ORIGINAL

IN THE SUPREME COURT OF OHIO

State of Ohio, Plaintiff-Appellee, v. Eric Long, Defendant-Appellant.	Case No. 2012-1410 On discretionary appeal from the Hamilton County Court of Appeals First Appellat District, No. C-110160

BRIEF OF *AMICUS CURIAE* NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS IN SUPPORT OF DEFENDANT-APPELLANT

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I. Introduction

The United States Supreme Court has held unequivocally that "youth matters," and that children are categorically different from adults for purposes of criminal sentencing. For this reason, before condemning a child to die in prison by imposing a sentence of life without the possibility of parole, a court is required by the Eighth Amendment to the United States Constitution to consider the child's youth and attendant circumstances as mitigating factors. *Miller v. Alabama*, 132 S. Ct. 2455 (2012).

Eric Long did not receive that constitutionally mandated treatment. Nothing in the record indicates that the trial judge – who sentenced Eric before *Miller* was decided, and thus did not have the benefit of the Supreme Court's latest pronouncements regarding the constitutional significance of his youth – considered his age at all. For this reason alone, Eric's sentence should be invalidated.

Moreover, this Court has previously held that Article I, Section 9 of the Ohio Constitution provides unique and independent protection against cruel and unusual punishments, and that children are categorically less culpable than adults. *Amicus curiae* NACDL urges this Court to vindicate those principles by holding that the Ohio Constitution categorically prohibits imposition of a life without parole sentence on any juvenile offender.

II. Statement of Interest of *Amicus Curiae* National Association of Criminal Defense Lawyers

Amicus curiae National Association of Criminal Defense Lawyers (NACDL) is a nonprofit voluntary professional bar association that works on behalf of criminal defense attorneys to ensure justice and due process for those accused of crime or misconduct. NACDL was founded in 1958. It has a nationwide membership of approximately 10,000, including private criminal defense lawyers, public defenders, military defense counsel, law professors, and judges. NACDL is the only nationwide professional bar association for public defenders and private criminal defense lawyers.

NACDL files numerous amicus briefs each year in the United States Supreme Court and other courts, in cases that present issues of broad importance to criminal defendants, criminal defense lawyers, and the criminal justice system as a whole. In particular, NACDL has a long-standing institutional commitment to rational and humane sentencing practices that affirm the dignity of the individual, and files amicus briefs in cases which – like the case of Eric Long – directly implicate those concerns.

III. The Eighth Amendment To The United States Constitution Requires That This Case Be Remanded For Individualized Consideration Of The "Distinctive Attributes Of Youth"

A. The Supreme Court Has Held that Children Are Constitutionally Different from Adults and Cannot Be Sentenced to Life Without Parole Unless Age Is Taken into Account

The trial court conducted its sentencing hearing in Eric Long's case on March 3, 2011. On June 25, 2012 – eight days before the Court of Appeals issued the decision from which this appeal is taken – the United States Supreme Court decided the case of *Miller v. Alabama*, 132 S. Ct. 2455 (2012).

Miller addressed appeals from two 14-year-old offenders, one from Alabama and the other from Arkansas, who were convicted of murder and sentenced to life in prison without the possibility of parole ("LWOP"). In each case, state law mandated the LWOP sentence, denying judge and jury any discretion to impose a lesser sentence after considering mitigating factors including the youth of the offenders. The Supreme Court invalidated the sentences, holding that mandatory LWOP sentences for defendants who were under 18 at the time of their crimes violates the prohibition on cruel and unusual punishments contained in the Eighth Amendment to the United States Constitution.

The Court reached this result by tracing two different lines of precedent. The first, the "proportionality" cases, adopt categorical bans where there is a "mismatch" between a class of offenders and imposition of a particular penalty. *See Miller*, 132 S. Ct. at 2463. These cases are founded on the principle that "it is

a precept of justice that punishment for crime should be graduated and proportioned to offense." *Weems v. United States*, 217 U.S. 349, 367 (1910); *see also Atkins v. Virginia*, 536 U.S. 304, 311 (2002).

