 129 Wn.2d 697, 713, 921 P.2d 495 (1996) (replacing the second factor with "the legislative purpose behind the statute" when the test is used outside the habitual offender context).

Proportionality analysis considers the crime and the sentence, but does not take into account the *offender*, as required by *Miller*. *Miller v.*

Alabama, 567 U.S. 460, 470–79, 132 S. Ct. 2455, 138 L. Ed. 2d 407 (2012) (holding that mandatory juvenile life without parole violates the Eighth Amendment, and recognizing that juveniles have diminished culpability and greater prospects for reform). Consequently, courts must now consider the mitigating qualities of youth during sentencing. *Id.* at 476–80. Thus, if *Miller* is to have any meaning, courts must consider a juvenile's youth when determining the constitutionality of his or her sentence. Because *Fain* proportionality analysis does not allow for consideration of the mitigating qualities of youth, applying this analysis to juvenile life without parole sentences would violate *Miller* and the Eighth Amendment, in addition to article I, section 14.

Washington courts are not constrained to *Fain* proportionality analysis if another analysis is more appropriate, as the categorical bar is here. In contrast to *Fain* proportionality analysis, a categorical bar analysis determines whether a particular punishment against a certain class of people is constitutionally barred given the nature of the offense or the characteristics of that class of offenders. *State v. Schmeling*, 191 Wn. App. 795, 799, 365 P.3d 202 (2015). This two-step analysis considers 1) whether there is a national consensus against the sentencing practice at issue, and 2) the independent judgement of the court, based on its precedent, as to whether the punishment is unconstitutional. *See id.* at

799–800. In "exercising independent judgment, we consider 'the culpability of the offenders at issue in light of their crimes and characteristics, along with the severity of the punishment in question.'" *Bassett*, 198 Wn. App. ¶ 32 (quoting *State v. Lyle*, 854 N.W.2d 378, 386 (Iowa 2014) (quoting *Graham v. Florida*, 560 U.S. 48, 67 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010)).

Thus, between the two tests, only the categorical bar analysis provides a workable, relevant test for determining whether juvenile life without parole sentences constitute cruel punishment because it allows for consideration of youth. The Court of Appeals neither "abandoned" nor is "bound" to *Fain.* Pet. for Rev. at 12, 15; *see also* Suppl. Br. of Pet'r at 15 (arguing that a cruel punishment claim "must proceed under the framework set out in *Fain*"). Rather, the Court of Appeals adopted a categorical bar analysis, recognized in Washington, that more effectively implements *Miller*'s central proposition that juveniles, as a class, are constitutionally different. *Amici* urge this Court to affirm the Court of Appeals' adoption of a categorical bar against juvenile life without parole.

II. EVEN THOUGH A *GUNWALL* ANALYSIS IS NOT REQUIRED TO ESTABLISH THAT ARTICLE I, SECTION 14 IS MORE PROTECTIVE THAN THE EIGHTH AMENDMENT IN THE JUVENILE SENTENCING CONTEXT, THE *GUNWALL* FACTORS SUPPORT ADOPTION OF THE CATEGORICAL BAR AGAINST JUVENILE LIFE WITHOUT PAROLE.

Since this Court in *Fain* declared article I, section 14 to be more protective than the Eighth Amendment, 94 Wn.2d at 392–93, Washington courts have continued to so hold in a variety of sentencing contexts.[3] Thus,

