COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

MIDDLESEX COUNTY NO. SJC-11454

COMMONWEALTH OF MASSACHUSETTS,
APPELLANT,

v.

MARQUISE BROWN,
APPELLEE.

ON RESERVATION AND REPORT BY THE SINGLE JUSTICE
OF THE COMMONWEALTH'S G. L. c. 211, § 3 PETITION

BRIEF OF JUVENILE LAW CENTER, et al. AS *AMICI CURIAE* ON BEHALF OF APPELLEE

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I. IDENTITY AND INTEREST OF *AMICI CURIAE*

The organizations submitting this brief work on behalf of adolescents in a variety of settings, including adolescents involved in the juvenile and criminal justice systems. *Amici* are advocates and researchers who have a wealth of experience and expertise in providing for the care, treatment, and rehabilitation of youth in the child welfare and justice systems. *Amici* know that youth who enter these systems need extra protection and special care. *Amici* understand from their collective experience that adolescent immaturity manifests itself in ways that implicate culpability, including diminished ability to assess risks, make good decisions, and control impulses. *Amici* also know that a core characteristic of adolescence is the capacity to change and mature. For these reasons, *Amici* believe that youth status separates juvenile and adult offenders in categorical and distinct ways that warrant distinct treatment.

See Appendix of a list and brief description of all *Amici*.

II. SUMMARY OF ARGUMENT

In *Miller v. Alabama*, 567 U.S.___, 132 S. Ct. 2455, 183 L.Ed.2d 407 (2012), the United States Supreme Court held that the mandatory imposition of sentences of life without the possibility of parole on juvenile offenders convicted of murder is unconstitutional. Under Massachusetts law, any juvenile fourteen or older convicted of first degree murder must be sentenced to life without parole. This statutory scheme is now unconstitutional.

In the absence of any action by the legislature, this Court must look to existing statutes to determine what constitutional sentence may be imposed on juveniles convicted of homicide. In Massachusetts, the only constitutional statutory sentence available is the sentence for lesser included offenses. Therefore, this Court should hold that the appropriate remedy for juveniles convicted of first degree murder is to impose the current statutory sentence for the lesser included offense of manslaughter. This approach is consistent with precedent and with adolescent development.

III. ARGUMENT

A. Massachusetts's Mandatory Life Without Parole Sentencing Scheme For Juveniles Convicted Of First Degree Murder Is Unconstitutional Under The United States And Massachusetts Constitutions

In *Miller v. Alabama*, 567 U.S.___, 132 S. Ct. 2455, 2469 (2012), the United States Supreme Court held "that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders." Acknowledging the unique status of juveniles and reaffirming its recent holdings in *Roper v. Simmons*, 543 U.S. 551 (2005), *Graham v. Florida*, 560 U.S. ___, 130 S. Ct. 2011 (2010), and *J.D.B. v. North Carolina*, 564 U.S. ___, 131 S. Ct. 2394 (2011), the Court in *Miller* held that "children are constitutionally different from adults for purposes of sentencing," *id.* at 2464, and therefore the "imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children." *Id.* at 2466.

1. In Holding Mandatory Juvenile Life Sentences Without Parole Unconstitutional, *Miller* Reaffirms The U.S. Supreme Court's Recognition That Children Are Fundamentally Different From Adults And Categorically Less Deserving Of The Harshest Forms Of Punishments

Justice Kagan, writing for the majority in *Miller*, was explicit in articulating the Court's rationale for its holding: the mandatory imposition of sentences of life without parole "prevents those meting out punishment from considering a juvenile's 'lessened culpability' and greater 'capacity for change,' *Graham v. Florida*, 130 S. Ct. 2011, 2026-27, 2029-30 (2010), and runs afoul of our cases' requirement of individualized sentencing for defendants facing the most serious penalties." *Miller* at 2460. The Court grounded its holding "not only on common sense . . . but on science and social science as well," *id.* at 2464, which demonstrate fundamental differences between juveniles and adults. The Court noted "that those [scientific] findings – of transient rashness, proclivity for risk, and inability to assess consequences – both lessened a child's 'moral culpability' and enhanced the prospect that, as the

years go by and neurological development occurs, his 'deficiencies will be reformed.'" *Id.* at 2464-65 (quoting *Graham*, 130 S. Ct., at 2027; *Roper*, 543 U.S. at 570).

In *Graham*, which held that life without parole sentences for juveniles convicted of non-homicide offenses violate the Eighth Amendment, the U.S. Supreme Court found that three essential characteristics distinguish youth from adults for culpability purposes:

> As compared to adults, juveniles have a "lack of maturity and an underdeveloped sense of responsibility"; they "are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure"; and their characters are "not as well formed." *Roper*, 543 U.S. at 569-70. These salient characteristics mean that "[i]t is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." *Id.* at 573. Accordingly, "juvenile offenders cannot with reliability be classified among the worst offenders." *Id.* at 569.

Id. at 2026. The Court concluded that "[a] juvenile is not absolved of responsibility for his actions, but his transgression 'is not as morally reprehensible as

that of an adult.'" *Id.* (quoting *Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988)).

The *Graham* Court found that because the personalities of adolescents are still developing and capable of change, an irrevocable penalty that afforded no opportunity for review was developmentally inappropriate and constitutionally disproportionate. The Court further explained that:

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

Id. at 2026-27. The Court's holding rested largely on the incongruity of imposing a final and irrevocable penalty on an adolescent, who had capacity to change and grow.

The *Graham* Court relied upon an emerging body of research confirming the distinct emotional, psychological and neurological status of youth. The Court clarified that, since *Roper*, "developments in psychology and brain science continue to show

fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence." *Id.* at 2026. Thus, the Court underscored that because juveniles are more likely to be reformed than adults, the "status of the offender" is central to the question of whether a punishment is constitutional. *Id.* at 2027.

