

Nos. 08-7412 and 08-7621

**In The
Supreme Court of the United States**

—◆—
TERRANCE JAMAR GRAHAM,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

—◆—
JOE HARRIS SULLIVAN,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

—◆—
**On Writs Of Certiorari To The
District Court Of Appeal Of Florida,
First District**

—◆—
**BRIEF *AMICI CURIAE* OF
NATIONAL ORGANIZATION OF
VICTIMS OF JUVENILE LIFERS
IN SUPPORT OF RESPONDENT**

—◆—
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[Additional *Amici* Listed On Inside Cover]

Victims for Justice
Victims of Crime Amendment
National Organization of Victim Assistance
National Coalition of Victims In Action
Families and Friends of Violent Crime Victims
National Organization of Parents of Murdered Children
Central Minnesota Chapter of POMC
Greater Cincinnati Area Chapter of POMC
Houston, Texas Chapter of POMC
Northwestern Pennsylvania Chapter of POMC
Southwest Louisiana Chapter of POMC
Utah Chapter of POMC
Association of Prosecuting Attorneys
The Ben Doran Foundation
Survivors In Action
Citizens Against Homicide
Justice For All
Crime Victims Action Alliance
Arizona Voice for Crime Victims
Worldwide Sensible Sentencing Organization
Witness Justice
Crime Victims United of California
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INTEREST OF *AMICI CURIAE*¹

National Organization of Victims of Juvenile Lifers (“NOVJL”) is a national organization comprised of the families of victims murdered by juvenile offenders, who subsequently were tried and sentenced as adults because of the horrific nature of their extremely violent crimes. NOVJL works to find other victims of violent juvenile offenders tried and sentenced as adults to life in order to protect their voices in the national public policy discussion about the juvenile life sentence and to support each other as victims of the devastating acts of criminally violent teens.

Victims for Justice (“VFJ”) specializes in serving and advocating for victims of all violent crimes including assault, robbery, and kidnapping as well as the surviving family and friends of homicide victims. VFJ helps victims cope with trauma and grief, ensures the judicial system respects their rights, advocates for change that will make a balanced justice

¹ No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae*, or its counsel made a monetary contribution to its preparation or submission. Petitioner Sullivan and Respondents received timely notice of intent of *amici* to file this brief and letters of consent by the parties have been filed with the Clerk of this Court. *Amici* requested and were granted consent by counsel of record for Petitioner Graham and consent is being filed with this brief.

system, and implements community programs for violence prevention.

Victims of Crime Amendment (“VOCA”) was established following the murders of two sorority members at Florida State University in 1978. Its express purpose is to balance the scales of justice by advocating on behalf of families, victims and witnesses. VOCA spearheaded legislation which led to a joint resolution and a statewide citizen vote that successfully amended Florida’s Constitution to provide rights for victims of crime and to create and establish victims’ rights’ offices within the executive office of the governor.

National Organization of Victim Assistance (“NOVA”) is a private, non-profit organization of victim and witness assistance programs and practitioners, criminal justice agencies and professionals, mental health professionals, researchers, former victims and survivors, and others committed to the recognition and implementation of victim rights and services. Founded in 1975, NOVA is the oldest national group of its kind in the worldwide victims’ movement. NOVA’s mission is to promote rights and services for victims of crime and crisis everywhere through national advocacy, direct services to victims, assistance to professional colleagues and membership activities and services.

National Coalition of Victims In Action (“NCVIA”) is a component of the Renée Olubunmi Rondeau Peace Foundation. NCVIA’s purpose is to encourage

victims of crime to become proactive for crime prevention and to support those victims already involved in order to bring enormous benefit to victims as well as to their communities. Members of the NCVIA come together as a national force to provide services to victims of crime and their families. NCVIA hopes thereby to raise public awareness of the effect of crime on victims and our communities, examine and support changes necessary to deal with the serious flaws in the criminal justice system, provide understanding and assistance to victims and survivors in recovery, and initiate programs related to the direct prevention of crime through long-term sustainable proposals and follow-up programs.

Families and Friends of Violent Crime Victims (“Families and Friends”) was founded in Washington State in 1975 as a non-profit crime victim support and advocacy organization. Families and Friends is one of the oldest victim advocacy and support groups in the country and the only statewide organization that provides 24-hour support for victims of robbery, victims of identity theft, victims of aggravated assault, loved ones of homicide victims and families of adults who are missing where foul play is suspected. Family and Friends’ goals include examining the criminal justice system, giving assistance to families and friends of victims during times of grief, and educating the public on the impact violent crime has in our society.

