STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JOHN ANTONIO POOLE,

Defendant-Appellee.
_____/

Supreme Court No. 166813

Court of Appeals No. 352569

Wayne Circuit Court No. 02-000893-FC

AMICUS CURIAE BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION OF MICHIGAN, JUVENILE LAW CENTER, AND THE SENTENCING PROJECT

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TABLE OF CONTENTS

INDEX OF AUTHORITIES

Cases

Constitutional Provisions

Statutes

Rules

Other Authorities

INTEREST OF AMICI CURIAE[1]

The **American Civil Liberties Union of Michigan** ("ACLU") is the Michigan affiliate of a nationwide, nonpartisan organization with over a million members dedicated to protecting the rights guaranteed by the United States Constitution and our state constitutions. The ACLU has long advocated for an end to the practice of sentencing young people in Michigan to life in prison, including through litigation, as amicus curiae, and through public education. See, e.g., *Hill v Snyder*, 900 F3d 260 (CA 6, 2018); *People v Stovall*, 510 Mich 301; 987 NW2d 85 (2022); ACLU of Michigan, *Second Chances: Juveniles Serving Life Without Parole in Michigan Prisons* (2004) <https://bit.ly/45X5mRz>; Second Chances 4 Youth & ACLU of Michigan, *Basic Decency: Protecting the Human Rights of Children* (2012) <https://bit.ly/3RjreTa>; ACLU of Michigan, *Unlocking Hope: Juvenile Life Without Parole Sentences in Michigan* (2013) <https://bit.ly/3soDt7h>.

Juvenile Law Center fights for rights, dignity, equity, and opportunity for youth. Juvenile Law Center works to reduce the harm of the child welfare and justice systems, limit their reach, and ultimately abolish them so all young people can thrive. Founded in 1975, Juvenile Law Center is the first non-profit public interest law firm for children in the country. Juvenile Law Center's legal and policy agenda is informed by—and often conducted in collaboration with—youth, family members, and grassroots partners. Since its founding, Juvenile Law Center has filed influential amicus briefs in state and federal courts across the country to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are consistent with children's unique developmental characteristics and human dignity.

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[1] Pursuant to MCR 7.312(H)(5), amici curiae state that no counsel for a party authored this brief in whole or in part, nor did anyone, other than amici and their counsel, make a monetary contribution intended to fund the preparation or submission of the brief.

The **Sentencing Project** is a nationwide nonprofit established in 1986 to engage in public policy research, education, and advocacy to promote effective and humane responses to crime. The Sentencing Project has produced a broad range of scholarship assessing extreme sentences in jurisdictions throughout the United States and has a specific interest in constitutional sentences for late adolescents.

LEGAL BACKGROUND AND QUESTION PRESENTED

In *Miller v Alabama*, 567 US 460; 132 S Ct 2455; 183 L Ed 2d 407 (2012), the United States Supreme Court held that mandatory life-without-parole sentences for offenses committed before the age of 18 violate the Eighth Amendment's prohibition on cruel and unusual punishment, US Const, Am VIII. In *People v Carp*, 496 Mich 440; 852 NW2d 801 (2014), vacated 577 US 1186 (2016), this Court held that the new rule announced in *Miller* would not be applied retroactively, under either federal or state retroactivity rules. But in *Montgomery v Louisiana*, 577 US 190; 136 S Ct 718; 193 L Ed 2d 599 (2016), the United States Supreme Court overruled *Carp* and held that *Miller* is retroactive because it announced a new substantive (as opposed to procedural) rule of constitutional law. Therefore, all juvenile life-without-parole sentences in Michigan are invalid and subject to resentencing.

The retroactivity question now returns to this Court following its decision in *People v Parks*, 510 Mich 225; 987 NW2d 161 (2022). In *Parks*, this Court held that mandatory life-without-parole sentences for 18-year-olds violates the Michigan Constitution's prohibition on cruel or unusual punishments, Const 1963, art 1, § 16—just as such sentences for those under the age of 18 were held to violate the Eighth Amendment in *Miller*. The question presented is: Does *Parks*—like *Miller*—apply retroactively to cases that have become final after the expiration of the period for direct review?