[3] For persistent offender cases, see *State v. Witherspoon*, 180 Wn.2d 875, 887, 329 P.3d 888 (2014); *State v. Manussier*, 129 Wn.2d 652, 674, 921 P.2d 473 (1996); *State v. Rivers*, 129 Wn.2d 697, 712, 921 P.2d 495 (1996); *State v. Thorne*, 129 Wn.2d 736, 772, 921 P.2d 514 (1996). For death penalty cases, see *State v. Roberts*, 142 Wn.2d 471, 506, 14 P.3d 713 (2000); *State v. Bartholomew*, 101 Wn.2d 631, 639, 683 P.2d 1079 (1984). For consecutive sentences, see *Wahleithner v. Thompson*, 134 Wn. App. 931, 936, 143 P.3d 321 (Div. I 2006). For cases indirectly supporting the conclusion that article I, section 14 provides greater protection than the Eighth Amendment, see *In re Rupe*, 115 Wn.2d 379, 396 n.5, 798 P.2d 780 (1990) (in the death penalty context, noting article I, section 14's greater protection); *In re Johnston*, 99 Wn.2d 466, 478, 663 P.2d 457 (1983) (in a medical license denial case, citing *Fain* as an example of article I, section 14 providing broader protection than the Eighth Amendment); *State v. Grenning*, 142 Wn. App. 518, 545–46, 174 P.3d 706 (Div. II 2008) (performing a *Fain* analysis in the consecutive and concurrent sentencing context to determine whether the sentence violated article I, section 14 and the Eighth Amendment); *In re Haynes*, 100 Wn. App. 366, 375–76, 996 P.2d 637 (Div. I 2000) (in the exceptional sentencing context, indirectly affirming the proposition by performing a *Fain* analysis to determine whether the sentence violated both article I, section 14 and the Eighth Amendment).

Immediately post-*Fain*, the Washington Court of Appeals inconsistently or improperly applied the *Fain* analysis, occasionally construing article I, section 14 as coextensive with the Eighth Amendment. *See, e.g.*, *State v. Bowen*, 51 Wn. App. 42, 47–48, 751 P.2d 1226 (1988) (equating proportionality analysis under article I, section 14 with proportionality analysis under the Eighth Amendment); *State v. Creekmore,* 55 Wn. App. 852, 870–72, 783 P.2d 1068 (1989) (citing *Bowen*, 51 Wn. App. at 47) (stating that article I, section 14 and the Eighth Amendment are given essentially identical treatment). However, the clarity of this Court's holdings in *Manussier*, *Rivers*, and *Thorne* cast doubt upon the Court of Appeals' analysis in *Bowen* and *Creekmore*, and the Court of Appeals since *Bowen* and *Creekmore* has articulated article I, section 14's heightened protection. *State v. Hart*, 188 Wn. App. 453, 461, 353 P.3d 253 (Div. III 2015); *State v. Flores*, 114 Wn. App. 218, 223, 56 P.3d 622 (Div. I 2002); *State v. Gimarelli*, 105 Wn. App. 370, 380, 20 P.3d 430 (Div. II 2001); *State v. Morin*, 100 Wn. App. 25, 29, 995 P.2d 113 (Div. I 2000); *State v. Ames*, 89 Wn. App. 702, 709 n.8, 950 P.2d 514 (Div. I 1998).

when article I, section 14 is invoked in a new context, the material inquiry is not *whether* the provision affords broader protection than the Eighth Amendment, but *how* the provision affords broader protection in this new context. *See Blomstrom v. Tripp*, __Wn.2d__, 402 P.3d 831, 842–43 (2017) (noting that article I, section 7 provides more robust protection than the Fourth Amendment and then utilizing the *Gunwall* factors to establish the nature of the heightened protection in the new context of privacy rights of pretrial detainees). Therefore, a *Gunwall* analysis is not required to invoke the protection of article I, section 14. *City of Woodinville v. Northshore United Church of Christ*, 166 Wn.2d 633, 642, 211 P.3d 406 (2009) (a *Gunwall* analysis is a helpful standard on briefing, not a doctrine controlling judicial decision-making).

Nevertheless, the *Gunwall* factors are useful interpretive tools for defining the nature of the heightened protection against cruel punishment. *See* Hugh D. Spitzer, *New Life for the "Criteria Tests" in State Constitutional Jurisprudence: "Gunwall is Dead—Long Live Gunwall!"*, 37 Rutgers L.J. 1169, 1183 (2006). *Amici* provide a *Gunwall* analysis here to demonstrate that (1) a categorical bar against juvenile life without parole is a logical, necessary, and well-supported development in article I, section 14 jurisprudence, and (2) the Court of Appeals functionally analyzed many of the *Gunwall* factors even if it did not explicitly label its

analysis according to the *Gunwall* rubric.[4] *See* Cross Pet. for Rev. at 2 n.1; Suppl. Br. of Resp't at 9-11; Supp. Br. of Pet'r at 10-15.