National Organization of Parents of Murdered Children, Inc. (“POMC®”) is a victims’ rights organization that provides the on-going emotional support needed to help parents and other survivors facilitate the reconstruction of a “new life” and to promote a healthy resolution. Not only does POMC help survivors deal with their acute grief but it also helps these survivors successfully interact with the criminal justice system. POMC makes the difference through continuing emotional support, education, prevention, advocacy and awareness. POMC provides support and assistance to all survivors of homicide victims while working to create a world free of murder.

Central Minnesota Chapter of Parents of Murdered Children, Inc. provides an increased awareness for prevention and aftermath of murder. It offers victim help groups where survivors may discuss their stories and find assistance for how to cope with their grief.

Greater Cincinnati Area Chapter of Parents of Murdered Children, Inc. provides support and assistance to survivors of murdered children. Members help one another by sharing experiences, feelings and insights and by allowing others to do the same.

Houston, Texas Chapter of Parents of Murdered Children, Inc. is a branch of the nation’s only non-profit self-help organization designed to provide support and assistance to all survivors of homicide

victims while working to create a world free of murder.

Northwestern Pennsylvania Chapter of Parents of Murdered Children, Inc. is a support group that supplies information about the grief process, provides emotional support to bereaved survivors and works to prevent the parole of violent criminals.

Southwest Louisiana Chapter of Parents of Murdered Children, Inc. is a self-help support group for the families and friends of those who have died by violence. It seeks to bring public awareness to the devastation that murder leaves in its wake.

Utah Chapter of Parents of Murdered Children, Inc. is a statewide non-profit organization that provides on-going emotional support, education, prevention, advocacy and awareness for victims of violent crime.

Association of Prosecuting Attorneys (“APA”) is a national “think tank” that represents prosecutors and provides them with additional resources such as training and technical assistance. APA’s goal is to develop proactive innovative prosecutorial practices that prevent crime, ensure equal justice and make our communities safer.

The Ben Doran Foundation (“Foundation”) addresses the legislature, stands with crime victims’ families and ensures no one forgets loved ones lost to the unimaginable horror of murder. The Foundation was created to speak up and speak out about crime

victims' rights and to address the many societal issues that lend themselves to murder and homicide. The Foundation is constantly forming new relationships with community non-profit leaders, law enforcement, legislators and the beautiful people who support it.

Survivors in Action, Inc. ("SIA") is a non-profit national advocacy group that supports victims and the families of victims of any crime, including domestic violence, identity theft, elder abuse, cyberstalking, child abuse, rape and sexual assault. Other national organizations typically help victims at specific points in the victimization cycle – such as when they first report the crime or in writing parole opposition letters – leaving "gaps" in needed services. SIA is the only organization that fills the support gaps for victims, providing guidance through all stages of the journey from victim to survivor, with no time limitations, cut-off dates or conditions. SIA's mission is to ensure that no victim anywhere in the nation is left behind.

Citizens Against Homicide ("CAH") is a non-profit organization in which the majority of Board members have lost a family member to murder, are surviving the devastating loss of a loved one, and are continuing to suffer the emotional trauma of coping with the criminal justice system. The members have joined together to create a body of support and a voice for the survivors and friends of murder victims.

Justice for All (“JFA”) is an all-volunteer, non-profit organization founded in 1993. JFA advocates for change in a criminal justice system that is inadequate in protecting the lives and property of law-abiding citizens. Through private citizen and corporate membership, JFA will peacefully exert the social and legislative influence necessary to effect positive change in the criminal justice system.

Crime Victims Action Alliance (“CVAA”) is a non-profit social welfare organization that promotes victims’ rights and public safety. CVAA aggressively advocates for better laws, regulations and policies, actively supports public officials who respect and endorse the rights of victims of violent crime and holds accountable those who have been entrusted to ensure public safety.

Arizona Voice for Crime Victims is a victims’ advocacy organization which ensures crime victims receive their rights to justice, due process and dignified treatment throughout the criminal justice process. Through five separate categories of activities, including educational programs and crisis response training programs, Arizona Voice for Crime Victims seeks to establish a compassionate justice system in which crime victims are informed of their rights, fully understand their rights, know how to assert their rights, have a meaningful way to enforce their rights, and know how to seek immediate crisis intervention when they become victims of crime.

Worldwide Sensible Sentencing Organization (“WWSSO”) is a voluntary international organization that supports and advocates for victims of violent crime and for common sense public safety measures that would incarcerate violently dangerous offenders for sentences proportionate to their crimes.

