IN THE SUPREME COURT, STATE OF WYOMING

CHRISTOPHER ROBERT HICKS, Appellant (Defendant), v. THE STATE OF WYOMING, Appellee (Plaintiff).	S-24-0323

MOTION TO FILE BRIEF AS AMICI CURIAE

On January 31, 2025, Appellant Christoper R. Hicks filed his brief in the above captioned matter. As that brief sets forth, it asks this Court to hold that mandatory sentences of life without parole for those under the age of twenty-one violate the Wyoming State Constitution. That argument was also raised below and addressed on the merits by the District Court. Pursuant to Wyo. R. App. P. 7.12, undersigned respectfully requests this Court to accept the simultaneously submitted amicus brief on behalf of Prof. Robert B. Keiter and The State Law Research Initiative (SLRI) in support of that argument for the reasons set forth below.

DISCUSSION

Proposed Amici collectively have decades of experience studying and litigating state constitutional claims across the United States in general and in Wyoming in particular. The issues presented below and before this Court are rooted in Wyoming's unique

antipunishment clauses which are either entirely foreign to the federal constitution or textually distinct. They also arise out of a scientific consensus and emergent statutory and constitutional appreciation that the differences between youthful offenders and their older counterparts have profound implications for criminal sentencing. Amici possess deep knowledge of and unique perspective on the issues presented in this case, and, in light of the stakes in the matter, seek this Court's leave to participate as such.

I. Interest in the Issues

Amicus Curiae, Prof. Robert B. Keiter, has decades of experience studying the Wyoming Constitution. For fifteen years, he served as a professor at the University of Wyoming College of Law. He co-authored with Tim Newcomb the first edition of the treatise, *The Wyoming State Constitution*, published by Greenwood Press in 1993. In 2017, Oxford University Press published the second edition with Prof. Keiter as the sole author. Prof. Keiter currently serves a Distinguished Professor of Law and the Wallace Stegner Professor of Law at the University of Utah College of Law, where he has continued to publish scholarship and teach courses on constitutional law.

Amicus Curiae, SLRI, a fiscally-sponsored project of the Proteus Fund, Inc., is a legal advocacy organization dedicated to reviving and strengthening state constitutional rights that prevent extremes in our criminal systems, with a focus on excessive prison terms and inhumane conditions of confinement. SLRI has unique expertise in the development and application of state constitutional law, particularly in the context of criminal legal systems. SLRI's work includes, among other things, fostering and developing legal

scholarship on the history and meaning of state constitutional rights, as well as working with legal scholars and criminologists to file amicus briefs in state courts of appeal.

II. Reasons for an Amicus Brief[1]

The simultaneously submitted amicus brief is appropriate and desirable for several reasons. This case presents a novel state constitutional challenge to Wyoming's sentencing statute for first-degree murder. That challenge was extensively litigated in the District Court and addressed on the merits. It presents the Court with an opportunity to address the interplay between Wyoming's antipunishment clauses. *See* Wyo. Const. art. I, §§14-16. The "neutral criteria" for assessing the meaning of these clauses are broad in scope and will draw on a rich source of information for the Court's analysis, particularly in light of Wyoming's unique constitutional provisions and history. *See Sheesley v. State*, 2019 WY 32, ¶ 15, 437 P.3d 830, 836 (Wyo. 2019) (discussing six "non-exclusive neutral criteria [*Saldana* factors] relevant to determining whether the Wyoming Constitution extends broader rights to Wyoming citizens than the United States Constitution") (internal quotation omitted, alteration in original)); *see also Russell v. State*, 2024 WY 126, ¶ 11 n.1, 559 P.3d 597 (Wyo. 2024) (citing *Sheesley*, ¶ 15, 437 P.3d at 836). The constitutional

[1] Amici have no reason to believe either party is not represented competently or not represented at all. *See* W.R.A.P. 7.12(b)(3). Amici are not aware of another case currently pending that may be affected by the decision in the case before the court. W.R.A.P. 7.12(b)(4). However, the issues in the case do have potential implications for the administration of sentencing in murder cases, as discussed *infra*.

framers' intent, the text's plain language, the provision's purpose and history, the document in its entirety, relevant amendments, matters of particular state or local concern, and related precedent from other states are all implicated by the brief presently before the Court. *See Sheesley*, ¶ 15.