The Court of Appeals answered: Yes.

Appellant answers: No.

Appellee answers: Yes.

Amici answer: Yes.

ARGUMENT

I. *Parks*, like *Miller*, recognized a substantive new rule of constitutional law.

In *Parks*, this Court recognized a new rule of state constitutional law when it extended *Miller*'s prohibition of mandatory life without parole to 18-year-olds. *Parks*, like *Miller*, should apply retroactively because the new rule it established is "substantive," not merely "procedural." See *Schriro v Summerlin*, 542 US 348, 351-352; 124 S Ct 2519; 159 L Ed 2d 442 (2004), citing *Teague v Lane*, 489 US 288; 109 S Ct 1060; 103 L Ed 2d 334 (1989) (plurality opinion). Under the *Teague* doctrine, if a new rule is merely "procedural," then it does not apply retroactively. *Summerlin*, 542 US at 352.[2] By contrast, if a new rule is "substantive," then it does apply retroactively because it "necessarily carr[ies] a significant risk that a defendant . . . faces a punishment that the law cannot impose upon him." *Id*. "A conviction or sentence imposed in violation of a substantive rule is not just erroneous but contrary to law and, as a result, void." *Montgomery*, 577 US at 203. For this reason, "the Constitution requires substantive rules to have retroactive effect regardless of when a conviction became final." *Id.* at 200.

Applying this standard, the United States Supreme Court held in *Montgomery* that the new rule in *Miller*—that the Eighth Amendment prohibits mandatory life-without-parole sentences for

[2] Until recently, the United States Supreme Court left open the possibility that in certain instances a new procedural rule could still apply retroactively if that new rule represented a "watershed rule[] of criminal procedure implicating the fundamental fairness and accuracy of the criminal proceeding." *Summerlin*, 542 US at 352 (quotation marks and citation omitted). Recently, however, the Court eliminated the possibility of "watershed" procedural rule retroactivity. *Edwards v Vannoy*, 593 US 255, 271-272; 141 S Ct 1547; 209 L Ed 2d 651 (2021).

youth under the age of 18—is substantive, and therefore retroactive. *Id.* at 206. As the *Montgomery* Court explained, *Miller* was grounded in the Eighth Amendment's "line of precedent holding certain punishments disproportionate when applied to juveniles," and "[p]rotection against disproportionate punishment is the central *substantive* guarantee of the Eighth Amendment." *Id.* (emphasis added). Because children have diminished culpability and greater prospects for reform as compared to adults, the Court explained, mandatory life-without-parole sentences for this class of defendants poses too great a risk of disproportionate punishment. *Id.* at 208. Indeed, *Miller* and *Montgomery* recognize that for most youth, a life-without-parole sentence would be "a punishment that the law cannot impose." *Summerlin*, 542 US at 352. *Miller* thus "rendered life without parole an unconstitutional penalty for a class of defendants because of their status—that is, juvenile offenders whose crimes reflect the transient immaturity of youth." *Id.* at 208 (quotation marks and citation omitted).

Essentially, *Miller* required states to expand the range of permissible sentencing outcomes for a class of defendants, and narrowed the population of defendants for whom the most severe sentence could be imposed. Such an alteration in potential outcomes, and narrowing of the class for whom a given outcome is permissible, "is a class function of substantive law." Buskey & Korobkin, *Elevating Substance Over Procedure: The Retroactivity of* Miller v. Alabama *under* Teague v. Lane, 18 CUNY L Rev 21, 33 (2014); see also *id.* at 40.

Analytically, the new rule in *Parks* is no different. This Court concluded in *Parks* that mandatory life-without-parole sentences for 18-year-olds violate Article 1, § 16 of the Michigan Constitution to the same extent, and for essentially the same reasons, that such mandatory sentences for individuals younger than 18 violate the Eighth Amendment. The Court came to this conclusion by combining *Miller*'s recognition "that youthful characteristics render defendants less

culpable," *Parks*, 510 Mich at 236, with "the scientific consensus that, in terms of neurological development, there is no meaningful distinction between those who are 17 years old and those who are 18 years old," *id*. at 252. Nothing in *Parks* suggests that this Court's adoption of *Miller* for 18-year-olds was any less a substantive ruling than *Miller* was for those younger than 18. To the contrary, this Court said: "[W]e find *Miller* **and *Montgomery*** persuasive to the extent they held that juveniles are constitutionally different from adults for purposes of imposing a life-without-parole sentence," *id*. at 247 (emphasis added); "Our consideration of brain science to determine whether the Legislature's chosen sentence—mandatory life without parole—is cruel or unusual to impose on 18-year-olds who commit first-degree-murder ***is no different*** than the analysis the United States Supreme Court undertook a decade ago in *Miller*," *id.* at 248 (emphasis added).