Witness Justice is a national, grassroots, non-profit organization providing support and advocacy for survivors of violence and trauma. Founded in 2002, its mission is to empower and assist victims of violence and their loved ones in healing from trauma and in navigating the criminal justice process. Each month, Witness Justice receives more than 150,000 hits on its website and approximately 300 individuals turn to it for direct assistance, making it one of the most sought-after victim service providers in the country. Witness Justice provides information and support from its expert corps of volunteers, connection through its virtual community, training resources for service providers, and direct assistance to any survivor who may have questions in the aftermath of violence. When necessary, Witness Justice advocates with legislators, state systems, and other organizations to foster positive social change that will provide the best potential for survivors’ healing and justice.

Crime Victims United of California (“CVUC”) is a non-partisan, non-profit organization dedicated solely to protecting the rights of victims. CVUC’s mission is to restore and maintain balance in California’s criminal justice system, which for too long has put

criminals' rights ahead of victims' rights. CVUC is the only organization of its kind in California using education, legislative advocacy and political action to enhance public safety, promote effective crime-reduction measures and strengthen the rights of crime victims.

Crime Victims United of Oregon ("CVU") was founded in 1983 to advance the rights of crime victims and enhance the safety of all law-abiding Oregonians by addressing problems in Oregon's criminal justice system. CVU's mission is to promote a more balanced justice system through legislative action and public awareness. Through the tireless efforts of many volunteers, most of them victims of violent crime, much progress has been made toward fulfilling our mission. CVU's philosophy is that the laws for the punishment of crime shall be founded on these principles: protection of society, personal responsibility, accountability for one's actions, and reformation.

IllinoisVictims.org is the only statewide victims' rights organization in Illinois. The organization acts as a watchdog over issues pertaining to victims of violent crime in the state of Illinois, especially in government and legislation. IllinoisVictims.org is an information clearinghouse and resource network of support for all victims of violent crime in Illinois, with a special focus on homicide victims.

LIFESSENTENCE is a victims' rights organization with a goal of educating youth, parents and the public about the effects of violence. Through its presentation on choices, LifeSentence shares our own

real life stories in a very graphic and powerful way. LifeSentence brings the reality of violent crime to the youth of today in a way that they can understand – through a mother’s heart.

Victims Voices Heard is a non-profit advocacy organization committed to assisting all victims and survivors of crime. The organization advocates for all victims as they seek to find the answers that will enable them to feel empowered and move forward with their lives. It provides a dialogue program that offers victims and victims’ survivors of violent crimes the opportunity to meet with their offender face-to-face in order to facilitate the healing recovery process. It acts as an advocate on behalf of the victim, helping them through the process and arranging a safe and secure environment for the meeting to take place.

3 Strikes is a non-profit organization that strives to keep violent and serious repeat offenders behind bars. The organization tracks and posts on the Internet related data for public access studies and statistics pertinent to crime in general and to 3 Strikes in particular. It was the author of California’s 3 Strikes and You’re Out Law, Proposition 184.

You Have the Power . . . Know How to Use It, Inc. is a non-profit agency created in 1993 in the State of Tennessee as a volunteer, grassroots effort composed of concerned citizens, crime survivors, and representatives from the office of the district attorney, law enforcement and community agencies. The organization is dedicated to raising awareness about crime

and justice issues. Its goal is to prevent violent crime and reduce victimization. It conducts educational programs, creates documentary videos, and produces practice resource books on topics such as domestic violence, elder abuse, methamphetamine, and child sexual abuse.

The Renée Olubunmi Rondeau Peace Foundation (RORPF) works to promote awareness on the part of the American public as to the magnitude of the crime problem and to individual and collective responsibility for the solution. RORPF seeks to accomplish its mission by involvement in three areas: Direct Service to crime victims through the National Coalition of Victims in Action; Educational Support through the Renée Olubunmi Rondeau Memorial Scholarship Fund; and Advocacy through Action Americans: Murder Must End Now! (AAMMEN!).

S.T.E.V.I.E. SUPPORT (Striving Towards Eradicating Violence in Ennercities) is a non-profit victims organization. Its mission is to mobilize, educate, empower, and assist survivors of homicides as to the social ills of the public health epidemic of violence. The organization seeks to put in place the necessary mechanisms by which lives will be saved and restored and communities can and will be reclaimed.

Justice for Homicide Victims (“JHV”) provides support to victims who fight for their rights and to be the champion of the legal rights of survivors of homicide victims by providing them information about victim rights in all aspects of the criminal justice

system. JHV seeks to educate the public as to the injustices in the present system of criminal justice in California. Only when the people are aware of the facts can change and reform be accomplished.



SUMMARY OF ARGUMENT

Despite numerous advancements in the criminal justice system, crime victims² remain second-class citizens. Today, this Court is being asked to engage in a callous bait-and-switch by improperly extending its decision in *Roper v. Simmons*³ to declare that life without parole for violent juveniles offends the Eighth Amendment. We urge this Court to remain faithful to the Constitution of the United States and its own jurisprudence, which clearly differentiates between the sentence of death and all others, including life without parole.