The stakes at issue also make an amicus brief appropriate and desirable. The case presents questions concerning the constitutionality of a sentencing statute. Relatedly, it presents questions about whether on the one hand, youthful defendants under age 21 are entitled to a meaningful opportunity to obtain release, or, on the other hand, a mandatory sentence of life without parole for a youthful offense is constitutional. These stakes alone weigh heavily in favor of an amicus brief.

Moreover, the legal questions at issue are novel. They arise at a time when there is increased recognition of the primacy of state constitutions as a source of constitutional jurisprudence. Simultaneously, there has emerged a scientific consensus that persons under 21-years-old lack the culpability of and a have greater capacity for reform than fully-developed adults, as described in the brief. This recognition has growing statutory and constitutional significance. These legal and factual developments also make an amicus brief appropriate and desirable.

III. Unique Information and Perspective of Amici

Amici have both unique information and a unique perspective on the issues presented. Prof. Keiter is perhaps the foremost academic authority on the Wyoming constitution, having published a treatise and other academic works on its meaning. He brings knowledge drawing on decades of study to the issues in this case.

SLRI brings its own unique expertise to the issues in the case, having developed scholarship on state antipunishment clauses across the nation, including in states with similarly worded provisions as Wyoming's antipunishment clauses. That comparative perspective, drawing on SLRI's knowledge of the experiences in other states will deepen the analysis of the important issues in this case.

CONCLUSION

Amici respectfully request that the Court accepts the simultaneously submitted amicus brief for consideration in this matter.

RESPECTFULLY SUBMITTED this 11th day of February 2025.

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The undersigned hereby certifies that on February 11, 2025, he served a true and correct copy of the foregoing via the Wyoming Supreme Court C-Track Electronic Filing System as follows:

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IN THE SUPREME COURT, STATE OF WYOMING

CHRISTOPHER ROBERT HICKS, Appellant (Defendant), v. THE STATE OF WYOMING, Appellee (Plaintiff).	S-24-0323

BRIEF OF AMICI CURIAE ROBERT B. KEITER AND THE STATE LAW RESEARCH INITIATIVE IN SUPPORT OF APPELLANT AND REVERSAL

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SUMMARY OF ARGUMENT

"[S]tate courts cannot rest when they have afforded their citizens the full protections of the federal Constitution." *Sheesley v. State*, 437 P.3d 830, 836 (Wyo. 2019) (quoting William J. Brennan, Jr., *State Constitutions and The Protection of Individual Rights*, 90 Harv. L. Rev. 489, 491 (1977)). Federal rights provide only a floor—not a ceiling—for defining individual liberty, and in Wyoming the "state constitution provides protection of individual rights separate and independent from the protection afforded by the U.S. Constitution." *Id*. (quoting *O'Boyle v. State*, 117 P.3d 401, 408 (Wyo. 2005)). These principles assume acute urgency when the state wields its unmatched power to extinguish personal liberty and imprison someone until they die. The severity of such deprivation is magnified when applied to younger people, who, consigned to death-by-incarceration before their brains have fully developed, will spend their entire adult lives in hopeless confinement. In this case, a man imprisoned since the age of 19 asks whether Wyoming's Constitution provides individual rights against excessive criminal punishments beyond those recognized by Eighth Amendment cases, and specifically whether it prohibits mandatory life without parole (LWOP) sentences for young adults under age 21. This Court should hold that the Wyoming Constitution does prohibit such sentences.

This brief proceeds in three main parts. First, we address the essential role of state constitutionalism in protecting individual liberty, explaining that state courts must independently analyze rights even when similar or superficially identical federal rights exist. This is perhaps especially true in Wyoming—a state with a long history of constitutional and judicial independence, a foundational commitment to individual liberty

free from federal interference, and a state constitution with individual rights that far outnumber those in the federal charter. *See* Wyo. Const. art. I; Robert B. Keiter, *The Wyoming State Constitution* 2d ed. (2017).