Importantly, in *Miller,* the Court found that none of what *Graham* "said about children — about their distinctive (and transitory) mental traits and environmental vulnerabilities — is crime-specific." *Id.* at 2465. The Court thus 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." *Id.*

The U.S. Supreme Court has repeatedly affirmed that a child's age is far "more than a chronological fact"; it bears directly on children's constitutional rights and status in the justice system. *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2403 (2011) (citations omitted). *Miller*, *Graham* and *Roper* enriched the Court's longstanding view of juveniles with

scientific research confirming that youth merit distinctive treatment under the Eighth Amendment. *See, e.g.*, *Roper*, 543 U.S. at 569-70 (examining the social science research demonstrating the unique characteristics of children); *Graham*, 130 S. Ct. at 2026 ("No recent data provide reason to reconsider the Court's observations in *Roper* about the nature of juveniles. . . . [D]evelopments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence."); *Miller*, *132* S. Ct. at 2464 ("Our decisions [in *Roper* and Graham] rested not only on common sense – on what 'any parent knows' – but on science and social science as well."). In *J.D.B.*, the Court reduced to a footnote the social science and cognitive science research cited at length in both *Roper* and *Graham*, stating that "[a]though citation to social science and cognitive science authorities is unnecessary to establish these commonsense propositions [that children are different than adults], the literature confirms what experience bears out." 131 S. Ct. 2403 n.5.

Because of these key differences between children and adults, *Miller* held "that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders," *id.* at 2469, because "[s]uch mandatory penalties, by their nature, preclude a sentencer from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it." *Id.* at 2467. While the Supreme Court left open the possibility that a trial court could impose a life without parole sentence, the Court found that "given all we have said in *Roper*, *Graham*, and [*Miller*] 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*." *Miller*, 132 S. Ct. at 2469 (emphasis added).

2. Massachusetts' Mandatory Life Without Parole Sentencing Scheme For Juvenile Offenders Convicted Of Murder Is Unconstitutional Pursuant To *Miller*

Massachusetts' sentencing scheme mandates that any juvenile offender, age fourteen or older, convicted of first degree murder be sentenced to life without the possibility of parole. *See* G.L. c. 265, §

2 ("Any other person who is guilty of murder in the first degree shall be punished by imprisonment in the state prison for life. . . . No person shall be eligible for parole . . . while he is serving a life sentence for murder in the first degree . . ."); G.L. c. 119, § 74 ("The juvenile court shall not have jurisdiction over a person who had at the time of the offense attained the age of fourteen but not yet attained the age of seventeen who is charged with committing murder in the first or second degree. Complaints and indictments brought against persons for such offenses . . . shall be brought in accordance with the usual course and manner of criminal proceedings.").

When a juvenile offender in Massachusetts is convicted of first degree murder, the sentencer is denied any opportunity to consider factors related to the juvenile's overall level of culpability, as mandated by *Miller*. *Miller* sets forth specific factors that the sentencer, at a minimum, should consider: (1) the juvenile's "chronological age" and related "immaturity, impetuosity, and failure to appreciate risks and consequences;" (2) the juvenile's "family and home environment that surrounds him;" (3) "the

circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him;" (4) the "incompetencies associated with youth" in dealing with law enforcement and a criminal justice system designed for adults; and (5) "the possibility of rehabilitation." *Id.* at 2468. Massachusetts' mandatory sentencing scheme for first degree murder, as applied to juvenile offenders, is therefore unconstitutional and juveniles must be sentenced, or resentenced, pursuant to a constitutional scheme.

3. Life Without Parole For Juvenile Offenders Convicted Of Murder Is Unconstitutional Pursuant To The Massachusetts Constitution

With respect to juvenile sentences, Article 26 of the Declaration of Rights should be interpreted more broadly than the Eighth Amendment of the United States Constitution. Article 26 states that "No magistrate or court of law, shall . . . inflict cruel *or* unusual punishments." Art. 26 of the Declaration of Rights of the Massachusetts Constitution (emphasis added). The U.S. Constitution bans cruel *and* unusual punishments, *see* U.S. Const. amend. VIII, whereas the Massachusetts Constitution is more broad and bans cruel *or* unusual

punishments.[1] While *Miller* left open the possibility that a discretionary life without parole sentence may be permissibly imposed on a juvenile offender, the broader protections of Article 26 mean that such a sentence would be unconstitutional pursuant to the Massachusetts Constitution. Indeed, Massachusetts has a longstanding commitment to providing special protections for minors against the full weight of criminal punishment. *See, e.g., Commonwealth v. A Juvenile*, 389 Mass. 128, 132 (1983) ("These added

[1] A comparison to Michigan is probative. Like Massachusetts' Constitution, the Michigan Constitution bars "cruel *or* unusual punishment," Mich. Const. Art. I, § 16 (emphasis added), as compared to the U.S. Constitution's ban on "cruel *and* unusual punishments." U.S. Const. amend. VIII (emphasis added). The Michigan Supreme Court has interpreted this provision more broadly than the U.S. Constitution's ban on cruel *and* unusual punishment. *See People v. Bullock*, 440 Mich. 15, 31 n.11 (Mich. 1992) ("While the historical record is not sufficiently complete to inform us of the precise rationale behind the original adoption of the present language by the Constitutional Convention of 1850, it seems self-evident that any adjectival phrase in the form 'A *or* B' necessarily encompasses a broader sweep than a phrase in the form 'A *and* B.' The set of punishments which are *either* 'cruel' *or* 'unusual' would seem necessarily broader than the set of punishments which are both 'cruel' *and* 'unusual.'") (emphasis in original). *See also Bear Cloud v. State*, 275 P.3d 377, 396-97 (Wyo. 2012) ("Our state constitution articulates the [cruel or unusual] standard in the disjunctive and the federal constitution in the conjunctive. We have at least tacitly recognized that under our state constitution we will look at the two words individually.")

[*Miranda*] protections [for juveniles] are consistent with our legal system's traditional policy which affords minors a unique and protected status. The law presumes different levels of responsibility for juveniles and adults and, realizing that juveniles frequently lack the capacity to appreciate the consequences of their actions, seeks to protect them from the possible consequences of their immaturity."); *Commonwealth v. Berry*, 410 Mass. 31, 34 (1991) ("where the defendant is a juvenile, courts must proceed with 'special caution' when reviewing purported waivers of constitutional rights").