In other words, *Parks*—just like *Miller*—"established that the penological justifications for life without parole collapse in light of the ['attributes of youth that 18-year-olds and juveniles share']," and thus "rendered life without parole an unconstitutional penalty for a class of defendants because of their status—that is, [18-year-old] offenders whose crimes reflect the transient immaturity of youth." *Montgomery*, 577 US at 208 (bracketed quotation from *Parks*, 510 Mich at 244). The new rule announced in *Miller and* the new rule subsequently announced in *Parks* are substantive because they recognize that for most defendants within a defined class (18-year-olds in *Parks*, juveniles under age 18 in *Miller*), a life-without-parole sentence is, under the relevant constitution's proportionality requirement, "a punishment that the law cannot impose." *Summerlin*, 542 US at 352.

Parks further confirmed the substantive nature of its ruling when it held that 18-year-olds must be sentenced under MCL 769.25 and the caselaw interpreting that statute, including *People v Taylor*, 510 Mich 112; 987 NW2d 132 (2022). *Parks*, 510 Mich at 267-268 & n 19. In *Taylor*,

this Court recognized not only that "*Miller*'s *substantive* holding is that [life without parole] is an excessive sentence for children whose crimes reflect transient immaturity," *Taylor*, 510 Mich at 128 (emphasis added), it also held that under MCL 769.25 the prosecutor bears a burden of proof "to overcome the presumption that [life without parole] is disproportionate," *id*. at 134, and must do so by clear and convincing evidence, *id*. at 135-136. Unless that burden of proof is satisfied, the court may not impose a life-without-parole sentence. *Id*. at 138. By adopting these MCL 769.25 *Taylor* requirements for 18-year-olds in *Parks*, this Court confirmed that its holding narrows the population of 18-year-olds for whom the most severe sentence can be imposed (only those for whom life without parole "is a constitutionally proportionate sentence," *id*. at 138) and expands the range of permissible sentencing outcomes for 18-year-olds convicted of first-degree murder (from mandatory life to a term of years under MCL 769.25). Except in cases where a prosecutor carries their burden of overcoming a presumption of disproportionality by clear and convincing evidence, a life-without-parole sentence is "a punishment that the law cannot impose." *Summerlin*, 542 US at 352. *Taylor*, therefore, confirms that *Parks* created a substantive rule.

II. *Parks*, as a substantive new rule, is retroactive under Michigan law.

As a substantive rule, *Parks* must apply retroactively under Michigan law. In arguing that *Parks* should not apply retroactively, the state's brief before this Court and the dissenting opinion in the Court of Appeals take somewhat divergent paths. In a nutshell, the state takes the position that this Court should adopt the substantive/procedural *Teague* framework for state constitutional law, but hold that as a matter of state law *Parks* is procedural, not substantive, even though it would be substantive under federal law as set forth in *Montgomery*. See Appellant Br at 26-28. By contrast, the Court of Appeals dissent argues that it is irrelevant whether the new rule in *Parks* is substantive or procedural, because retroactivity under Michigan state constitutional law is

governed by the (pre-*Teague*) *Linkletter-Hampton* test,[3] not by the *Teague* doctrine. See *People v Poole*, __ Mich App __, __; __ NW3d __ (2024) (Docket No. 352569) (RIORDAN, J., dissenting); slip op. at 20-21. Neither argument has merit.