Second, we argue that Wyoming's Constitution provides greater rights against excessive punishments in particular. While this Court has acknowledged textual distinctions between state and federal anti-punishment rights, it has "never conducted a comprehensive analysis to determine precisely how that difference equates to greater protection." *Norgaard v. State*, 339 P.3d 267, 274 (Wyo. 2014). We do so here. We begin with state courts' key institutional role in protecting rights within state criminal legal systems and the limits of Eighth Amendment case law. Eighth Amendment rights are expressly federal-specific, constrained by federalism concerns and shaped without regard to the norms and history of a particular state. This is but one reason that state courts should not reflexively import the Eighth Amendment's limited holdings and bright-line rules into their own constitutions.

Given these general principles, we next consider Section 14 specifically. This begins with the text. While the federal Eighth Amendment bans "cruel *and* unusual" punishment, U.S. Const. amend. VIII, Article 1, Section 14 of the Wyoming Constitution uses a disjunctive formulation that prohibits "cruel *or* unusual punishment." Wyo. Const. art. I, § 14 (emphasis added). This is a crucial and, according to Wyoming's founding history, intentional distinction. Indeed, the Wyoming Constitution includes separate and related anti-punishment clauses that the U.S. Constitution does not. Under Section 15, the "penal code shall be framed on the humane principles of reformation and prevention," while

Section 16 requires "safe and comfortable prisons," the "humane treatment of prisoners," and protects those arrested and "confined in jail" from being treated with "unnecessary rigor." *Id*. §§ 15, 16. These are mutually reinforcing provisions that enhance rights against excessive and ultimately cruel criminal penalties.

Third and finally, we explain how Section 14 applies here. We agree with Mr. Hicks that, under Section 14, this Court need only apply the principles in *Miller v. Alabama* to the facts of this case. In *Miller*, the U.S. Supreme Court cited the "distinctive attributes of youth" to bar mandatory LWOP for youth under age 18. *Miller*, 567 U.S. 460 (2012). And the record here shows that emerging adults ages 18 through 20 are materially indistinguishable—that "[t]here is no meaningful cognitive difference" between 17-year-olds on the one hand, and people ages 18 through 20 on the other. *In re Monschke*, 482 P.3d 276, 288 (Wash. 2021). Accordingly, this Court can—and should—simply invoke Section 14 to "apply existing constitutional protections of *Miller* to an enlarged class of youthful offenders." *Id*. at 280

But even setting *Miller* aside, a full excessive punishment analysis under Section 14 yields the same result. Imposing mandatory LWOP on emerging adults younger than 21—and on Mr. Hicks in particular—is unconstitutionally cruel because it fails to serve an accepted penological purpose. Properly analyzed in light of the record evidence, mandatory LWOP makes no measurable contribution to the constitutionally established goals of "reformation and prevention," nor even pure retribution. It is little more than the wanton infliction of suffering, an arbitrary and severe liberty deprivation that is cruel and therefore unconstitutional.

ARGUMENT

I. The Wyoming Constitution Provides Greater Individual Rights Than The Federal Constitution

In the grand tradition of American federalism, Wyoming has a long history of independently interpreting its constitution and providing greater civil liberties than the federal government. In our federalist system, this is both expected and sensible. Federal court holdings bind the entire nation. But states are free—and encouraged—to independently act as "laboratories for devising solutions to difficult legal problems." *Oregon v. Ice*, 555 U.S. 160, 171 (2009) (citing *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting)). This is especially so in criminal law, where the federal courts exercise restraint and defer to states in their management of their own criminal legal systems. *See id.* at 170-71.