The Court in *Miller* did not resolve – because it did not need to reach the issue[2] – whether a categorical ban on life without parole for juveniles is required by the Eighth Amendment. To the extent that this remains an open question under the United States Constitution, this Court should clarify that, at a minimum, this ban is required by the Massachusetts Constitution. Because, with respect to

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[2] In *Miller*, the Supreme Court noted that "[b]ecause that holding [that mandatory juvenile life without parole sentences are unconstitutional] is sufficient to decide these cases, we do not consider Jackson's and Miller's alternative argument that the Eighth Amendment requires a categorical bar on life without parole for juveniles." 132 S. Ct. at 2469.

juvenile sentences, Article 26 of the Declaration of Rights should be interpreted more broadly than the Eighth Amendment of the United States Constitution, juvenile life without parole sentences should never be constitutional in the Commonwealth.

B. Marquise Brown Should Be Sentenced Based On The Most Severe Lesser Included Offense Of Manslaughter

Because *Miller* struck down the only statutory sentence that may be imposed upon juveniles convicted of first degree murder - mandatory life without the possibility of parole - Massachusetts currently provides no constitutional sentence for this class of offenders. While the legislature may at some point craft an alternative, constitutional sentence for juvenile offenders in response to *Miller*, this Court must, in the interim, look to existing statutes to determine a constitutional sentence.

The only available constitutional sentencing option is to resentence these juvenile offenders based on the most severe lesser included offense. As argued by Appellee, juvenile offenders convicted of first degree murder should be resentenced in accordance with the sentencing scheme for the lesser included offense

of manslaughter, which carries a maximum term of 20 years.

1. Sentencing Mr. Brown Based On The Most Severe Lesser Included Offense Is Consistent With Precedent That Courts Should Not Legislate

Precedent supports resentencing juveniles convicted of first degree murder to the sentence for the next most severe lesser included offense. It is axiomatic that the role of the court is not to legislate, even where legislation leaves gaps or leads to inconsistency. *See, e.g., Pielech v. Massasoit Greyhound*, 423 Mass. 534, 539 (Mass. 1996)("'We must construe the statutes as they are written'". . . . 'The scope of the authority of this court to interpret and apply statutes is limited by its constitutional role as a judicial, rather than a legislative, body. . . .')(internal citations omitted); *United States v. Jackson*, 390 U.S. 570, 88 S. Ct. 1209, 20 L.Ed.2d 138 (1968) (finding unconstitutional the capital sentencing provision of the federal kidnapping statute but left devising a new procedure to the legislature). The role of this Court is not to devise a new, alternative sentencing scheme; instead it must

interpret the statutes in place to determine a constitutional sentence.[3]

[3] The Commonwealth's proposal that juvenile offenders receive either life with or life without parole is not viable. Even assuming that life without parole is constitutional for juvenile offenders under the Massachusetts Constitution – which *Amici* dispute – this approach would require this Court to create sentencing guidelines such that a lower court would be able to determine when a life without parole statute could be constitutionally imposed, including guidelines that ensure that life without parole sentences be "uncommon," as required by *Miller*. *See Miller*, 132 S. Ct. at 2469 (finding that "given all we have said in *Roper*, *Graham*, and [*Miller*] 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*.") (emphasis added). Creating this sentencing framework falls within the powers of the legislative, not judicial, branch – especially since any new mitigation-based sentencing hearing could involve significant expenditures of public resources for the additional court time and expert fees required. The most analogous model for mitigation-based *Miller* hearings is the mitigation model in capital cases. In these cases, state legislatures have outlined specific procedures for determining when the death penalty may be imposed. *See, e.g.*, 42 Pa. C. S. A. § 9711 (outlining Pennsylvania's sentencing procedures for first degree murder where the death penalty is a possible sentence; in the death penalty context, the legislature specified who should determine the appropriate sentence, what factors the sentencer should consider, what evidence is admissible, and what findings are necessary to impose the severe sentence of death). If the legislature wishes to impose life without parole on juvenile offenders in the wake of *Miller* – assuming such a sentence is constitutional – they, not the courts, must outline the structure of the sentencing hearing, as well as the relevant factors and findings the sentencer should consider.

2. Sentencing Mr. Brown To A Term-Of-Years Sentence Is Consistent With U.S. Supreme Court Precedent And Adolescent Development

Sentencing Mr. Brown based on the lesser included offense of manslaughter is in line with United States Supreme Court precedent in *Roper*, *Graham*, and *Miller* that juveniles are categorically less culpable than adults who commit similar offenses. *See, e.g., Miller* at 2464 (noting that "juveniles have diminished culpability and greater prospects for reform"). In other words, juveniles who commit first degree murder are categorically less culpable than adults who commit first degree murder.

The notion that youthful offenders should be held to a lesser degree of culpability for the same crime committed by an adult is well established in academic literature. As one expert notes:

> In the context of homicide gradations, [] criminal law arrays actors' culpability and blameworthiness along a continuum from a premeditated killer for hire at one end to the minimally responsible actor barely capable of discerning right from wrong at the other end, even though each caused the same harm. . . . Youthfulness affects the actor's abilities to reason instrumentally and freely to choose behavior, and locates an offender closer to the diminished

> responsibility end of the continuum than to the fully autonomous free-willed actor.

Barry C. Feld, *Competence, Culpability and Punishment: Implications of Atkins for Executing and Sentencing Adolescents*, 32 Hofstra L. Rev. 463, 500-501 (2003). Feld further argues, "criminally responsible young offenders deserve less severe penalties than do mature offenders. Every other area of law recognizes that young people have limited judgment, are less competent decision-makers because of their immaturity, and require greater protection than do adults. Applying the same principle of diminished responsibility in the criminal law requires . . . shorter sentences for youths than for adults convicted of the same offenses." *Id.* at 498-499.[4]

Therefore, it is logical to base juveniles' sentences on the manslaughter statute since the

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[4] *See also* David A. Brink, *Immaturity, Normative Competence, and Juvenile Transfer: How (not) to Punish Minors for Major Crimes*, 82 Tex. L. Rev. 1555, 1557-58 (2004) (arguing that youths' diminished moral competence means they should be punished proportionately less severely than adults and that punishment serves neither rehabilitative nor deterrent goals for youth who tend to outgrow their deviance, and noting, "It is in part because the normative competence of juveniles is diminished that we think that juvenile crime should be conceived and punished differently than adult crime and that juveniles should be tried and sentenced differently.").

legislature has deemed a 20-year maximum sentence the appropriate sentence for less culpable *adult* murderers. This approach also resolves the United States Supreme Court's concern in *Graham* and *Miller* that juveniles sentenced to life, because of their young age, serve *longer* sentences than adult murderers who receive the same sentence. *See, e.g., Graham v. Florida*, 130 S. Ct. at 2028 ("Life without parole is an especially harsh punishment for a juvenile. Under this sentence a juvenile offender will on average serve more years and a greater percentage of his life in prison than an adult offender."). A 20-year maximum sentence acknowledges that, though a youth may be deserving of a harsh sentence, it should be less harsh than the sentence for an adult who commits the same serious crime.