In particular, the *Miller* Court relied on two cases which determined that certain penalties for juvenile offenders were categorically disproportionate. In *Roper v. Simmons*, 543 U.S. 551 (2005), the Supreme Court held that the death penalty is unconstitutional as applied to all offenders under the age of 18. The Court noted that because of the significant differences between children and adults – including their immaturity, recklessness, vulnerability to peer pressure, and still-developing personality traits – children "cannot with reliability be classified among the worst offenders." *Id.* at 569. "The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character." *Id.* at 570. The Court concluded that the death penalty was, by definition and as a matter of law in all cases, disproportionate punishment for juvenile offenders.

Graham v. Florida, 130 S. Ct. 2011 (2010), followed *Roper* in holding that juvenile offenders cannot be given a LWOP sentence for any crime other than homicide. The Court reaffirmed *Roper*'s findings regarding the nature of children as compared with adults and noted, "Life without parole is an especially harsh punishment for a juvenile." *Id.* at 2028. The Court imposed a categorical ban on

LWOP sentences for juvenile non-homicide offenders, rejecting the alternative that sentencers simply be directed to take the defendant's age into account. The Court observed that courts might not be able, "with sufficient accuracy, [to] distinguish the few incorrigible juvenile offenders from the many that have the capacity for change." *Id.* at 2032. "Finally," the Court concluded, "a categorical rule gives all juvenile nonhomicide offenders a chance to demonstrate maturity and reform. The juvenile should not be deprived of the opportunity to achieve maturity of judgment and self-recognition of human worth and potential." *Id.*

The *Miller* Court also invoked the line of "individualized sentencing" cases, which grow out of the basic precept that the Eighth Amendment mandates proportionality – that is, the punishment must fit the offense and the offender. *Woodson v. North Carolina*, 428 U.S. 280 (1976), struck down a statute that imposed a mandatory death penalty because it did not permit any consideration of the character and record of the defendant or the circumstances of the crime. *Id.* at 304. Similarly, *Lockett v. Ohio*, 438 U.S. 586 (1978), held that the sentencer in a capital case cannot be precluded from considering, as a mitigating factor, anything about the defendant or the crime that might constitute a basis for a sentence other than death. *Id.* at 604.

Looking at these two strains of precedent together, the *Miller* Court concluded that mandatory LWOP sentences for juveniles violate the Eighth

Amendment. Based on *Roper* and *Graham*, the *Miller* Court held that children are "constitutionally different from adults for purposes of sentencing," and "less deserving of the most severe punishments." 132 S. Ct. at 2464. "Most fundamentally, *Graham* insists that youth matters in determining the appropriateness of a lifetime of incarceration without the possibility of parole." *Id.* Combining the principle that "youth matters" with the constitutional requirement of individualized sentencing, the Court concluded that in any case involving a child and a potential LWOP sentence, the trial court *must* take into account the "offender's age and the wealth of characteristics and circumstances attendant to it." *Id.* at 2467.

B. The Principles of *Miller* Apply Equally Whether the LWOP Sentence Is Mandated or Imposed as a Matter of Discretion

The holding and reasoning of *Miller* do not apply only to mandatory LWOP cases, but rather to any case in which a juvenile defendant is subject to an LWOP sentence. This is clear, in the first instance, from the language of *Miller* itself. The Court noted that *Graham*'s reasoning "implicates *any* life-without-parole sentence imposed on a juvenile." *Id.* at 2465 (emphasis added). The Court did not reach (because it was not necessary) the question whether the Eighth Amendment requires a categorical ban on LWOP for children, but did make the following pointed observations:

> [G]iven all we have said in *Roper*, *Graham*, and this decision about children's diminished culpability and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon. That is especially so because of the great difficulty we noted in *Roper* and *Graham* of distinguishing at this early age between "the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." Although we do not foreclose a sentencer's ability to make that judgment in homicide cases, *we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.*

Id. at 2469 (citation omitted, emphasis added). This language unquestionably implies that in order to comply with constitutional requirements, any sentencing court must take the "distinctive attributes of youth," *id.* at 2465, into account before imposing an LWOP sentence on a child.