A. *Federal Rights Provide Only the Minimum for Protecting Individuals from Government Excess*

The Federal Constitution provides only the minimum protections from government excess that states must afford their citizens. Beyond that, state courts play a crucial role in shaping and enforcing the full breadth of constitutional rights. As Justice William Brennan implored a half century ago, the "legal revolution which has brought federal law to the fore must not be allowed to inhibit the independent protective force of state law—for with it, the full realization of our liberties cannot be guaranteed." Brennan, *State Constitutions*, *supra*, at 491. Accordingly, a state court is free to read "its own State's constitution more broadly than [the Supreme Court] reads the federal Constitution, or to reject the mode of

analysis used by [the Supreme Court] in favor of a different analysis of its corresponding constitutional guarantee." *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 293 (1982).

State courts' responsibility to independently interpret their own constitutions is a vital feature, not a defect, in our constitutional democracy. "This redundancy in interpretive authority—whereby state courts and federal courts independently construe the guarantees that their respective constitutions have in common—is one important way that our system of government channels disagreement in our diverse democracy." Goodwin Liu, *State Constitutions & the Protection of Individual Rights: A Reappraisal*, 92 N.Y.U. L. Rev. 1307, 1312 (2017). Indeed, the state and federal courts have a rich history of drawing on each other for interpretive guidance on analogous language. *See id.* at 1332-33.

An "approach [that] treats federal precedent with a presumption of correctness . . . has no sound basis in our federal system." *Id.* at 1315. Such "lockstepping" poses a "grave threat to independent state constitutions, and [is] a key impediment to the role of state courts in contributing to the dialogue of American constitutional law." Jeffrey S. Sutton, *51 Imperfect Solutions: States and the Making of American Constitutional Law*, 174 (2018). Indeed, "lockstepping" often follows not from thorough analysis, but from the tendency of practitioners to focus primarily if not exclusively on federal claims. *See*, *e.g.*, Chief Justice Loretta H. Rush & Marie Forney Miller, *Cultivating State Constitutional Law To Form A More Perfect Union—Indiana's Story*, 33 Notre Dame J. of L. Ethics & Pub

Pol'y 377, 378, 397 (2019) (explaining that while "the Indiana Constitution is a wellspring of civil-liberty guarantees," such rights "often go[] untapped by litigants and their legal representatives," and that "[i]n our federalist system of governance, attorneys and state supreme courts have responsibilities for cultivating the constitutional law of their states.").

Even when analogous constitutional provisions share the same text, it is proper for state courts to disagree with federal precedent even "on the basis of constitutional reasoning that transcends state boundaries." Liu, *State Constitutions*, *supra*, at 1312. But where the "state-specific history" or text differs from the federal constitution, "it is no surprise that state courts interpreting state constitutions may construe individual rights more expansively than federal courts interpreting the Federal Constitution." *Id.* at 1313.

B. *Wyoming Places Primacy on Its Broader Set of Individual Rights*

In Wyoming there are especially strong reasons for judicial independence from federal influence and from other branches of state government. Wyoming's constitutional structure, history, and tradition all point in the same direction: the Wyoming Constitution provides stronger individual rights—including through both broader language and unique protections—and it also created a strong independent judiciary. Amicus Keiter has explained that beyond creating an "independent supreme court," the delegates to the 1889 Wyoming Constitutional Convention refused to include a provision allowing for advisory opinions because doing so would have undermined this Court's independence. Keiter, *supra*, at 12-13 (internal citations omitted). "This commitment to an independent judiciary also reflected the convention's sense of faith in the judiciary as a guardian of individual

rights, a faith that was not reflected in its view of legislative or executive power." *Id.* at 12-13 (internal citations omitted).

A broad understanding of individual rights under the state constitution is consistent with the Convention delegates having "endorsed the liberal construction of the Declaration of Rights." *Id.* at 18. That construction is "confirmed, at least implicitly, by the sheer number of provisions protecting individual rights in the Wyoming Constitution, as well as the broad language used to define many of those rights." *Id.*