A. Factors One and Two: Plain Language and Differences Between Federal and State Provisions

While Washington courts almost uniformly agree that article I, section 14 is more protective than the Eighth Amendment, *supra* note 3, they have not relied heavily on a textual analysis of the two constitutional provisions. Nevertheless, the two provisions are textually different. Factor one considers the plain language of the statute, and factor two considers the differences between analogous federal and state constitutional provisions. Washington's cruel punishment clause reads "Excessive bail shall not be required, excessive fines imposed, nor cruel punishment inflicted." Const. art. I, § 14. The federal constitution's Eighth Amendment is the analogous provision to article I, section 14 and reads "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. XIII.

Washington's provision is similar to the Eighth Amendment, but lacks the words "and unusual." This Court in *State v. Dodd*—one of the

[4] The *Gunwall* factors are non-exclusive and include: 1) the textual language of the Washington constitution; 2) significant changes in the text of the Washington constitution and parallel federal provisions; 3) State Constitutional and common law history; 4) preexisting state law; 5) differences in structure between the state and federal constitution; and 6) matters of state interest or local concern. *Gunwall*, 106 Wn.2d. at 61-62.

few cases to analyze the textual factors in the article I, section 14 context—notes the text of the state provision, banning all cruel punishment, is broader than the Eighth Amendment, which protects against punishment only if it was both cruel *and* unusual. 120 Wn.2d 1, 21, 838 P.2d 86 (1992). The rest of the *Gunwall* analysis in *Dodd* is inapplicable to this case. *See* Suppl. Br. of Pet'r at 11-13 (erroneously suggesting that this Court be guided by the *Dodd* court's pronouncement that the *Gunwall* factors do not demand article I, section 14 to be interpreted more broadly than the Eighth Amendment).[5]

B. Factor Three: Constitutional and Common Law History

The categorical bar is the only meaningful way to ensure heightened protection against cruel punishment to juvenile offenders charged with homicide. In reaching this conclusion, the Court of Appeals

[5] The Court in *Dodd* determined that article I, section 14 did not extend greater protection than the Eighth Amendment within the narrow context of whether a capital defendant can waive general appellate review. 120 Wn.2d at 21; *see also Manussier*, 129 Wn.2d at 674 n.89 (explicitly limiting *Dodd* as applicable only to its narrow context). When *Dodd* is considered alongside post-*Dodd* death penalty cases that hold article I, section 14 to be more protective, *see, e.g.*, *Roberts*, 142 Wn.2d 471, it is beyond dispute that *Dodd* and the few cases that rely on *Dodd* are outliers. *See In re Cross*, 180 Wn.2d 664, 731, 327 P.3d 660 (2014) (quoting *Dodd*, 120 Wn.2d at 22) (dismissing Cross's arguments that chapter 10.95 RCW violates article I, section 14 by relying on *Dodd* for the larger proposition that the *Gunwall* factors do not demand that article I, section 14 be interpreted more broadly than the Eighth Amendment); *State v. Yates*, 161 Wn.2d 714, 792, 168 P.3d 359 (2007) (citing *Dodd*, 120 Wn.2d at 22) (relying on *Dodd*'s statement that *Gunwall* factors do not demand that article I, section 14 be interpreted more broadly than the Eighth Amendment in dismissing Yates' much broader argument that Chapter 10.95 RCW is arbitrary and thus violates article I, section 14, when *Dodd* examined only whether article I, section 14 provided greater protection regarding waiver of appeal).

carefully analyzed article I, section 14 common law and determined that *Fain*'s proportionality test is ill-suited to analyzing whether juvenile life without parole is ever a constitutional punishment. As the Court of Appeals noted, the first *Fain* factor focuses on the characteristics of the crime, and not, as *Miller* requires, on the mitigating qualities that flow from the offender's youth. *Bassett*, 198 Wn. App. at 738 (citing *Fain*, 94 Wn.2d at 397-98). The Court of Appeals similarly noted that the fourth *Fain* factor, which considers the punishment meted out in other jurisdictions, conflicts with *Miller* because it "allows comparison with the punishment for *adult* offenders who commit the same crimes." *Id*. (emphasis in original). Because *Fain* does not properly consider youth, it cannot be the appropriate analysis.