A. *Parks* is substantive under state constitutional law.

The state's argument that *Parks* should not be considered substantive under state law even though it is materially indistinguishable from *Miller* falls short. The state urges this Court to follow Justice Scalia's dissent in *Montgomery*, see Appellant Br at 26, rather than the actual holding in *Montgomery*, but advances no argument why there is a compelling reason to define what is "substantive" under a state retroactivity doctrine differently from how it is defined under federal law. Essentially, the state argues that because *Miller* mandated that sentencers follow a certain "process," and did not "categorically" bar life without parole for juveniles, *Miller* should be seen as procedural and *Montgomery*'s decision to the contrary should be ignored. This argument is flawed in at least two respects.

First, as explained by the majority in *Montgomery*, although *Miller* does have a "procedural component"—i.e., it requires *Miller* hearings where youth and its distinctive attributes are considered prior to imposing a sentence—its procedural requirements are those that are "necessary to implement a substantive guarantee." *Montgomery*, 577 US at 209-210. In other words, *Miller*'s holding "goes far beyond the *manner* of determining a defendant's sentence" and "did more than require a sentencer to *consider* a juvenile offender's youth before imposing life without parole; it . . . rendered life without parole an unconstitutional penalty for a class of defendants because of their status—that is, juvenile offenders whose crimes reflect the transient immaturity of youth."

[3] *Linkletter v Walker*, 381 US 618; 85 S Ct 1731; 14 L Ed 2d 601 (1965); *People v Hampton*, 384 Mich 669; 187 NW2d 404 (1971).

Id. at 206, 208 (quotation marks and citation omitted; emphasis added). Such a decision is substantive because it made life without parole, for all but the rare, "permanent[ly] incorrigibl[e]" youth, *id*. at 209, "a punishment that the law cannot impose," *Summerlin*, 542 US at 352. Thus, even though life without parole was not "categorically" barred for *all* juveniles, it *was* barred for a large group of juvenile defendants whose crimes reflected transient immaturity—and *that* is what makes the new rule substantive, Justice Scalia's dissent notwithstanding. *Montgomery*, 577 US at 209.

Second, even under state law, this Court's decisions in *Parks* and *Taylor* have already made clear that the function and effect of *Parks* is the same: the prosecutor will bear a burden, by clear and convincing evidence, to overcome a presumption that life without parole is an unconstitutionally disproportionate sentence. *Taylor*, 510 Mich at 134. If the prosecutor does not overcome the presumption, the defendant must be sentenced to a term of years, and cannot be sentenced to life without parole. *Id*. at 138-139. Thus, for 18-year-olds under *Parks* just as for juveniles under *Taylor*, there is now a new group of defendants for whom life without parole is "a punishment that the law cannot impose." *Summerlin*, 542 US at 352. When a new rule bars a type of punishment for a group of people in this way, the new rule is substantive—and therefore retroactive.

B. The *Linkletter-Hampton* test also requires retroactivity.

Judge Riordan's argument in dissent, reasoning that *Parks* is non-retroactive because the relevant state constitutional law is governed by the *Linkletter-Hampton* test rather than *Teague*, fares no better. Under the *Linkletter-Hampton* standard, if a new rule is *not* substantive, then a three-factor test is used to determine whether the new rule should nonetheless be given retroactive effect: (1) the purpose of the new rule; (2) reliance on the old rule; and (3) the effect of retroactivity on the administration of justice. See *People v Maxson*, 482 Mich 385, 393; 759 NW2d 817 (2008)

(applying the three-factor test after determining that a new rule was not substantive under *Teague*).[4] However, what the Court of Appeals dissent neglected to mention is that even under *Linkletter-Hampton*, if a new rule *is* substantive, then, as in *Teague*, it *is* retroactive, and the three "factors" are largely irrelevant. See *People v Gay*, 407 Mich 681, 706; 289 NW2d 651 (1980).[5] Thus, contrary to the dissent's assertion that whether *Parks* is substantive or procedural is "entirely beside the point," *Poole*, __ Mich App at __ (RIORDAN, J., dissenting); slip op. at 20, in fact it is effectively the only point that needs to be considered.

Additionally, even if the three *Linkletter-Hampton* factors are considered under a state retroactivity test, they too favor giving *Parks* retroactive effect. This is so for two reasons: (1) *People v Carp* itself is not binding or persuasive, and (2) on their own terms the *Linkletter-Hampton* factors weigh in favor of retroactivity.