An overwhelming national consensus exists that a life without parole sentence is appropriate and constitutional for juvenile offenders who show an exceptional disregard for human life. Courts, legislatures, and American people have strongly approved of these sentences as an effective and lawful device to deter juvenile crime and protect law-abiding citizens.

² The word “victim” throughout this brief is intended to include the actual victim as well as the victim’s family.

³ 543 U.S. 551 (2005).

These institutions understand that violent crimes are no less traumatizing to victims because the offenders are underage. A criminal justice system which categorically denies constitutional and proper sentences for juvenile offenders perpetuates no justice at all.

◆

ARGUMENT

I. TO ABOLISH THE LIFE WITHOUT PAROLE SENTENCE FOR JUVENILE OFFENDERS ON THE HEELS OF *ROPER* WOULD BE A BAIT-AND-SWITCH VIOLATIVE OF THE HARD-WON RIGHTS OF VICTIMS.

For most of American history,⁴ the criminal and juvenile justice systems failed to acknowledge a role for victims. Conventional thought held an “assumption that crime victims should behave like good

⁴ At the birth of our country, crime victims were solely responsible for investigating and prosecuting the crimes committed against them. As society increasingly realized it had an interest in ensuring crimes were prosecuted, and prosecuted fairly, a new system emerged that coupled private prosecution with public prosecutors. Once governments appointed public prosecutors, however, private prosecution became increasingly rare and eventually nonexistent. This newly created process resulted in the unintentional exclusion of crime victims. Joanna Tucker Davis, *The Grassroots Beginnings of the Victims' Rights Movement*, Nat'l Crime Victim Law Inst. (2004), available at <http://www.ncvli.org/objects/ReportingCrime.pdf> (last visited Sept. 17, 2009).

Victorian children – seen but not heard.”⁵ More than 30 years ago, however, this Court catalyzed the Modern Crime Victims’ Rights Movement, which finally gave the innocent a voice. In *Linda R. S. v. Richard D.*,⁶ this Court denied a crime victim’s right to compel a criminal prosecution because “a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another.”⁷ This Court then suggested that Congress “may enact statutes creating legal rights, the invasion of which [would] create standing” for a crime victim.⁸

In the early 1980s, President Ronald Reagan, in response to a national outcry for fundamental victims’ rights, appointed the President’s Task Force on Victims of Crime (“Task Force”). The President directed the Task Force to assess the treatment of crime victims in the criminal justice system.⁹ The Task Force members were unanimous in their many findings: “The innocent victims of crime have been overlooked, their pleas for justice have gone unheeded, and their wounds – personal, emotional and financial – have gone unattended.”¹⁰ The Task Force

⁵ *Kenna v. U.S. Dist. Ct. for the Ctr. Dist. of Cal.*, 435 F.3d 1011, 1013 (9th Cir. 2000).

⁶ 410 U.S. 614 (1972).

⁷ *Id.* at 619.

⁸ *Id.* at 616, n.3.

⁹ President’s Task Force on Victims of Crime, *Final Report*, Washington, D.C.: U.S. Government Printing Office, Dec. 1982.

¹⁰ *Id.* at ii.

found poor treatment of crime victims more widespread than it had expected and that “somewhere along the way the system ha[d] lost track of the simple truth that it is supposed to be fair and protect those who obey the law while punishing those who break it.”¹¹ The Task Force recommended sweeping changes, aimed at restoring balance to the skewed criminal justice system. These recommendations implicated every segment of government and society: federal, state and local governments as well as the private sector.¹²

The response to the irrefutable evidence that the criminal justice system had systematically denied victims’ rights was overwhelming. The growing recognition of the plight of victims – aided by the Court’s suggestion and the Task Force’s report – led to profound reforms in the adult system. Within 10 years, every state had enacted statutory rights for crime victims and many adopted constitutional amendments protecting victims’ rights.¹³ As of today, all states have adopted a statutory crime victims’ bill of rights and 33 states have passed constitutional amendments that guarantee rights for crime victims.¹⁴ In the federal system, Congress passed the

¹¹ *Id.* at vi.

¹² *Id.* at ii.

¹³ Dean G. Kilpatrick *et al.*, Office of Justice Programs, *The Rights of Crime Victims – Does Legal Protection Make a Difference?*, U.S. Dep’t of Justice, Dec. 1998, available at <http://www.ncjrs.gov/pdffiles/173839.pdf> (last visited Sept. 17, 2009).