Significantly, a twenty-year maximum sentence is consistent with the American Law Institute draft revisions to the Model Penal Code sentencing provisions for juvenile offenders who have been convicted in adult criminal courts. *See* American Law Institute, *Model Penal Code: Sentencing – Tentative Draft No. 2*, Mar. 25, 2011, at 35-37, *available at* http://www.ali.org/00021333/Model%20Penal%20Code%20TD%

20No%202%20-%20online%20version.pdf. The draft sentencing guidelines for juveniles suggest that for anyone under the age of 18, no sentence of imprisonment longer than 25 years be imposed for any offense or combination of offenses, and twenty years should be the maximum prison term available for offenders who were under the age of 16 at the time of the offense. *Id.* at 36.[5] While the draft recommendations recognize that individual jurisdictions will determine the appropriate sentencing caps differently, their suggestion of 25 and 20 year maximums for offenders under age 18 and under age 16, respectively, lends weight to the reasonableness of a 20-year maximum sentence for juveniles convicted of homicide offenses.

C. Mandatory Life *With* Parole Sentences Contravene *Miller* And *Graham*

To the extent this Court may consider mandatory life *with* parole a viable sentencing option for Mr. Brown, such a sentence contravenes the mandates of

[5] The sentencing suggestions are not absolute; the drafters note that the caps of 25 and 20 years "are set out in bracketed language[] to indicate that no ineluctable formula has been employed to generate the ceilings specified for each age group." *Id.* at 44.

Miller and *Graham*. First, mandatory life with parole sentences for juveniles violate *Miller*'s insistence that "a sentencer have the ability to consider the 'mitigating qualities of youth.'" *Miller*, 132 S. Ct. at 2467. Imposing a one-size-fits-all approach to juvenile sentencing ignores the U.S. Supreme Court's concern with harsh mandatory sentencing schemes:

> Under these schemes, every juvenile will get the same sentence as every other - the 17-year-old and the 14-year-old, the shooter and the accomplice, the child from a stable household and the child from a chaotic and abusive one.

Id. at 2467-68. These mandatory sentencing schemes are particularly infirm under U.S. Supreme Court precedent if the parole review does not ensure that each juvenile receives a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Graham,* 130 S. Ct. at 2030.

As *Graham* makes clear, the Eighth Amendment "forbid[s] States from making the judgment at the outset that [juvenile] offenders never will be fit to reenter society." *Id.* at 2032. Juveniles who receive non-life without parole sentences "should not be deprived of the opportunity to achieve maturity of judgment and self-recognition of human worth and

potential." *Id.* at 2032. Therefore, replacing a mandatory juvenile life without parole scheme with a mandatory life with parole scheme does not cure the scheme's constitutional infirmities since "life with parole" is the functional equivalent of "life without parole" if the opportunity for release is not meaningful.

For an opportunity for release to be "meaningful" under *Graham*, review must begin long before a juvenile reaches old age. The Supreme Court has noted that "'[f]or most teens, [risky or antisocial] behaviors are fleeting; they cease with maturity as individual identity becomes settled. Only a relatively small proportion of adolescents who experiment in risky or illegal activities develop entrenched patterns of problem behavior that persist into adulthood.'" *Roper*, 543 U.S. at 570 (quoting Steinberg & Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am. Psychologist 1009, 1014 (2003)). Because most juveniles are likely to outgrow their antisocial and criminal behavior as they mature into adults, review of the juvenile's maturation and rehabilitation should begin relatively early in the

juvenile's sentence, and the juvenile's progress should be assessed regularly. *See, e.g., Research on Pathways to Desistance; December 2012 Update*, Models for Change, *available at*: http://www.modelsforchange.net/publications/357 (finding that, of the more than 1,300 serious offenders studied for a period of seven years, only approximately 10% report continued high levels of antisocial acts. The study also found that "it is hard to determine who will continue or escalate their antisocial acts and who will desist[,]" as "the original offense . . . has little relation to the path the youth follows over the next seven years."). Early and regular assessments enable the reviewers to evaluate any changes in the juvenile's maturation, progress and performance. Regular review also provides an opportunity to confirm that the juvenile is receiving vocational training, programming and treatment that foster rehabilitation. *See, e.g., Graham*, 130 S. Ct. at 2030 (noting the importance of "rehabilitative opportunities or treatment" to "juvenile offenders, who are most in need of and receptive to rehabilitation").[6]

[6] The American Bar Association (ABA) provides a model:

A "meaningful opportunity for release" also requires that the parole board focus on the characteristics of the youth, including his or her lack of maturity at the time of the offense, and not merely the circumstances of the offense. *Roper* cautioned against the "unacceptable likelihood" that "the brutality or cold-blooded nature of any particular crime would overpower mitigating arguments based on youth as a matter of course." 543 U.S. at 573. *See also Graham*, 130 S. Ct. at 2032. Similarly, in parole review, the parole board must not allow the underlying facts of the crime to overshadow the juvenile's immaturity at the time of the offense and progress and growth achieved while incarcerated. The

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in 2008, the ABA adopted a policy that built upon *Roper* and anticipated *Graham* and *Miller* by calling for different sentencing and parole policies for offenders who were under 18 at the time of their crimes. With respect to parole, the ABA declared that:

> Youthful offenders should generally be eligible for parole or other early release consideration at a reasonable point during their sentence; and, if denied, should be reconsidered for parole or early release periodically thereafter.

See ABA Criminal Justice Section, The State of Criminal justice 2007-2008, at 317 (Victor Streib, ed. 2008).

risk that the circumstances of the offense will outweigh the rehabilitative progress of the juvenile would be especially acute in states such as Massachusetts in which individuals convicted of first degree murder are statutorily denied parole eligibility and therefore the parole board is not accustomed to reviewing the cases of inmates who have committed first degree murder; if these cases now come before the parole board for juvenile offenders only, the facts of the underlying offense may cloud the parole board's ability to assess the juvenile's reduced culpability or rehabilitation.