This interpretation is consistent with the findings and reasoning of the *Miller* opinion. *Miller* starts from – and reaffirms – the premise that "children are constitutionally different from adults for purposes of sentencing." *Id.* at 2464. As set forth in *Roper* and *Graham*, science and social science establish that there are fundamental differences between the juvenile mind and the adult mind. *Id.*; *see Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982) ("youth is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage."). In light of those differences, juvenile offenders must have the opportunity to demonstrate to the sentencing court that an LWOP sentence would be disproportionate to their crime

– whether because of environmental considerations, family circumstances, personality traits that may be transient, bad judgments due to youth, or any combination of these and similar factors.

Miller establishes that children must be able to put mitigating evidence before the court before they can be sentenced to life without parole. A child sentenced under a discretionary statute must have the same right as a child sentenced under a mandatory statute, to a fully informed and deliberative sentencing process in which the child has a full and fair opportunity to convince his sentencer that his youth warrants providing him with at least a chance for eventual release from prison. To hold that the first defendant has lesser rights under the Eighth Amendment than the second defendant would undermine the principles set forth by the *Miller* Court.

The Florida Court of Appeal followed this logic in holding in 2012 that *Miller* governed an LWOP sentence imposed under a discretionary statute. The defendant in *Daugherty v. State*, 96 So. 3d 1076, 2012 Fla. App. LEXIS 14868 (Ct. App. Fla. 2012), was 17 at the time of his offenses and was sentenced to life in prison without the possibility of parole, although the trial judge had discretion to impose a lesser sentence. *Id.* at 1079. The defendant argued that the trial court had failed adequately to consider his youth. Evidence of his age and other mitigating factors had been introduced, but the trial court – like the court here – did not

expressly consider or address any of the "distinctive attributes of youth." *Id.* at 1080. The Court of Appeal remanded for further consideration, noting that "under *Miller*, judges must take an individualized approach to sentencing juveniles in homicide cases and consider factors which predict whether a juvenile is amenable to reform or beyond salvation." *Id.* at 1079.

In this case, the Court of Appeals correctly noted that Eric Long's LWOP sentence was not mandated by operation of law. The Court of Appeals did not imply, however, that *Miller* is inapplicable to this case, nor would it have been correct to do so. The principles underlying the decision in *Miller* carry equal force whether a child is sentenced to die in prison under a mandatory or a discretionary sentencing scheme.

C. *Miller* and the Supreme Court's Individualized Sentencing Cases Require that the Trial Court Actually Consider and Address the Defendant's Youth

Miller and the Supreme Court's line of cases addressing individualized sentencing requirements make clear that the Constitution requires not just that sentencing courts have the ability to consider mitigating factors, but that they actually do so. *Miller* concludes, "Although we do not foreclose a sentencer's ability to make that judgment [of LWOP] in homicide cases, *we require it to take into account* how children are different." 132 S. Ct. at 2469. As the Supreme Court stated in *Eddings*, "We note that the Oklahoma death penalty statute permits the defendant to present evidence 'as to any mitigating circumstances.' *Lockett*

requires the sentencer to listen." 455 U.S. at 115 n.10 (citation omitted, emphasis added).

Again, the requirement that mitigating factors be taken into account by the sentencer derives from the principle of proportionality. "[I]t is precisely because the punishment should be directly related to the personal culpability of the defendant" that the sentencing judge or jury must consider mitigating evidence; such consideration is essential if the sentencer is to give a "reasoned moral response to the defendant's background, character, and crime." *Penry v. Lynaugh*, 492 U.S. 302, 327-28 (1989) (emphasis omitted); *see also Penry v. Johnson*, 532 U.S. 782, 787 (2001) (reviewing court must be "sure" that the sentencer "fully considered the mitigating evidence as it bore on the broader question of . . . moral culpability"); *cf. Gall v. United States*, 552 U.S. 38, 52 (2007) ("It has been uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue.").

The Eighth Amendment's proportionality principle requires the courts to consider each defendant as a unique and singular moral being, and treat her or him with dignity – even in cases in which that defendant has committed the most heinous of crimes. Consequently, not only does a child have a constitutional right

to present mitigating evidence to the court, but the court has a corresponding constitutional obligation to consider that evidence in making the sentencing determination.