¹⁴ *Id.*

Victim and Witness Protection Act of 1982,¹⁵ its purpose is “to enhance and protect the necessary role of crime victims and witnesses in the criminal justice process; to ensure that the federal government does all that is possible to assist victims and witnesses of crime . . . , and to provide model legislation for state and local governments.” In 1990, Congress continued its robust endorsement of victims’ rights by enacting the first federal bill of rights for victims of crime – the Victim’s Rights and Restitution Act of 1990.¹⁶ Finally, Congress passed the Crime Victims’ Rights Act of 2004,¹⁷ which significantly expanded the rights of crime victims for crimes committed by adults and provided specific enforcement mechanisms and placed a duty on the federal courts to ensure victims are afforded these rights.

Despite these hard-won and deserved advances in victims’ rights, the criminal justice system still routinely denies victims their rights of involvement and participation. Studies continue to highlight the re-victimizing and re-traumatizing of victims the

¹⁵ 18 U.S.C. §§ 1512-1515 (1982).

¹⁶ 42 U.S.C. §§ 10606-10607 (1990).

¹⁷ 18 U.S.C. § 3771 (2004). The definition of “victim” in section 3771(e) of the Crime Victims’ Rights Act of 2004 (CVRA) is not limited to victims of adult offenders; thus, it seems that victims of juvenile offenders also possess these explicit rights. A current federal court case, *United States v. L.M.*, 425 F.Supp. 2d 948 (Iowa N.D. 2006), confronted the issue of whether the CVRA applies to juvenile proceedings and concluded that these rights do attach to victims of juvenile offenders so long as the proceedings are considered public.

criminal justice system imposes. One study found many victims abandon pursuing criminal charges due to the torment of dealing with a system that either ignores them outright or treats them as second-class citizens.¹⁸ These victims feel helpless, as if the system designed to protect and advocate for them, instead abandons them. Further, victims perceive that those in the system – prosecutors, defense attorneys, and judges – appear to not care about them or the crimes committed against them.¹⁹ Another study found nearly one-third of victims interviewed would not get involved again with the criminal justice system.²⁰ This latter study is alarming because, as the Task Force stated, “[w]ithout the cooperation of victims and witnesses in reporting and testifying about crime, it is impossible in a free society to hold criminals accountable.”²¹

Unfortunately, state juvenile justice systems still lack many of the hard-fought reforms achieved in the adult system. For example, only 13 of the 45 states that enacted some form of victims’ rights legislation by 1988 specifically included victims of juvenile

¹⁸ Robert Elias, *Victims of the System* 109 (Transaction Books Brunswick, NJ 1983).

¹⁹ *Id.*

²⁰ *Id.* at 132.

²¹ President’s Task Force on Victims of Crime, *supra* n.7, at vi.

offenders.²² Only half the states have enacted comprehensive notification and participatory rights for victims of serious juvenile offenses. Moreover, those states only allow the victim to be notified or attend hearings if the case involves an offense considered a felony if perpetrated by an adult.²³ In addition, enforcement problems have rendered ineffective some recent on-point legislation. After an in-depth review of victims' rights within the juvenile justice system, the National Victim Center reported "most of the rights for victims of juvenile offenders should more accurately be called suggestions, or recommendations, as they are only advisory in nature."²⁴ Thus, victims of juvenile offenders have not experienced the same advancements of protection of rights as victims of adult offenders – this means the criminal justice system treats victims of the same or similar crimes vastly different solely due to the perpetrator's age.

²² David Beatty *et al.*, Office of Justice Programs, *New Directions from the Field: Victims' Rights and Services for the 21st Century*, U.S. Dep't of Justice, 1997, at 7, available at <http://www.ojp.usdoj.gov/ovc/new/directions/pdftxt/direct.pdf> (last visited Sept. 17, 2009).

²³ *Id.*

²⁴ *1996 Victims' Rights Sourcebook: A Compilation and Comparison of Victims' Rights Laws*, Nat'l Victim Ctr., 1997, § 13.

The *Roper* opinion abolished the death sentence for juveniles; however, the Court then immediately and unambiguously approved of the life without parole sentence for juveniles. The Court reasoned this substitute would sufficiently serve as a deterrent, one of the death penalty's "two distinct social purposes."²⁵ This Court stated "[t]o the extent the juvenile death penalty might have residual deterrent effect, it is worth noting that the punishment of life imprisonment without the possibility of parole is itself a severe sanction, in particular for a young person."²⁶ Thus, this Court relied on the availability and constitutionality of life without parole for juvenile offenders for its conclusion the death sentence for juveniles violates the Eighth Amendment. To hold contrary now, a mere four years later, would be an egregious bait-and-switch that re-victimizes and re-traumatizes innocent victims who deserve consistency and finality of the law.