Additionally, for the opportunity for release to be meaningful, the juvenile's young age at the time of the offense and incarceration cannot be a factor that makes release *less* likely. *Cf. Roper*, 543 U.S. at 573 (noting that "[i]n some cases a defendant's youth may even be counted against him"); Ga. Comp. R. & Regs. r. 475-3-.05(8)(e) (automatically assigning a higher risk score to inmates admitted to prison at age 20 or younger for the purposes of assessing parole eligibility in Georgia).[7]

[7] Additionally, parole boards should be mindful that any risk assessment tools that favorably assess

For life with parole to be a permissible sentencing option, this Court would have to outline clear guidelines to ensure all children sentenced to life with parole receive the meaningful opportunity for release that is required by *Graham*.[3] However, devising appropriate parole guidelines for juvenile

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inmates with stable employment histories or stable marriages may not be applicable to inmates who were incarcerated as children and therefore had little or no opportunity to establish an employment history or stable marital relationships prior to their incarceration. For example, the Massachusetts Parole Board assesses the inmate's employment history and connection with family and friends as factors in determining parole. *See* Massachusetts Parole Board, *Guidelines for Life Sentence Decisions*, *available at* http://www.mass.gov/eopss/agencies/parole-board/guidelines-for-life-sentence-decisions.html. *See also* Ga. Comp. R. & Regs. r. 475-3-.05(8)(g) (Georgia regulations giving lower risk scores to inmates who were employed at the time of their arrest); Mich. Comp. Laws Ann. § 791.235 (3)(a) (noting that the parole board in Michigan can consider an inmate's marital history).

[8] Indeed, if the opportunity for release is in fact meaningful, the 20-year maximum sentence advocated by Appellee and *Amici* here is substantively similar to the 15-year to life sentencing scheme adopted by the lower court. *See Commonwealth v. Brown*, No. 09-00963, Memorandum of Decision and Order (Mass. Super. Ct., Nov. 20, 2012). If the opportunity for release is truly meaningful, and youth are receiving the appropriate rehabilitative programming while incarcerated, one would expect under either sentencing scheme that youth would be released from prison after approximately 15 to 20 years. However, because Massachusetts currently provides no assurance that parole review for juvenile offenders is meaningful, as required by *Graham*, 15-year to life sentences would not comply with U.S. Supreme Court precedent.

offenders is a legislative or executive function, and therefore lies beyond the scope of the judicial branch. Accordingly, mandatory life with parole sentences are inconsistent with *Miller* and *Graham*. Sentencing Mr. Brown, and others similarly situated, based on manslaughter is the only constitutionally permissible sentencing option.

IV. CONCLUSION

As Justice Frankfurter wrote over fifty years ago in *May v. Anderson* 345 U.S. 528, 536 (1953), "[c]hildren have a very special place in life which law should reflect. Legal theories and their phrasing in other cases readily lead to fallacious reasoning if uncritically transferred to determination of a State's duty towards children." Even today, adult sentencing practices that preclude taking into account the characteristics of individual juvenile defendants are unconstitutionally disproportionate punishments. When sentencing children in the adult criminal justice system, courts must take additional considerations and precautions to ensure that the sentences account for the unique developmental characteristics of adolescents, as the Supreme Court has acknowledged

For the foregoing reasons, *Amici* respectfully request that this Court remand the case for sentencing in accordance with *Miller* and *Graham*.

Respectfully submitted,

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APPENDIX: IDENTITY OF *AMICI* AND STATEMENTS OF INTEREST

ORGANIZATIONS

Juvenile Law Center is the oldest public interest law firm for children in the United States. Founded in 1975, Juvenile Law Center advocates on behalf of youth in the child welfare and criminal and juvenile justice systems to promote fairness, prevent harm, and ensure access to appropriate services. Among other things, Juvenile Law Center works to ensure that children's rights to due process are protected at all stages of juvenile court proceedings, from arrest through disposition, from post-disposition through appeal, and that the juvenile and adult criminal justice systems consider the unique developmental differences between youth and adults in enforcing these rights. Juvenile Law Center urges this Court to remand for a sentencing consistent with the U.S. Supreme Court's decision in *Miller v. Alabama*, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012).

The **Campaign for the Fair Sentencing of Youth** (CFSY) is a national coalition and clearinghouse that coordinates, develops and supports efforts to implement just alternatives

to the extreme sentencing of America's youth with a focus on abolishing life without parole sentences for all youth. Our vision is to help create a society that respects the dignity and human rights of all children through a justice system that operates with consideration of the child's age, provides youth with opportunities to return to community, and bars the imposition of life without parole for people under age eighteen. We are advocates, lawyers, religious groups, mental health experts, victims, law enforcement, doctors, teachers, families, and people directly impacted by this sentence, who believe that young people deserve the opportunity to give evidence of their remorse and rehabilitation. Founded in February 2009. the CFSY uses a mulch-pronged approach, which includes coalition-building, public education, strategic advocacy and collaboration with litigators - on both state and national levels - to accomplish our goal.

Citizens for Juvenile Justice (CfJJ) is an independent, non-profit, statewide policy organization that works to improve the juvenile justice system in Massachusetts. Its advocacy is shaped by the conviction that both children in the system and public safety are best served by a fair and

effective system that recognizes the ways children are different from adults and focuses primarily on their rehabilitation. As part of its effort to educate the public and policymakers about important juvenile justice issues, CfJJ is interested in explaining why juvenile sentencing practices should take into account the fundamental characteristics of youth - and why sentencing juveniles to life, or to terms that effectively amount to life, is inconsistent with the constitution and values of the Commonwealth.

The **Defender Association of Philadelphia** is an independent, non-profit corporation created in 1934 by a group of Philadelphia lawyers dedicated to the ideal of high quality legal services for indigent criminal defendants. Today some two hundred and fifteen full time assistant defendants represents clients in adult and juvenile, state and federal, trial and appellate courts, and at civil and criminal mental health hearings as well as at state and county violation of probation/parole hearings. Association attorneys also serve as the Child Advocate in neglect and dependency court. More particularly,

Association attorneys represent juveniles charged with homicide. Life imprisonment without the possibility of parole is the only sentence for juveniles found guilty in adult court of either an intentional killing or a felony murder. The Defender Association attorneys have had numerous juveniles given sentences of life imprisonment without parole. The constitutionality of such sentences has been challenged at the trial level and at the appellate level by Defender Association lawyers.