1. *People v Carp* carries no precedential weight or persuasive authority regarding state-law retroactivity.

As a threshold matter, amici agree with appellee that *Carp* carries no precedential weight because it has been vacated—in full, not just in part. While it may be tempting to treat *Carp* as still good law with respect to state-law determinations that were not directly overruled by *Montgomery*, *Carp*'s precedential value has been completely nullified by the *combined* effect of the United States Supreme Court vacating this Court's pre-*Montgomery* judgments and this Court's

[4] The *Linkletter-Hampton* test is generally thought to be more permissive than *Teague*, which replaced it under federal law. See *Sawyer v Smith*, 497 US 227, 257–258; 110 S Ct 2822; 111 L Ed 2d 193 (1990) (Marshall, J., dissenting).

[5] In *Gay*, this Court left open the possibility that the *Linkletter-Hampton* factors could still be addressed, but said that "only in the rare instance will they have determinative effect." *Gay*, 407 Mich at 706. Amici are unaware of any case in which a new rule of state constitutional law that would be deemed substantive under *Teague* principles was nonetheless subjected to the three-factor *Linkletter-Hampton* test and denied retroactive effect.

subsequent orders on remand, vacating the defendants' sentences and denying leave to appeal. See Appellee Br at 20-23.

To think of the situation another way, the only reason this Court addressed state-law retroactivity in *Carp* was because it held that *Miller* was not substantive and thus not retroactive under the federal *Teague* doctrine. But that holding turned out to be incorrect. So once *Carp*'s *Teague* analysis was overruled and vacated, its state-law retroactivity analysis became dicta. Had *Carp* been correctly decided, the Court would not have addressed state-law retroactivity. And once the error in *Carp* was corrected by the combination of orders from the United States Supreme Court and this Court, nothing of precedential value regarding retroactivity remained.

Additionally, *Carp* lacks persuasive authority regarding state-law retroactivity because the majority opinion's analysis is suffused with a mistaken belief that the new rule in *Miller* was purely procedural—an error that undermines any lessons it might otherwise hold for *Parks*. In analyzing the first factor of the *Linkletter-Hampton* test, the *Carp* Court concluded: "As *Miller* alters only the *process* by which a court must determine a defendant's level of moral culpability for purposes of sentencing, it has no bearing on the defendant's *legal culpability* for the offense of which the defendant has been duly convicted." *Carp*, 496 Mich at 501 (emphasis added). But, as *Montgomery* demonstrated, this reading of *Miller* was thoroughly mistaken; *Miller* required far more than a change in process, and in fact did alter juvenile defendants' legal culpability by making most of them constitutionally ineligible for the most severe punishment available under the law. See *Montgomery*, 577 US at 208. The *Carp* majority then concluded that because the first factor "clearly counsels" against retroactivity, the remaining factors were of lesser importance. *Carp*, 496 Mich at 502-503. Thus, the *Carp* Court's initial error regarding whether *Miller* was substantive so

thoroughly infected its state-law retroactivity analysis that it can no longer be considered even persuasive authority in addressing the retroactivity of *Parks*.

2. Applying the three *Linkletter-Hampton* factors to *Parks*, this Court should give *Parks* retroactive effect.

Linkletter-Hampton's three factors require *Parks* to be applied retroactively. Those factors are: (1) the purpose of the new rule; (2) reliance on the old rule; and (3) the effect of retroactivity on the administration of justice. *Maxson*, 482 Mich at 393.

Purpose

The first factor, the purpose of the new rule, weighs in favor of retroactivity. The purpose of the new rule in *Parks* is to extend to age 18 under the Michigan Constitution the rule from *Miller* that a life-without-parole sentence is an unconstitutional punishment to impose on "offenders whose crimes reflect the transient immaturity of youth." *Parks*, 510 Mich at 239, quoting *Montgomery*, 577 US at 208. When the purpose of a new rule is to eliminate the unconstitutionally harsh punishments that have been mandated by the absence of that rule, the corrective rule should be applied retroactively. See *Toye v State*, 133 So 3d 540, 544-545 (Fla App, 2014) (finding *Miller* retroactive under "purpose" prong of *Linkletter* test).