This is not an issue of innocence; juries found these offenders guilty in a court of law. Moreover, judges determined appropriately severe sentences for them, taking into account the exceptionally cruel acts and callous disregard of human life these offenders demonstrated. After enduring arduous trials, the criminal justice system promised victims their offenders would never be released. Now petitioner's request

²⁵ *Roper*, 543 U.S. at 571.

²⁶ *Id.* at 572.

threatens victims with the real possibility they will have to endure trying the case over and over in parole hearings for the rest of their lives, and possibly even their children's lives. In many instances, the crimes committed by juveniles who received life without parole occurred many years ago, even decades. To now subject victims to regular parole hearings with their offenders would be unjust and unfairly burdensome – evidence may have been lost or misplaced, memories have faded, and witnesses have either died or relocated. To reopen final sentences and require victims to regularly engage with their offenders in parole hearings would serve only to transfer the life sentences from the guilty offenders to the innocent victims.

This Court is asked to retroactively deny legislatures, courts, and society the right to enforce sentences of life without parole against violent juvenile offenders. Any such decision would result in a callous bait-and-switch that would necessarily be an affront to victims. The criminal justice system promised these victims, and this Court affirmed in *Roper* that their offenders would never be released. To deny victims the finality of the law and the opportunity to recover from the horror and cruelty of the violence perpetrated against them would be a merciless swindle.

II. THE OVERWHELMING NATIONAL CONSENSUS IS THAT JUVENILE LIFE WITHOUT PAROLE IS APPROPRIATE AND CONSTITUTIONAL IN LIMITED CASES.

Every state and federal appellate court that has confronted the constitutionality of juvenile life without parole has upheld this rare sentence.²⁷ And

²⁷ See, e.g., *Calderon v. Schribner*, No. 2:06-cv-00770-TMB, 2009 WL 89279, *4-6 (E.D. Cal. Jan. 12, 2009) (upholding life sentence without parole for a 17-year-old convicted of kidnapping for ransom with bodily injury, but not death); *Culpepper v. State*, 971 So. 2d 259 (Fla. Dist. Ct. App. 2008), *cert. denied*, 981 So. 2d 1199 (Fla. 2008) (holding that *Roper* does not provide basis for claim that mandatory life without parole imposed on 14-year-old for murder violates the Eighth Amendment); *Tate v. State*, 864 So. 2d 44 (Fla. Dist. Ct. App. 2003) (finding no Eighth Amendment violation from imposition of mandatory life sentence on 12-year-old for murder of six-year-old); *Phillips v. State*, 807 So. 2d 713 (Fla. Dist. Ct. App. 2002) (holding life without parole imposed on 14-year-old for murder of eight-year-old not violative of the Eighth Amendment); *People v. Cooks*, 648 N.E.2d 190 (Ill. Ct. App. 1995) (holding mandatory life sentence given to 14-year-old for double murder did not violate Eighth Amendment); *People v. Bentley*, No. 214170, 2000 WL 33519653 (Mich. Ct. App. Apr. 11, 2000) (finding 14-year-old murderer's mandatory non-parolable life sentence did not violate state or federal prohibition against cruel and unusual punishment); *State v. Warren*, 887 N.E.2d 1145 (Ohio 2008) (upholding life sentence without parole for a 15-year-old convicted of kidnapping and forcibly raping a nine-year-old victim over two months); *State v. Jensen*, 579 N.W.2d 613 (S.D. 1998) (holding life sentence given to 14-year-old who murdered cab driver was not grossly disproportionate); *State v. Howell*, 34 S.W.3d 484 (Tenn. Crim. App. 2000) (holding natural-life sentence for 14-year-old did not violate the state and constitutional prohibitions on cruel and unusual punishment); *State v. Loukaitis*, 1999 WL 1044203

(Continued on following page)

despite the vast amount of resources expended by advocacy groups on behalf of juvenile perpetrators, only two states, Texas and Colorado, have passed any legislation reforming juvenile life without parole sentences.²⁸ Yet both states apply the revised juvenile sentences prospectively, and Colorado still requires

(Wash. Ct. App. 1999) (finding Eighth Amendment analysis not necessary where 14-year-old given life without parole for murdering a teacher and two students and wounding another); *State v. Massey*, 803 P.2d 340 (Wash. Ct. App. 1990) (finding natural life sentence given to 13-year-old for murder did not violate the Eighth Amendment). *But see Naovarath v. State*, 779 P.2d 944 (Nev. 1989) (relying on the Nevada Constitution and the Eighth Amendment to the U.S. Constitution to strike down a sentence of life without parole imposed on a 13-year-old who had been molested by the man he killed); *In re Nunez*, 173 Cal. App. 4th 709 (Ct. App. 4th Dist. 2009) (vacating a sentence of life without parole imposed on an offender who committed a kidnapping when he was 14 years old on the grounds that the sentence was disproportionate compared to the penalty for murder and therefore “serves no valid penological purpose”). While *Naovarath* and *Nunez* each upset a sentence of life without parole, neither called into question the constitutionality of the sentence as applied to juvenile offenders.