The **Massachusetts Alliance for Families** (the MAFF) is an advocacy association dedicated to enhancing the quality of life for children who cannot live with their biological families and for the families who care for them. In addition to working to improve system care and offer opportunities for members to provide mutual support to one another, MAFF provides public education on foster care and related issues and advocates for needed resources and appropriate public policy. Central to this work is the idea that the whole child matters, regardless of circumstance or environment and that we must work toward improving the care for all children, including those in state custody.

The **Massachusetts Society for the Prevention of Cruelty to Children** (MSPCC) is a non-profit organization dedicated to ensuring the health and safety of children through direct services to children and families and public advocacy on their behalf. In furthering its mission, MSPCC promotes child well-being through prevention and intervention services, ensures children's mental and physical health through the provision of clinical care, supports biological, as well as adoptive and foster, parents in the challenging, joyous work of raising children, and speaks out and takes action in the public arena in support of laws, standards, and resources that protect children and help them thrive. As a result, MSPCC is interested in explaining why lifelong sentences are incomparable with our societal standards, constitution, and all that we know about child development.

National Association of Criminal Defense Lawyers (NACDL) was founded in 1958. It has a nationwide membership of approximately 10,000 and up to 40,000 with affiliates. NACDL's members include 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. The American Bar Association recognizes NACDL as an affiliated organization and awards it representation in its House of Delegates.

NACDL is dedicated to advancing the proper, efficient, and just administration of justice including issues involving juvenile justice. NACDL files numerous amicus briefs each year in the U.S. Supreme Court and other courts, seeking to provide amicus assistance in cases that present issues of broad importance to criminal defendants, criminal defense lawyers, and the criminal justice system as a whole. NACDL has a particular interest in this case because the proper administration of justice requires that age and other circumstances of youth be taken into account in order to ensure compliance with constitutional requirements and to promote fair, rational and humane practices that respect the dignity of the individual

National Legal Aid & Defender Association (NLADA), founded in 1911, is America's oldest and largest nonprofit association devoted to excellence in the delivery of legal

services to those who cannot afford counsel. For 100 years, NLADA has pioneered access to justice at the national, state and local level through the creation of our public defender system, development of nationally applicable standards for legal representation, groundbreaking legal legislation and the creation of important institutions such as the Legal Services Corporation. NLADA serves as a collective voice for our country's civil legal aid and public defender services and provides advocacy, training, and technical assistance to further its goal of securing equal justice.

The **Public Defender Service** for the District of Columbia (PDS) is a federally funded, independent public defender organization; for 50 years, PDS has provided quality legal representation to indigent adults and children facing a loss of liberty in the District of Columbia justice system. PDS provides legal representation to many of the indigent children in the most serious delinquency cases, including those who have special education needs due to learning disabilities. PDS also represents classes of youth, including a

class consisting of children committed to the custody of the District of Columbia through the delinquency system.

The **Youth Law Center** is a San Francisco- based national public interest law firm working to protect the rights of children at risk of or involved in the juvenile justice and child welfare systems. Since 1978, Youth Law Center attorneys have represented children in civil rights and juvenile court cases in California and two dozen other states. The Center's attorneys are often consulted on juvenile policy matters, and have participated as amicus curiae in cases around the country involving important juvenile system issues. Youth Law Center attorneys have written widely on a range of juvenile justice, child welfare, health and education issues, and have provided research, training, and technical assistance on legal standards and juvenile policy issues to public officials in almost every State. The Center has long been involved in public policy discussions, legislation and court challenges involving the treatment of juveniles as adults. Center attorneys were consultants in the John D. and Catherine T. MacArthur

Foundation project on adolescent development, and have recently authored a law review article on juvenile competence to stand trial. The imposition of life without parole sentences upon fourteen year-olds is an issue that fits squarely within the Center's long-term interests.

INDIVIDUALS

Hon. **Gail Garinger** (ret.) is The Child Advocate for the Commonwealth of Massachusetts. The Child Advocate is charged with investigating reports of "critical incidents" and child abuse and neglect involving children receiving services from state agencies, advising the public and government officials on ways to improve services to children and families, and advocating for the humane and dignified treatment of children placed in the care or under the supervision of the Commonwealth, including those serving life sentences. Before Governor Patrick appointed her as Child Advocate in 2008, Judge Garinger served as a juvenile court judge in Massachusetts for thirteen years, the last eight years as First Justice of the Middlesex County Division of the Juvenile Court Department. A Harvard Law School graduate,

she has also served as General Counsel at Children's Hospital Boston and has significant private practice experience in children's health and welfare law.

Judge Garinger firmly believes that imposing Life without Parole sentences for crimes committed by minors is inconsistent with evolving standards of decency, and the constitutions of both the United States and Massachusetts.

STATUTORY ADDENDUM

Constitutions

Article 26, MA Declaration of Rights

Article XXVI. No magistrate or court of law, shall demand excessive bail or sureties, impose excessive fines, or inflict cruel or unusual punishments. No provision of the Constitution, however, shall be construed as prohibiting the imposition of the punishment of death. The general court may, for the purpose of protecting the general welfare of the citizens, authorize the imposition the punishment of death by the courts of law having jurisdiction of crimes subject to the punishment of death.

Eighth Amendment, U.S. Constitution

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Mich. Const. Art. I, § 16

Sec. 16. Excessive bail shall not be required; excessive fines shall not be imposed; cruel or unusual punishment shall not be inflicted; nor shall witnesses be unreasonably detained.

Statutes

G. L. c. 119, § 74

Except as hereinafter provided and as provided in sections fifty-two to eighty-four, inclusive, no criminal proceeding shall be begun against any person who prior to his seventeenth birthday commits an offense against the laws of the commonwealth or who violates any city ordinance or town by-law, provided, however, that a criminal complaint alleging violation of any city ordinance or town by-law regulating the operation of motor vehicles, which is not capable of being judicially heard and determined as a civil motor

vehicle infraction pursuant to the provisions of chapter ninety C may issue against a child between sixteen and seventeen years of age without first proceeding against him as a delinquent child.