Recognizing that *Fain* proportionality analysis would comply with neither the Eighth Amendment nor article I, section 14 in the juvenile life without parole context, the Court of Appeals had to "make an independent judgment of whether the punishment in question violates our State's cruel punishment proscription." *Id.* ¶ 57. The independent judgment of whether article I, section 14 categorically prohibits juvenile life without parole demands consideration of whether courts might be *actually capable* of considering the mitigating characteristics of youth as mandated by *Miller* and *Montgomery*.

The Court of Appeals was gravely concerned that sentencing courts would "misidentify[] juveniles with hope of rehabilitation for those who are irretrievably corrupt." *Bassett*, 198 Wn. App. ¶ 61. The "factors identified in *Miller* provide little guidance for a sentencing court and do not alleviate the unacceptable risk identified." *Id.*

> [Consideration of] the offender's family and home environment ... is ... fraught with risks. For example, what significance should a sentencing court attach to a juvenile offender's stable home environment? Would the fact that the adolescent offender failed to benefit from a comparatively positive home environment suggest he or she is irreparable and an unlikely candidate for rehabilitation? Or conversely, would the offender's experience with a stable home environment suggest that his or her character and personality have not been irreparably damaged and prospects for rehabilitation are therefore greater? ...
>
> A similar quandary faces courts sentencing juvenile offenders who have experienced horrendous abuse and neglect or otherwise have been deprived of a stable home environment. Should the offenders' resulting profound character deficits and deep-seated wounds count against the prospects for rehabilitation and in favor of life-without-the-possibility-of-parole sentences under the *Miller* framework? Or should sentencing courts view the deprivation of a stable home environment as a contraindication for life without the possibility of parole because only time will tell whether maturation will come with age and treatment in a structured environment?

Id. (quoting *State v. Sweet*, 879 N.W.2d 811, 838 (Iowa 2016)). Thus, the Court of Appeals recognized that only a categorical bar on juvenile life without parole could mitigate the risk that a juvenile whose crimes do not reflect "permanent incorrigibility," *Montgomery*, 136 S. Ct. at 734, might be sentenced to die in prison.

C. Factor Four: Preexisting State Law

Factor four considers whether "previously established bodies of state law…bear upon the granting of distinctive state constitutional rights." Hugh D. Spitzer, *Which Constitution? Eleven Years of* Gunwall *in Washington State*, 21 Seattle U. L. Rev. 1187, 1214 (1998). Preexisting Washington law has consistently extended greater consideration of the characteristics of youth in the sentencing context than is required by federal law. The Court of Appeals carefully examined this Court's juvenile sentencing jurisprudence,[6] consistent with the scope of the fourth *Gunwall* factor, and concluded that an "examination of our precedent illustrates that our Supreme Court has adopted and applied *Miller*'s reasoning beyond its holding….Washington's jurisprudence has embraced the reasoning of *Miller*, *Roper*, and *Graham* and has built upon it and extended its principles." *Bassett*, 198 Wn. App. at 737 (internal citations omitted).

This Court has consistently extended *Miller*'s "children are different" principles to protect juveniles in the sentencing context. In *Ramos*, this Court logically extended *Miller* to apply to *de facto* life

[6] Because none of this Court's recent juvenile sentencing decisions have been explicitly based on article I, section 14, this Court's decisions are treated under factor 4 (preexisting state law), rather than factor 3 (common law interpreting the particular constitutional provision in question).

sentences because "[w]hether that sentence is for a single crime or an aggregated sentence for multiple crimes, we cannot ignore that the practical result is the same." *Ramos*, 187 Wn.2d at 438; *Bassett*, 198 Wn. App. ¶ 45 (analyzing *Ramos*, 187 Wn.2d at 438).[7] The *Ramos* court also explicitly acknowledged that *Miller*'s reasoning applies with equal force to multiple homicides as it does to single homicides: "[N]othing about *Miller* suggests its individualized sentencing requirement is limited to single homicides because 'the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, *even when they commit terrible crimes*.'" *Ramos*, 187 Wn.2d at 438 (citing *Miller*, 132 S. Ct. at 2465) (emphasis added in *Ramos*); *Bassett*, 198 Wn. App. ¶ 45 (quoting *Ramos*, 187 Wn.2d at 438).