Consistent with this original understanding, this Court has given primacy to state constitutional claims. When properly raised, the state constitution is both independent and considered first, providing state-specific liberty protections that often go beyond those found in the federal charter. *See Sheesley v. State*, 437 P.3d 830, 836 (Wy. 2019) ("We have repeatedly reminded litigants that '[o]ur state constitution provides protection of individual rights separate and independent from the protection afforded by the U.S. Constitution.'"); *see also id*. at 837 (explaining that the factors used to determine state independence from analogous federal rights "are neither compulsory nor exclusive"). Time and again, the Court has "emphasized that '[w]hen a party raises a state constitutional claim and provides proper argument on appeal and in the trial court below, the state constitutional analysis takes primacy.'" *Joseph v. State*, 530 P.3d 1071, 1075 n.2 (Wyo. 2023) (quoting *Levenson v. State*, 508 P.3d 229, 235 (Wyo. 2022)). That primacy applies even to state constitutional provisions with a federal counterpart. *See Vasquez v. State*, 990 P.2d 476, 485 (Wyo. 1999) ("[I]dentical provisions do not mean that an independent interpretation is not warranted") (internal citation omitted)). This is in keeping with the "freer hand" that

states enjoy to consider "local conditions and traditions" when interpreting and implementing a constitutional guarantee. *People v. McKnight*, 446 P.3d 397, 407 (Colo. 2019) (quoting Sutton, *supra*, at 17).

In criminal cases, this Court has recognized broader individual rights in the contexts of both "unreasonable searches and seizures" and "due process." For example, this Court held that article 1, § 4 provided greater protection from police searches during a traffic stop than the Fourth Amendment. *O'Boyle*, 117 P.3d at 408-09 (discussing *Vasquez*, 990 P.2d at 480). That conclusion flowed from both "older Wyoming cases analyzing [the state] search and seizure provision" and "matters of local and state concern." *Id.* at 411 (citing *Saldana v. State*, 846 P.2d 604, 622 (Wyo. 1993) (Golden, J., concurring)). On the latter point, the Court relied on recent studies demonstrating the prevalence of police stops on the interstates bisecting the state, showing how state constitutional rights are responsive to developing empirical evidence. *Id.* (citing DEA Microgram Bulletin, Vol. XXXVII, No. 9, September 2004); NDIC Narcotics Digest Weekly 2004; and 2002 Wyoming Vehicle Mile Book (WYDOT)).

In *Black v. State*, 820 P.2d 969, 972 (Wyo. 1991), this Court applied the state due process clause to a police interrogation where the federal "fifth amendment and *Miranda* were not implicated" because the person was not in custody. *Id.* Nonetheless, the Court found a due process violation after police badgered a pregnant woman who was "upset" and "crying" throughout the interview. *See id.* at 971-72. While police are permitted to question a suspect about their involvement in a crime, "[d]ue process [under the Wyoming

Constitution] does not permit the police to coerce an individual into knotting her own noose." *Id.* at 972.

In the civil context, the state Equal Protection Clause "is construed to protect people against legal discrimination more robustly than does the federal constitution." *Johnson v. State of Wyo. Hr'g Exam' Off.*, 838 P.2d 158, 165 (Wyo. 1992), and religious liberty in Wyoming may be stronger under state than under federal law. *See Neely v. Wyo. Comm'n on Jud. Conduct & Ethics*, 390 P.3d 728, 742 (2017) (citing Robert B. Keiter & Tim Newcomb, *The Wyoming State Constitution* 69 (2011)).

Finally, the Court has not hesitated to exercise judicial review and strike down legislation that violates the state constitution. *See, e.g.*, *Bowers v. Wyo. State Treasurer*, 593 P.2d 182 (Wyo. 1979) (invalidating state workers' compensation laws which violate Wyoming's Equal Protection Clause). In sum, this Court has embraced the robust judicial review and independence envisioned by the state's founders: When confronted with rights violations, it has not simply deferred to legislative judgments; rather it has given full expression to the Wyoming Constitution's expansive individual rights protections.

II. Wyoming's Constitution Provides Greater Individual Rights Against Excessive Punishment Than The Federal Eighth Amendment

A. *Eighth Amendment Jurisprudence Is An Especially Poor Fit For Automatic State Court Deference*

It is especially vital for state courts to independently analyze rights within criminal legal systems, including rights against excessive punishment. In Wyoming, of course, Sections 14, 15, and 16 have distinct language not found in the federal charter. But even in

states with a constitutional anti-punishment clause that is identical to the Eighth Amendment, courts should not reflexively import the holdings and doctrines of Eighth Amendment case law without first conducting an independent, state-based analysis.