D. The Record Does Not Demonstrate that Eric Long's Age and Attendant Circumstances Were Considered in Making the Decision to Sentence Him to Life Without Parole

The Court of Appeals erred when it held, "The record reflects that the trial court did consider those factors before imposing sentence." The record reflects that the defense argued Eric's youth as a mitigating factor. However, in sentencing Eric together with his two adult co-defendants, the trial judge cited only Eric's "violent history and record" and the three defendants' (undifferentiated) risks of future offenses, "nature and circumstances of these offenses," and "your history, character and condition." The trial judge did *not* expressly consider any of the "mitigating qualities of youth," *Miller*, 132 S. Ct. at 2467, such as:

- Eric's age.
- Eric's culpability relative to his adult co-defendants.
- Eric's circumstances and family background, and the possible effects of family and peer pressures.
- Eric's mental and emotional development.
- Any "incompetencies associated with youth" – for example, Eric's refusal to allow his attorney to negotiate a plea agreement.

See id. at 2467-68.

In addressing similar cases post-*Miller*, other state courts have confirmed

that these kinds of factors must be actively considered by the trial court before sentencing a child to life in prison without parole. *See, e.g., Commonwealth v. Knox*, 2012 PA Super 148, 50 A.3d 749 (Pa. Super. Ct. 2012) ("Our review of *Miller* indicates, at the very least, one must consider a juvenile's age at the time of the offense, his diminished culpability and heightened capacity for change, the circumstances of the crime, the extent of his participation in the crime, his family, home and neighborhood environment, his emotional maturity and development, the extent that familial or peer pressure may have affected him, his past exposure to violence, his drug and alcohol history, his ability to deal with the police, his capacity to assist his attorney, the presence of any drug and/or alcohol problems, his mental health history, and his potential for rehabilitation."); *Bear Cloud v. State*, 2013 WY 18, 294 P.3d 36 (Wyo. 2013) ("To fulfill *Miller*'s requirements, Wyoming's district courts must consider the factors of youth and the nature of the homicide at an individualized sentencing hearing when determining whether to sentence the juvenile offender to life without the possibility of parole," listing factors); *see also State v. Riley*, 140 Conn. App. 1, 58 A.3d 304 (Conn. App. Ct. 2013) (Borden, J., dissenting) (court cannot impose sentence of life without parole on a juvenile without taking into account "the factors that distinguish the juvenile brain from the adult brain regarding the juvenile's diminished culpability and heightened capacity for change" and how those factors "counsel *against* sentencing

the juvenile irrevocably to die in prison") (emphasis original).

> What *Miller* . . . require[s] is that the sentencer, in imposing the harshest possible penalty on a juvenile (i.e., LWOP), consider the offender's youth and the hallmark features of youth that are indicative of lesser culpability and greater capacity for change (compared to adults), and individually consider the offender and the offense. This sentencing process is not an unfamiliar one. Courts have been engaging in like processes for as long as they have been imposing sentences.

People v. Siackasorn, 211 Cal. App. 4th 909, 916 (2012).

"'[J]ust as the chronological age of a minor is itself a relevant mitigating factor of great weight, so must the background and mental and emotional development of a youthful defendant be duly considered' in assessing his culpability." *Miller*, 132 S. Ct. at 2467 (citing *Eddings*, 455 U.S. at 116). None of those factors was considered in Eric's sentencing proceeding. *Miller* teaches that for a child, a sentence of life without parole is analogous to a sentence of death, and cannot constitutionally be imposed without consideration of the defendant's "age and the wealth of characteristics and circumstances attendant to it." *Id.* That consideration simply was not afforded to Eric Long. As a result, his LWOP sentence should be invalidated.