²⁸ The other states include California, Michigan, Nebraska, Florida, Washington, and Louisiana. Claudia Rowe, *A Look at Why State Teens Can Get Life Without Parole*, Seattle Post-Intelligencer, Feb. 5, 2009, at A1. Similar legislation has been introduced at least twice at the federal level. Juvenile Justice Accountability and Improvement Act of 2009, H.R. 2289, 110th Cong. (2009); Juvenile Justice Accountability and Improvement Act of 2007, H.R. 4300, 109th Cong. (2007). The 2007 bill attracted only two supporters out of the 435-member House of Representatives. The more recent bill has attracted no more support.

juvenile offenders to serve a minimum of 40 years before they receive their first parole review.²⁹

In other states where legislatures have introduced bills to end or moderate life without parole sentences for juveniles, the legislation³⁰ either languishes or is quickly defeated outright, presumably because no public support exists to change a law that would release violent offenders solely due to their age at the time they committed their crime. The courts, legislatures, and citizens have overwhelmingly approved the availability of the life without parole sentence for juveniles. Thus, any decision contrary to this express will would not only be an affront to all

²⁹ Colo. Rev. Stat. § 17-22.5-104(d)(IV) (2006); S.B. 839, 81st Leg., Reg. Sess. (Tex. 2009) (passed in both House and Senate, May, 2009).

³⁰ For example, legislation in California that would ban juvenile life without parole sentences recently failed a vote in Committee. *Committee Strikes Down Fair Sentencing for Youth Act*, Calif. Chron., July 2, 2009, available at <http://www.californiachronicle.com/articles/view/108384> (last visited Sept. 17, 2009). The key sponsor in an Illinois measure to abolish juvenile life without parole has backed off stating that more dialogue is needed between the juvenile advocates and the victims. Amanda Paulson, *States Reconsider Life Behind Bars for Youth*, Christ. Sci. Mon., March 12, 2008. Also, the Michigan legislation to end juvenile life without parole sentences “remains stalled in the Senate Judiciary Committee.” Eartha Jane Melzer, *As Bill to Ban Life Imprisonment for Children Languishes, Inequities of Defense Persist*, Mich. Messenger, April 13, 2009 available at <http://michiganmessenger.com/16689/as-bill-to-ban-life-imprisonment-for-children-languishes-inequities-of-defense-persist> (last visited Sept. 17, 2009).

crime victims but also to the country's law-abiding public.

III. UPHOLDING LIFE WITHOUT PAROLE FOR JUVENILE OFFENDERS IS ESSENTIAL FOR THE PROTECTION OF AMERICA'S LAW-ABIDING CITIZENS, PARTICULARLY ITS INNOCENT CHILDREN.

The United States has the worst juvenile crime rate in the Western world and ranks third in the world in the number of murders committed by juveniles.³¹ In 2003, 15 percent of male arrests and 20 percent of female arrests involved a person under 18.³² Starting in the late 1980s and continuing into the 1990s, the Violent Crime Index arrest rate for juvenile offenders rose dramatically.³³ By 1994, the arrest rate of juvenile offenders for violent crimes had risen 61 percent above its 1988 level.³⁴ Yet this astonishing increase was not the only story – the seriousness and heinousness of juvenile crimes had

³¹ Charles D. Stimson & Andrew M. Grossman, *Adult Time for Adult Crimes: Life Without Parole for Juvenile Killers and Violent Teens*, The Heritage Foundation, Aug. 2009, available at <http://www.heritage.org/research/crime/upload/lwop.pdf#page=5> (last visited Sept. 17, 2009).

³² Office of Justice Programs, *Juvenile Offenders and Victims: 2006 National Report*, U.S. Dep't of Justice (2006), at 126.

³³ *Id.* at 132.