First, state courts interpreting state constitutions are structurally better positioned to shape and enforce anti-punishment rights because the vast majority of criminal cases are adjudicated in state courthouses. In 2021, for example, 74,465 criminal cases were filed in all federal district courts,[1] while over 12 million were filed in state courts.[2] As a result, state and local governments hold nearly 90% of the people confined in U.S. prisons.[3] Assessing the constitutional limits of such systems is therefore a state-specific task for which state courts have greater legitimacy and responsibility. *See* Robert J. Smith, Zoe Robinson & Emily Hughes, *State Constitutionalism and the Crisis Of Excessive Punishment*, 108 Iowa L. Rev. 537, 544 (2023) (hereinafter "*State Constitutionalism*"). As one scholar recently observed, "with respect to criminal law and punishment, one would

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[1] *See* United States Courts, *U.S. District Courts—Judicial Business* 2021, Table 5, https://www.uscourts.gov/data-news/reports/statistical-reports/judicial-business-united-states-courts.

[2] National Center for State Courts, Court Statistics Project Releases Trial Court Caseload Trends (2021), https://www.ncsc.org/newsroom/at-the-center/2024/courtstatistics-project-releases-trial-court-caseload-trends.

[3] *See* Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie 2024*, Prison Policy Initiative (March 14, 2024), https://www.prisonpolicy.org/reports/pie2024.html.

presume that the protections against cruel or unusual punishments from state courts would be much greater tha[n] the protections needed in federal courts[,]" as "[s]tates have historically, and even currently, administered the vast majority of criminal sanctions." William Berry, *Unlocking State Punishment Clauses*, Rutgers L. Rev. (forthcoming 2025) (manuscript at 21), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5017494. Eighth Amendment jurisprudence is, by its own terms, federal-specific and constrained by concerns about unduly intruding into state legal systems. This approach necessarily ignores crucial state-specific factors such as unique state history and policy interests, leaving a gap for state liberty protections to fill. Indeed, the Supreme Court has cited this dynamic when explicitly inviting a different state constitutional approach to similar questions.

Take, for example, the Court's opinion in *Jones v. Mississippi*, 593 U.S. 98 (2021), which held that sentencing courts are not required to make on-the-record findings of permanent "incorrigibility" before sentencing a child to die in prison. The majority said this outcome "avoid[s] intruding more than necessary upon the States' sovereign administration of their criminal justice systems," *id*. at 117 (quoting *Montgomery v. Louisiana*, 577 U.S. 190, 211 (2016)). And it stressed that "our holding today does not preclude the States from imposing additional sentencing limits in cases involving defendants under 18," including through "rigorous proportionality or other substantive appellate review of life-without-parole sentences." *Id*. at 120-21.

This invitation for states to establish more "rigorous" proportionality review echoes Justice Anthony Kennedy's controlling opinion in *Harmelin v. Michigan*, the 1991 case in which the Court all but eliminated Eighth Amendment proportionality review of adult

prison terms. *Harmelin*'s test, which prioritizes deference to state legislatures over individual rights, was derived from "the nature of our federal system," 501 U.S. 957, 1001 (1991) (Kennedy, J., concurring in part and concurring in the judgment);—a factor irrelevant to state courts applying state constitutions. *See Fletcher v. State*, 532 P.3d 286, 308 (Alaska Ct. App. 2023) ("*Fletcher I*") ("the federalist concerns that led to the restrained approach adopted by *Jones* are not at issue when state courts are determining the scope and meaning of their own independent state constitutions.").