Reliance

The second factor, reliance, also counsels in favor of retroactivity. In considering this factor, courts must examine "whether individual persons or entities have been adversely positioned in reliance on the old rule" and "suffered actual harm from that reliance." *Maxson*, 482 Mich at 394, 396 (quotation marks omitted). In *Maxson*, for example, defendants under the old rule had no right to appointed counsel on an appeal from a guilty plea, whereas they did under the new rule. Discussing the reliance factor, this Court examined (1) how many defendants would have actually appealed from a guilty plea had the new rule been in effect, and (2) how many of those defendants

would have actually obtained relief on appeal. *Id.* at 394-397. The Court ultimately decided against retroactivity because relatively few defendants would have appealed even had the new rule been in effect, and even fewer would have obtained relief on appeal as a result of the new rule. See *id.*

But in this case, the opposite is true. Reliance on the pre-*Parks* rule "adversely positioned" *all* 18-year-olds who were convicted of first-degree murder. They could not argue for a sentence other than life without parole based on the "mitigating characteristics of youth." *Parks*, 510 Mich at 232. Further, it is likely that most 18-year-olds sentenced under the pre-*Parks* rule "suffered actual harm" from reliance on it, *Maxson*, 482 Mich at 396, because had the new rule been in effect " 'appropriate occasions for sentencing [them] to this harshest penalty [would have been] uncommon,' " *Parks*, 510 Mich at 239, quoting *Miller*, 567 US at 479; see also *Parks*, 510 Mich at 259 ("[T]he logic articulated in *Miller* about why children are different from adults for purposes of sentencing applies in equal force to 18-year-olds."). Indeed, although it is impossible to know with certainty how often Michigan judges would have chosen to impose a life-without-parole sentence on an 18-year-old had that punishment not been mandatory (and had prosecutors been required to overcome a presumption against such a sentence by clear and convincing evidence pursuant to *Taylor*), *Miller* resentencing data in Michigan strongly suggests that such sentences would have been rare. According to data maintained by the Michigan Department of Corrections and provided to the ACLU, only 5% of post-*Miller* resentencings for 17-year-olds in Michigan, and only 5% of post-*Miller* resentencings overall, have resulted in sentences of life without parole.[6]

[6] The data underscores the degree to which the *Carp* majority misunderstood the importance and implications of *Miller*. In discussing the second *Linkletter-Hampton* factor, the *Carp* majority stated: "[I]t is speculative at best to presume that a majority of Michigan's juvenile offenders serving life-without-parole sentences would gain relief in the form of a lesser sentence if they received a resentencing hearing pursuant to the retroactive application of *Miller*." *Carp*, 496 Mich at 509. In reality, 95% of those resentenced have obtained such relief. The *Carp* majority also opined that 17-year-olds would be less likely to receive "special leniency" under *Miller*, *id*. at 508,

Thus, reliance on the old rule was detrimental to 18-year-olds who were sentenced to life without parole under a mandatory law "without consideration of the attributes of youth that 18-year-olds and juveniles share." *Parks*, 510 Mich at 244.

Administration of Justice

The third factor, the effect of retroactivity on the administration of justice, also favors the retroactive application of *Parks*. Although the state has an interest in finality, see *Maxson*, 482 Mich at 397, in this case only the length of defendants' sentences will be called into question—not the validity of their underlying convictions. Further, the state does *not* have a legitimate interest in punishing 18-year-olds (or anyone else) more harshly than the Constitution allows. Finally, this is not a situation in which the courts would be "inundated" with requests for relief. *Maxson*, 482 Mich at 398. There are a finite, known number of individuals incarcerated in Michigan who were sentenced to mandatory life for offenses committed at the age of 18 (approximately 264[7]—fewer than the number of children who were resentenced under *Miller*), and they would be entitled to limited relief only as to the length of their sentences. The fair administration of justice would be served, not undermined, by mitigating punishments that are unconstitutionally harsh.