The juvenile court shall not have jurisdiction over a person who had at the time of the offense attained the age of fourteen but not yet attained the age of seventeen who is charged with committing murder in the first or second degree. Complaints and indictments brought against persons for such offenses, and for other criminal offenses properly joined under Massachusetts Rules of Criminal Procedure 9 (a) (1), shall be brought in accordance with the usual course and manner of criminal proceedings.

G. L. c. 265, § 2

Whoever is guilty of murder committed with deliberately premeditated malice aforethought or with extreme atrocity or cruelty, and who had attained the age of eighteen years at the time of the murder, may suffer the punishment of death pursuant to the procedures set forth in sections sixty-eight to seventy-one, inclusive, of chapter two hundred and seventy-nine. Any other person who is guilty of murder in the first degree shall be punished by imprisonment in the state prison for life. Whoever is guilty of murder in the second degree shall be punished by imprisonment in state prison for life. No person shall be eligible for parole under section one hundred and thirty-three A of chapter one hundred and twenty-seven while he is serving a life sentence for murder in the first degree, but if his sentence is commuted therefrom by the governor and council under the provisions of section one hundred and fifty-two of said chapter one hundred and twenty-seven he shall thereafter be subject to the provisions of law governing parole for persons sentenced for lesser offenses.

Mich. Comp. Laws Ann. § 791.235 (3(a)

(3) The parole board may consider but shall not base a determination to deny parole solely on either of the following:
(a) A prisoner's marital history.

(b) Prior arrests not resulting in conviction or adjudication of delinquency.

42 Pa. C. S. A. § 9711

§ 9711. Sentencing procedure for murder of the first degree

(a) Procedure in jury trials.--

(1) After a verdict of murder of the first degree is recorded and before the jury is discharged, the court shall conduct a separate sentencing hearing in which the jury shall determine whether the defendant shall be sentenced to death or life imprisonment.

(2) In the sentencing hearing, evidence concerning the victim and the impact that the death of the victim has had on the family of the victim is admissible. Additionally, evidence may be presented as to any other matter that the court deems relevant and admissible on the question of the sentence to be imposed. Evidence shall include matters relating to any of the aggravating or mitigating circumstances specified in subsections (d) and (e), and information concerning the victim and the impact that the death of the victim has had on the family of the victim. Evidence of aggravating circumstances shall be limited to those circumstances specified in subsection (d).

(3) After the presentation of evidence, the court shall permit counsel to present argument for or against the sentence of death. The court shall then instruct the jury in accordance with subsection (c).

(4) Failure of the jury to unanimously agree upon a sentence shall not impeach or in any way affect the guilty verdict previously recorded.

(b) Procedure in nonjury trials and guilty pleas.--If the defendant has waived a jury trial or pleaded guilty, the sentencing proceeding shall be conducted before a jury impaneled for that purpose unless waived by the defendant with the consent of the Commonwealth, in which case the trial judge shall hear the evidence and determine the penalty in the same manner as would a jury as provided in subsection (a).

(c) Instructions to jury.--

(1) Before the jury retires to consider the sentencing verdict, the court shall instruct the jury on the following matters:

(i) the aggravating circumstances specified in subsection (d) as to which there is some evidence.

(ii) the mitigating circumstances specified in subsection (e) as to which there is some evidence.

(iii) aggravating circumstances must be proved by the Commonwealth beyond a reasonable doubt; mitigating circumstances must be proved by the defendant by a preponderance of the evidence.

(iv) the verdict must be a sentence of death if the jury unanimously finds at least one aggravating circumstance specified in subsection (d) and no mitigating circumstance or if the jury unanimously finds one or more aggravating circumstances which outweigh any mitigating circumstances. The verdict must be a sentence of life imprisonment in all other cases.

(v) the court may, in its discretion, discharge the jury if it is of the opinion that further deliberation will not result in a unanimous agreement as to the sentence, in which case the court shall sentence the defendant to life imprisonment.

(2) The court shall instruct the jury that if it finds at least one aggravating circumstance and at least one mitigating circumstance, it shall consider, in weighing the aggravating and mitigating circumstances, any evidence presented about the victim and about the impact of the murder on the victim's family. The court shall also instruct the jury on any other matter that may be just and proper under the circumstances.

(d) Aggravating circumstances.--Aggravating circumstances shall be limited to the following:

(1) The victim was a firefighter, peace officer, public servant concerned in official detention, as

defined in 18 Pa.C.S. § 5121 (relating to escape), judge of any court in the unified judicial system, the Attorney General of Pennsylvania, a deputy attorney general, district attorney, assistant district attorney, member of the General Assembly, Governor, Lieutenant Governor, Auditor General, State Treasurer, State law enforcement official, local law enforcement official, Federal law enforcement official or person employed to assist or assisting any law enforcement official in the performance of his duties, who was killed in the performance of his duties or as a result of his official position.

(2) The defendant paid or was paid by another person or had contracted to pay or be paid by another person or had conspired to pay or be paid by another person for the killing of the victim.

(3) The victim was being held by the defendant for ransom or reward, or as a shield or hostage.

(4) The death of the victim occurred while defendant was engaged in the hijacking of an aircraft.

(5) The victim was a prosecution witness to a murder or other felony committed by the defendant and was killed for the purpose of preventing his testimony against the defendant in any grand jury or criminal proceeding involving such offenses.

(6) The defendant committed a killing while in the perpetration of a felony.

(7) In the commission of the offense the defendant knowingly created a grave risk of death to another person in addition to the victim of the offense.

(8) The offense was committed by means of torture.

(9) The defendant has a significant history of felony convictions involving the use or threat of violence to the person.

(10) The defendant has been convicted of another Federal or State offense, committed either before or at the time of the offense at issue, for which a sentence of life imprisonment or death was imposable

or the defendant was undergoing a sentence of life imprisonment for any reason at the time of the commission of the offense.

(11) The defendant has been convicted of another murder committed in any jurisdiction and committed either before or at the time of the offense at issue.

(12) The defendant has been convicted of voluntary manslaughter, as defined in 18 Pa.C.S. § 2503 (relating to voluntary manslaughter), or a substantially equivalent crime in any other jurisdiction, committed either before or at the time of the offense at issue.