IV. This Court Should, Pursuant to Article I, Section 9 of the Ohio Constitution, Declare a Life Without Parole Sentence Unconstitutional for Any Juvenile Offender

This Court last year declared unconstitutional a punishment for juvenile sex offenders under the Ohio Constitution, stressing that Article I, Section 9 "contains its own prohibition against cruel and unusual punishment [which] provides unique

protection for Ohioans." *In re C.P.*, 131 Ohio St. 3d 513, 529 (2012). This Court reiterated the principle that the "Ohio Constitution is a document of independent force," and it stressed that "state courts are unrestricted in according greater civil liberties and protections to individuals and groups." *Id.* (citing *Arnold v. Cleveland*, 67 Ohio St. 3d 35 (1993)). The instant case presents compelling reasons for this Court to conclude that the "unique protections" of Article I, Section 9 categorically preclude a life without parole sentence for a juvenile offender. *See generally* Jeffrey S. Sutton, *What Does—and Does Not—Ail State Constitutional Law*, 59 U. Kan. L. Rev. 687, 707-13 (2011) (explaining why it is "increasingly difficult to justify" interpreting state constitutional provisions just like parallel federal provisions and asserting that "state courts diminish their constitutions by interpreting them in lockstep with the Federal Constitution"); William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 Harv. L. Rev. 489, 495 (1977) (praising the trend of "more and more state courts ... construing state constitutional counterparts of provisions of the Bill of Rights as guaranteeing citizens of their states even more protection than the federal provisions, even those identically phrased"); Randall T. Shepard, *The Maturing Nature of State Constitution Jurisprudence*, 30 Val. U. L. Rev. 421, 496 (1996) (same).

Ohio's laws have long embraced the wise and well-established perspective

that juveniles are, by virtue of their youth and continuing development, not comparable in responsibility to adults. As this Court explained in its recent discussion of juvenile sentencing procedures, with "regard to the culpability of the offenders, ... Ohio has developed a system for juveniles that assumes that children are not as culpable for their acts as adults." *C.P.*, 131 Ohio St. 3d at 523. This Court stressed that, "not only are juveniles less culpable than adults, their bad acts are less likely to reveal an unredeemable corruptness" and they "are more capable of change than adult offenders." *Id.* at 524. These fundamental principles and uncontestable human realities both suggest and justify an interpretation of Article I, Section 9 of the Ohio Constitution to preclude a life without parole sentence for any Ohio juvenile offender.

This Court's ruling in *C.P.* built, in part, upon the Supreme Court's 2010 *Graham* ruling which highlighted the difficulty for courts "with sufficient accuracy, [to] distinguish the few incorrigible juvenile offenders from the many that have the capacity for change." 130 S. Ct. at 2032. Based on that reality, as noted above, the *Graham* court adopted, for Eighth Amendment purposes, "a *categorical rule* [which] gives all juvenile nonhomicide offenders a chance to demonstrate maturity and reform [because a child] should not be deprived of the opportunity to achieve maturity of judgment and self-recognition of human worth and potential." *Id.* (emphasis added). A principled approach to the "independent

force" and "unique protections" of Article I, Section 9 of the Ohio Constitution should in turn embrace a categorical rule prohibiting LWOP sentences for any juvenile offender: all of Ohio's children, simply by virtue of their tender age and development and no matter the particulars of their conduct, ought not be forever denied at sentencing any future "chance to demonstrate maturity and reform" nor "be deprived of the opportunity to achieve maturity of judgment and self-recognition of human worth and potential." *Id.*

The Supreme Court's recent ruling in *Miller* left open the possibility that, under extreme circumstances and only after an individualized sentencing procedure, it might be constitutional in some "uncommon" cases to impose an LWOP sentence on a juvenile offender. *See* 132 S. Ct. at 2469. In so doing, however, the Supreme Court echoed many factors which this Court emphasized in *C.P.* – *e.g.*, that children are "constitutionally different from adults for purposes of sentencing," and that they "less deserving of the most severe punishments" because of their "lessened culpability and greater capacity for change," *see* 132 S. Ct. at 2460-69 – factors that collectively and necessarily apply to *all* juvenile offenders regardless of the nature of their criminal behavior. In other words, the fundamental and forceful animating principles set forth by this Court in *C.P.* and by the Supreme Court in *Graham* and *Miller* justifies interpreting Article I, Section 9 of the Ohio Constitution to categorically preclude the imposition of a life without

parole sentence on a juvenile offender based on the reality that never can a juvenile offender's culpability be so extreme nor his prospects for change so bleak that he should forever be denied any prospect for any future opportunity for parole.[1]