Second, state deference to Eighth Amendment law impedes the proper development of federal rights. Eighth Amendment analysis requires surveying trends in punishment laws and norms on a state-by-state basis, including state supreme court holdings. *See*, *e.g.*, *Graham v. Florida*, 560 U.S. 48, 73 (2010) (citing a Kentucky Court of Appeals decision to find that the distinctive attributes of youth diminish the penological justifications for imposing life without parole sentences, *Workman v. Commonwealth*, 429 S.W.2d 374, 378 (Ky. App. 1968)). But if state courts simply import federal holdings as their own then they short circuit this crucial input. There can be no evolution of national community standards without a corresponding evolution in state law.

Given this dynamic, a federal doctrine that applies to more than 50 separate criminal legal systems—and that depends in part on independent state law for its own development—does not warrant a presumption of correctness when the scope of *state* constitutional rights is at issue.

B. *When Litigants Properly Raise Claims, State Courts Have Increasingly Expanded Individual Rights Against Excessive Punishment*

Consistent with the general principles of state constitutionalism and the structural importance of state constitutional rights, there is a growing (though not entirely new) trend of state supreme courts expanding rights against excessive punishments. In some states, the primacy of state antipunishment rights has been well-established for decades. For example, one year after the U.S. Supreme Court in *Harmelin* upheld Michigan's mandatory life without parole sentencing law for cocaine possession, the Michigan Supreme Court struck down the same law under its state ban on "cruel or unusual" punishment, citing the state's unique text, history, and constitutional emphasis on rehabilitation. *See People v. Bullock*, 485 N.W.2d 866, 871-77 (Mich. 1992). Similarly, the Washington Supreme Court in 1980 held that a life sentence for forging about $470 worth of bad checks is unconstitutionally "cruel." *State v. Fain*, 617 P.2d 720, 723, 728 (Wash. 1980). The court, acknowledging that the U.S. Supreme Court's contrary holding in *Rummel v. Estelle*, 445 U.S. 263 (1980) involved indistinguishable facts, explained that the text and history of Washington's constitution compelled a different result. *Id.* at 723. "Especially where the language of our constitution is different from the analogous federal provision," the court wrote, "we are not bound to assume the framers intended an identical interpretation." *Id*.

More recently, state courts have departed from and built upon Eighth Amendment cases in expanding rights against excessive prison terms based on the offense and age of the offenders, including rights against LWOP for emerging adults. In a case involving youth under 18, the Alaska Court of Appeals in 2023 declined to follow the U.S. Supreme

Court's holding in *Jones*, deciding instead that sentencing courts must "affirmatively consider" youth as a mitigating factor and justify any life without parole sentence—including a sentence so long it is the functional equivalent of LWOP—with "an on-the-record sentencing explanation" as to why "the juvenile offender is one of the rare juvenile offenders whose crime reflects irreparable corruption." *Fletcher I*, 532 P.3d at 308 (internal quotations omitted); *see also State v. Fletcher*, 555 P.3d 1046, 1048 (Alaska Ct. App. 2024) (holding *Fletcher I* applies retroactively). Similarly, the New Jersey Supreme Court held that a 30-year mandatory minimum sentence before parole eligibility violated the state constitution when applied to children. *State v. Comer/Zarate*, 266 A.3d 374, 380-81 (N.J. 2022).

Some state high courts have gone further and imposed categorical bars against certain punishments for children. The Iowa Supreme Court, for example, held that all mandatory minimum sentences, regardless of length, violate the state "cruel and unusual" punishment clause when applied to children. *State v. Lyle*, 854 N.W.2d 378, 380-81 (Iowa 2014). And the state high courts in Iowa, Massachusetts, and Washington have barred all youth life without parole sentences (whether discretionary or mandatory), *State v. Sweet*, 879 N.W.2d 811, 839 (Iowa 2016); *Diatchenko v. D.A.*, 1 N.E.3d 270, 275-76 (Mass. 2013); *State v. Bassett*, 428 P.3d 343, 345-46 (Wash. 2018), while the Michigan Supreme Court held that life *with* parole sentences are "cruel or unusual" punishment when imposed on children convicted of second degree murder. *People v. Stovall*, 987 N.W.2d 85, 87 (Mich. 2022).