³⁴ *Id.*

also intensified. During the period between 1987 and 1993, the juvenile arrest rate for murder increased 110 percent.³⁵ The juvenile arrest rate for forcible rape grew 44 percent between 1980 and 1991.³⁶

The terrifying rise in juvenile violent crime prompted many states to pass legislation imposing harsher penalties and longer sentences; these new policies have proven overwhelmingly effective. Juvenile crime has decreased substantially since its peak in 1993.³⁷ According to the United States Department of Justice, the juvenile arrest rate for Violent Crime Index offenses fell 49 percent between 1994 and 2004, reaching its lowest level since at least 1980.³⁸ In 2006, the growth in the juvenile murder arrest rate was 73 percent below its 1993 peak.³⁹

Despite the proven success of tougher accountability for juvenile offenders, a few advocacy groups are lobbying for a return to a juvenile justice system with ineffective and inappropriate penalties. These groups argue that ‘children’ should not be held fully accountable for their crimes and that the criminal justice system needs to protect juveniles from the

³⁵ *Id.*

³⁶ *Id.*

³⁷ Howard N. Snyder, Office of Juvenile Justice and Delinquency Prevention, *Juvenile Arrests 2006*, U.S. Dep’t of Justice, Nov. 2008, available at <http://www.ncjrs.gov/pdffiles1/ojdp/221338.pdf> (last visited Sept. 17, 2009).

³⁸ *Id.*

³⁹ *Id.*

harsher aspects of the system. What these advocacy groups fail to acknowledge, is that softening sentences for juvenile offenders puts actual children in harm's way – innocent ones, not those who have committed violent crimes. About 62 percent of victims of nonfatal violence committed by juvenile offenders were themselves under 18.⁴⁰ Children make up 95 percent of the victims of sexual assaults committed by juveniles.⁴¹ Juvenile offenders committed about 1 in 2 violent offenses against children; only 1 in 10 violent offenses against adults were committed by a juvenile offender.⁴²

IV. THE CONSTITUTIONAL JUVENILE LIFE WITHOUT PAROLE SENTENCE IS A NECESSARY AND EFFECTIVE TOOL WITHIN THE CRIMINAL JUSTICE SYSTEM.

The *amici* do not oppose the juvenile justice system in general. The criminal justice system appropriately affords juvenile offenders extra layers of legal protection for a variety of socially significant reasons. Most states already have processes in place that review and evaluate appropriate charges and channels of prosecution that look to the individual facts of each case.

⁴⁰ Office of Justice Programs, *Victims of Violent Juvenile Crime*, U.S. Dep't of Justice (July 2004).

⁴¹ *Id.*

⁴² *Id.*

Although most juvenile offenders should not and do not have their cases adjudicated in the adult criminal justice system, the legislatures, the courts and the American people recognize limited exceptions for particularly heinous offenses. In 2005, juvenile courts transferred less than 1 percent of cases to the adult system.⁴³ These cases represented the very worst acts perpetrated on other human beings and call for adjudication in courts appropriate for the crime.

The *amici* are not advocating for a more broad application of the life without parole sentence for juvenile offenders; courts should use it sparingly, as is currently the case. But the life without parole sentence is an effective sentence for the worst juvenile offenders and thus has a place in the nation's criminal justice system. At a minimum, the Court should affirm its decision in *Roper*, which allows states to enact legislation to manage the life without parole process for juvenile offenders and, indeed, the juvenile justice system as the constitutionally empowered state law makers decide.



⁴³ Office of Justice Programs, *Delinquency Cases Waived to Criminal Court, 2005*, U.S. Dep't of Justice (June 2009).

CONCLUSION

Since *Roper*, advocacy groups have pursued an intense national campaign to eliminate or moderate life without parole sentences for juveniles. Unfortunately, these groups have often presented inaccurate portraits of the offenders and their offenses that misinform the public policy discussion. Advocacy groups have expended significant resources on convicted juveniles, most of whom are guilty and often unrepentant of cruel and aggravated offenses. The victims, however, are all too often left feeling discarded and insulted by the system formed to protect them. When debate arises about perpetrators' sentences, victims are often treated like unwelcome interlopers. Yet, their perspective is central to the discussion because there would be no crime, sentence or debate without first the innocent victims. Thus, any sweeping, retroactive legal decision which does not first take into account the interests of victims, would only serve to re-victimize the very people this system is designed to protect.

The petitioners are asking this Court to further restrict victims' rights to hold juvenile offenders accountable for heinous crimes and to require these devastated victims to be re-traumatized in constant legal reengagement with the offenders in unending parole hearings. This only serves to transfer the life sentence from the culpable offender to the innocent victim.

The *amici* are hopeful this Court will continue to affirm legal finality for traumatized victims who will never forget the depth of the horrors committed against the victims by these juvenile offenders. The life without parole sentence for juveniles is appropriately rare and reserved only for the worst of the worst offenders. The *amici* ask this Court to follow its reasoning in *Roper* and uphold the constitutionality of the life without parole sentence for violent juvenile offenders.

Respectfully submitted,

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