Regarding this third factor, this Court in *Maxson* also reasoned that the "state's interest in finality . . . serves [its] goal of rehabilitating those who commit crimes because rehabilitation demands that the convicted defendant realize that he is justly subject to sanction, that he stands in need of rehabilitation." *Maxson*, 482 Mich at 398 (quotations and brackets omitted). In this case,

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but in fact post-*Miller* resentencing data indicates that, like a juvenile lifer population overall, only 5% of 17-year-olds in Michigan have been resentenced to life without parole.

[7] See Pluta, *Appeals Court Says 18-Year-Olds Automatically Sentenced to Life Without Parole Will Get New Hearings*, Michigan Public (January 18, 2024) <https://www.michiganpublic.org/criminal-justice-legal-system/2024-01-18/appeals-court-says-18-year-olds-automatically-sentenced-to-life-without-parole-will-get-new-hearings>.

however, the goal of rehabilitation is not served by denying retroactive effect to *Parks*. As this Court observed, "the current system of punishment of 18-year-old first-degree murderers to life without the possibility of parole 'forswears altogether the rehabilitative ideal.' " *Parks*, 510 Mich at 265, quoting *Miller*, 567 US at 473. In fact, allowing defendants to petition for postconviction relief under *Parks* would serve the state's interest in rehabilitation because "[a] young person who knows that he or she has [a] chance to leave prison before life's end has [an] incentive to become a responsible individual," and may even gain "access to vocational training and other rehabilitative services" that are otherwise unavailable to prisoners who are condemned to "die in prison without any meaningful opportunity to obtain release." *Graham v Florida*, 560 US 48, 74, 79; 130 S Ct 2011; 176 L Ed 2d 825 (2010); see also *People v Stovall*, 510 Mich 301, 314 n 3, 320-321; 987 NW2d 85 (2022) (discussing limits on access to educational and rehabilitative programming for prisoners in Michigan with life sentences).

Indeed, the fair administration of justice would be undermined by not applying *Parks* retroactively. Given that this Court has concluded that "there is no meaningful distinction between those who are 17 years old and those who are 18 years old," *Parks*, 510 Mich at 252, serious equal-protection concerns would be implicated if 18-year-olds were not entitled to resentencing under *Parks* while 17-year-olds are entitled to resentencing under *Miller*. The constitutional guarantee of equal protection under the law is "essentially a direction that all persons similarly situated should be treated alike," *City of Cleburne, Tex v Cleburne Living Ctr*, 473 US 432, 439; 105 S Ct 3249; 87 L Ed 2d 313 (1985), and it " 'require[s] that a distinction made have some relevance to the purpose for which the classification is made,' " *Doe v Austin*, 848 F2d 1386, 1394 (CA 6, 1988), quoting *Baxtrom v Herold*, 383 US 107, 111; 86 S Ct 760; 15 L Ed 2d 620 (1966). Because this Court has concluded that "the logic articulated in *Miller* about why children are different from

adults for purposes of sentencing applies ***in equal force*** to 18-year-olds," *Parks*, 510 Mich at 259 (emphasis added), under equal-protection principles this Court should likewise regard 18-year-olds as similarly situated to 17-year-olds for retroactivity/resentencing purposes. Further, treating pre-*Parks* 18-year-olds differently from post-*Parks* 18-year-olds by failing to give *Parks* retroactive effect would raise its own equal-protection concerns given that *Parks* implicates a fundamental right to be free from cruel or unusual punishments. See *Cooey v Kasich*, 801 F Supp 2d 623, 653 (SD Ohio, 2011). Additionally, in all other states where courts have extended *Miller* to older adolescents under state constitutional law, those decisions are applied retroactively to defendants whose convictions have become final on direct review. See *Commonwealth v Mattis*, 493 Mass 216, 237; 224 NE3d 410 (2024); *In re Monschke*, 197 Wash 2d 305, 309-311; 482 P3d 276 (2021). Accordingly, the need for public confidence in the fairness of our legal system and equality of treatment under the law—a key component of the administration of justice—weighs strongly in favor of retroactivity here.

CONCLUSION

For the foregoing reasons, this Court should hold that *Parks* applies retroactively, affirm the judgment of the Court of Appeals, and remand for resentencing.

Respectfully submitted,

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WORD-COUNT STATEMENT

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