(13) The defendant committed the killing or was an accomplice in the killing, as defined in 18 Pa.C.S. § 306(c) (relating to liability for conduct of another; complicity), while in the perpetration of a felony under the provisions of the act of April 14, 1972 (P.L. 233, No. 64), known as The Controlled Substance, Drug, Device and Cosmetic Act, and punishable under the provisions of 18 Pa.C.S. § 7508 (relating to drug trafficking sentencing and penalties).

(14) At the time of the killing, the victim was or had been involved, associated or in competition with the defendant in the sale, manufacture, distribution or delivery of any controlled substance or counterfeit controlled substance in violation of The Controlled Substance, Drug, Device and Cosmetic Act or similar law of any other state, the District of Columbia or the United States, and the defendant committed the killing or was an accomplice to the killing as defined in 18 Pa.C.S. § 306(c), and the killing resulted from or was related to that association, involvement or competition to promote the defendant's activities in selling, manufacturing, distributing or delivering controlled substances or counterfeit controlled substances.

(15) At the time of the killing, the victim was or had been a nongovernmental informant or had otherwise provided any investigative, law enforcement or police agency with information concerning criminal activity and the defendant committed the killing or was an accomplice to the killing as defined in 18 Pa.C.S. §

306(c), and the killing was in retaliation for the victim's activities as a nongovernmental informant or in providing information concerning criminal activity to an investigative, law enforcement or police agency.

(16) The victim was a child under 12 years of age.

(17) At the time of the killing, the victim was in her third trimester of pregnancy or the defendant had knowledge of the victim's pregnancy.

(18) At the time of the killing the defendant was subject to a court order restricting in any way the defendant's behavior toward the victim pursuant to 23 Pa.C.S. Ch. 61 (relating to protection from abuse) or any other order of a court of common pleas or of the minor judiciary designed in whole or in part to protect the victim from the defendant.

(e) Mitigating circumstances.--Mitigating circumstances shall include the following:

(1) The defendant has no significant history of prior criminal convictions.

(2) The defendant was under the influence of extreme mental or emotional disturbance.

(3) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.

(4) The age of the defendant at the time of the crime.

(5) The defendant acted under extreme duress, although not such duress as to constitute a defense to prosecution under 18 Pa.C.S. § 309 (relating to duress), or acted under the substantial domination of another person.

(6) The victim was a participant in the defendant's homicidal conduct or consented to the homicidal acts.

(7) The defendant's participation in the homicidal act was relatively minor.

(8) Any other evidence of mitigation concerning the character and record of the defendant and the circumstances of his offense.

(f) Sentencing verdict by the jury.--

(1) After hearing all the evidence and receiving the instructions from the court, the jury shall deliberate and render a sentencing verdict. In rendering the verdict, if the sentence is death, the jury shall set forth in such form as designated by the court the findings upon which the sentence is based.

(2) Based upon these findings, the jury shall set forth in writing whether the sentence is death or life imprisonment.

(g) Recording sentencing verdict.--Whenever the jury shall agree upon a sentencing verdict, it shall be received and recorded by the court. The court shall thereafter impose upon the defendant the sentence fixed by the jury.

(h) Review of death sentence.--

(1) A sentence of death shall be subject to automatic review by the Supreme Court of Pennsylvania pursuant to its rules.

(2) In addition to its authority to correct errors at trial, the Supreme Court shall either affirm the sentence of death or vacate the sentence of death and remand for further proceedings as provided in paragraph (4).

(3) The Supreme Court shall affirm the sentence of death unless it determines that:

(i) the sentence of death was the product of passion, prejudice or any other arbitrary factor; or

(ii) the evidence fails to support the finding of at least one aggravating circumstance specified in subsection (d)

(iii) Deleted.

(4) If the Supreme Court determines that the death penalty must be vacated because none of the aggravating circumstances are supported by sufficient evidence, then it shall remand for the imposition of a life imprisonment sentence. If the Supreme Court determines that the death penalty must be vacated for any other reason, it shall remand for a new sentencing hearing pursuant to subsections (a) through (g).

(i) Record of death sentence to Governor.--Where a sentence of death is upheld by the Supreme Court, the prothonotary of the Supreme Court shall transmit to the Governor a full and complete record of the trial, sentencing hearing, imposition of sentence, opinion and order by the Supreme Court within 30 days of one of the following, whichever occurs first:

(1) the expiration of the time period for filing a petition for writ of certiorari or extension thereof where neither has been filed;

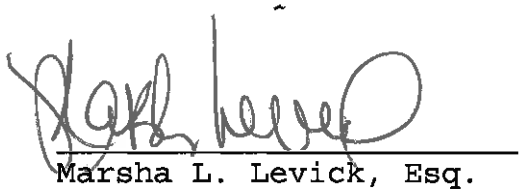
(2) the denial of a petition for writ of certiorari; or

(3) the disposition of the appeal by the United States Supreme Court, if that court grants the petition for writ of certiorari.

Notice of this transmission shall contemporaneously be provided to the Secretary of Corrections.

CERTIFICATE OF COMPLIANCE

I, Marsha L. Levick, hereby certify that the brief complies with the rules of court that pertain to the filing of briefs, including, but not limited to: Mass. R.A.P. 16(a) (6) (pertinent findings or memorandum decision); Mass. R.A.P. 16(e) (references to the record); Mass. R.A.P. 16(f) (reproduction of statutes, rules, regulations); Mass. R.A.P. 16 (h) (length of briefs); Mass. R.A.P. 18 (appendix to briefs); and Mass. R.A.P. 20 (form of briefs, appendices and other papers).



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CERTIFICATE OF SERVICE

I, Marsha L. Levick, Esq., do hereby certify this 16th day of August, 2013, that a true and correct copy of this Brief on Behalf of *Amici Curiae* has been sent, via U.S. first class mail, to the following persons:

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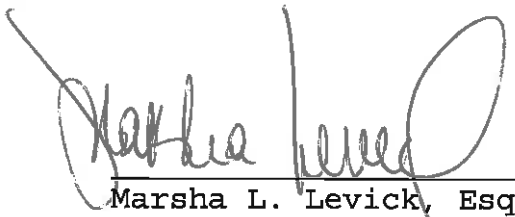

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