Importantly, embrace of a categorical sentencing rule based on the "unique protections" set forth in the Article I, Section 9 of the Ohio Constitution will best serve the interests of Ohio given the problematic reality that the U.S. Supreme Court has only opaquely indicated that, as a matter of federal law, it will be "uncommon" for a juvenile life without parole sentence to be constitutional. *See Miller*, 132 S. Ct. at 2469. If this Court were simply to adopt a "lockstep approach" to interpreting Article I, Section 9 in this juvenile sentencing setting, all of Ohio's lower courts, its prosecutors and defense attorneys – not to mention Ohio's General Assembly and the general public – will necessarily be obligated to

[1] Ohio constitutional law concerning political responsibility provides further justification for a *categorical* age-based rule in this setting. Article V, Section 1 of the Ohio Constitution provides that only a person who has reached "the age of eighteen years ... is entitled to vote." By denying *all* Ohio juveniles any right to vote, the Ohio Constitution recognizes as a fundamental principle that all Ohio juveniles, *categorically*, lack the essential maturity and judgment needed to justify a direct role in the election of representatives and in other aspects of democratic self-governing. This reasonable constitutional judgment that *all* Ohio juveniles are not yet sufficiently responsible to have a formal voice in our political process necessarily suggests that *all* Ohio juveniles likewise should be deemed lacking in the maturity and judgment which could justify forever condemning them though a sentence of life without the possibility of parole. *Cf.* Beth A. Colgan, *Constitutional Line Drawing at the Intersection of Childhood and Crime*, ___ Stan. J. of Civil Rights & Civil Liberties ___ (forthcoming 2013) (suggesting why the use of a categorical age-based line set at 18 for various civil rights justifies use of this line in Eighth Amendment jurisprudence), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2215304.

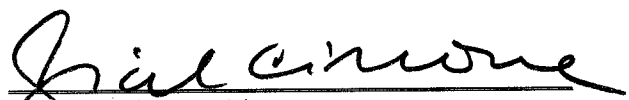
keep guessing (and keep litigating) whether, when and how federal constitutional law allows a particular juvenile offender to be sentenced to life without parole. In other words, adopting a "lockstep approach" to application of Article I, Section 9 in this case will lock Ohio courts and litigants into a hard-to-win federal constitutional guessing game concerning (1) what *substantive factors* of a juvenile's conduct might permit the conclusion that he is so culpable and so irredeemable that he lawfully can be forever denied any prospect for any future opportunity for parole, and (2) what *procedural mechanisms* satisfy the Supreme Court's requirement in *Miller* that the sentencing authority "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." 132 S. Ct. at 2469.

Not surprisingly, the questions left unresolved in *Graham* and *Miller* as to exactly whether, when and how a juvenile offender may, as a matter of federal constitutional law, be sentenced to life without parole have already produced considerable uncertainty and many jurisprudential conflicts in state courts around the nation. *See generally* Douglas A. Berman, Graham *and* Miller *and the Eighth Amendment's Uncertain Future*, Criminal Justice magazine, Winter 2013, at 19; *see also* Craig S. Lerner, *Sentenced To Confusion:* Miller v. Alabama *and the Coming Wave of Eighth Amendment Cases*, 20 Geo. Mason L. Rev. 25 (2012) (highlighting that the *Miller* ruling is "riddled with uncertainties that will spawn

more litigation"). The various challenging jurisprudential issues left unresolved in *Graham* and *Miller* not only create legal difficulties for Ohio's lawyers and judges, but also create a broader uncertainty for criminal defendants and crime victims concerning exactly what sets of punishments can and will be imposed for serious crimes committed by juvenile offenders. Rather than simply adopt the uncertain (and perhaps still evolving) aspects of the Eight Amendment doctrines set out in *Graham* and *Miller*, this Court can and should embrace the most principled and most administrable state constitutional standard by interpreting Article I, Section 9 of the Ohio Constitution to categorically preclude a life without parole sentence for any juvenile offender.

Dated: March 11, 2013

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on March 11, 2013, a true and correct copy of the foregoing BRIEF OF AMICUS CURIAE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS IN SUPPORT OF DEFENDANT-APPELLANT was served on the following parties by mail:

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