In *State v. O'Dell*, this Court further extended *Miller* when it allowed the youth of an adult offender to be considered as a justification for departures below the standard sentencing range, in recognition that the juvenile brain is not fully developed by the age of eighteen. 183 Wn.2d 680, 688–98, 358 P.3d 359 (2015); *Bassett*, 198 Wn. App. ¶ 46 (discussing *O'Dell*). In *State v. Houston-Sconiers*, this Court expanded

[7] Because this Court held previously in *Ramos*, 187 Wn.2d at 438-39, that Washington courts must treat *de facto* juvenile life without parole sentences as they do actual life without parole sentences, it follows both naturally and necessarily that *de facto* juvenile life without parole sentences are also categorically barred. *Amici* urge this Court to so explicitly hold.

Miller even further when it declared that for courts to fully address the mitigating qualities of youth, courts need absolute discretion to depart from sentencing guidelines and any other mandatory sentencing enhancements when sentencing juveniles in adult court. 188 Wn.2d 1, 21, 391 P.3d 409 (2017); *Bassett*, 198 Wn. App. ¶ 47 (discussing *Houston-Sconiers*).

While neither *Ramos*, *O'Dell*, nor *Houston-Sconiers* was explicitly based on article I, section 14, this Court has demonstrated its commitment to expand Eighth Amendment jurisprudence beyond its formal holdings. Thus, even though this Court has not explicitly addressed how article I, section 14 is more protective in the juvenile sentencing context, it has fully embraced the precept that "children are constitutionally different" and acted to address the significant risks of applying adult sentencing procedures to juveniles. This Court's extension of Eighth Amendment jurisprudence beyond its formal holdings supports the explicit adoption of the categorical bar under article I, section 14.

D. Factor five: Structural Differences Between State and Federal Constitutions

The fifth *Gunwall* factor always supports an independent state constitutional analysis because "the federal constitution is a grant of power

from the states, while the state constitution represents a limitation of the State's power." *State v. Young*, 123 Wn.2d 173, 180, 867 P.2d 593 (1994).

E. Factor Six: Matters of State and Local Concern

Factor six requires Washington courts to determine "whether the right claimed, in the context of the particular case before us, is a matter of such singular state interest or local concern that our constitution should be interpreted independently of the federal constitution." *State v. Foster*, 135 Wn.2d 441, 461, 957 P.2d 712 (1998). State criminal sentencing is a matter of local concern, as is the conduct of criminal trials generally. *See State v. Smith*, 150 Wn.2d 135, 152, 75 P.3d 934 (2003) (right to jury trial in criminal prosecution is a matter of local concern, rejecting State's argument that the right to a jury trial is generally a concern to litigants nationally).

CONCLUSION

Amici respectfully suggest that Mr. Bassett's case is the appropriate moment to bar juvenile life without parole, given the careful analysis of the Court of Appeals and the robust briefing on state constitutional issues. More fundamentally, Mr. Bassett's case gives this Court the opportunity to engage in principled development of Washington's constitution, placing its juvenile justice jurisprudence soundly within our state constitution's protection against cruel

punishment. *See Michigan v. Long*, 463 U.S. 1032, 1041-42, 103 S. Ct. 3469, 77 L. Ed. 2d 1201 (1983).

RESPECTFULLY SUBMITTED this 8th day of January, 2018.

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DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington, that on January 8, 2018, the forgoing document was electronically filed with the Washington State's Appellate Court Portal, which will send notification of such filing to all attorneys of record.

Signed in Seattle, Washington, this 8th day of January, 2018.

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