Most relevant here, state high courts have increasingly recognized that the same rationale resulting in greater rights for youth applies with equal force to emerging adults at least up to age 21. As the Washington Supreme Court explained, there is "no meaningful neurological bright line . . . between age 17 on the one hand, and ages 19 and 20 on the other," and so "existing constitutional protections" should apply to this "enlarged class of youthful offenders." *In re Monschke*, 482 P.3d at 280, 287 . As a result, the state supreme courts in Washington and Michigan have barred mandatory LWOP as unconstitutionally cruel punishment for people under age 21 and 19, respectively. *Id*. at 277; *People v. Parks*, 987 N.W.2d 161, 183 (Mich. 2022).[4] The Massachusetts Supreme Judicial Court, meanwhile, extended its rule in *Diatchenko* and held that all life without parole sentences violate the state constitution when applied to anyone under age 21. *Commonwealth v. Mattis*, 224 N.E.3d 410, 415 (Mass. 2024).

As discussed further below, in recognizing and applying broader state constitutional rights, these state supreme court decisions variously relied on distinct state constitutional text, related provisions with no federal analog, unique state history, state-specific standards of decency (including the state's primary penological goals of punishment), and state courts' general role protecting individual liberty. *See generally*, Smith et. al, *State*

[4] On January 22, 2025, the Michigan Supreme Court heard oral argument in two cases that, together, present the question of whether the court's holding in *Parks* applies to people ages 19 and 20. *See People v. Czarnecki*, MSC No. 166654; *People v. Taylor*, MSC No. 166428.

Constitutionalism, *supra*, at 577-93. In Wyoming, all these factors point toward applying Section 14 more expansively than the Eighth Amendment. *See also Saldana*, 846 P.2d at 624 (Golden, J., concurring) (highlighting similar factors to assess whether Wyoming constitutional rights are independent of and broader than similar federal rights).

C. *Section 14 Provides Expansive Liberty Protections And Restricts State Punishment To The Goals Of Prevention And Reformation*

An independent analysis of Wyoming's "cruel or unusual" punishment clause in Section 14—considering its text, history, related state constitutional provisions, and this Court's relevant case law—shows that it provides more expansive liberty protections than the Eighth Amendment, and in particular that it prioritizes the penological goals of reformation and prevention while proscribing criminal punishments that are excessive in relation to their purpose.

Starting with the text, Wyoming bars punishment that is either "cruel or unusual," using the disjunctive "or" where the federal constitution uses the conjunctive "and." This is no accident. First, delegates at Wyoming's 1889 Constitutional Convention recognized that a punishment that was unusual alone would render it unconstitutional. One delegate proposed striking the word "unusual" for that very reason, but the Convention considered and rejected that amendment without questioning the premise:

> Mr. COFFEEN. I wish to call attention to the last line of Sec. 14. "Nor shall any cruel or unusual punishment be inflicted." To some people hanging might be considered an unusual form of punishment. This might prevent any such punishment for crime. I therefore move to strike it out.

> Mr. BAXTER. I think the proper construction of that is that unusual means something unheard of, some punishment that the law does not contemplate. If the legislature should provide for punishment by electricity or something else, I have no idea there would be any objection to it under this.

Journal and Debates of the Constitutional Convention of the State of Wyoming, 719 (1898).[5] With no further recorded discussion, the motion was rejected.

The delegates were aware of the federal constitution and other states that used the conjunctive to limit criminal punishments. When the Convention met, delegates had before them copies of recently ratified constitutions from five western territories—North Dakota, South Dakota, Montana, Washington, and Idaho. Keiter, *The Wyoming State Constitution*, *supra*, at 8. Notably, the anti-punishment clauses in these charters covered a range of linguistic options, from banning "cruel" punishments in South Dakota and Washington, to the disjunctive "cruel or unusual" in North Dakota, to Montana's "cruel and unusual" provision paired with a clause providing that "[l]aws for the punishment of crime shall be founded on the principles of prevention and reformation." Mont. Const. art. II, § 28 (1889). With these options before them, Wyoming's founders ratified a disjunctive "cruel or unusual" clause while also making a commitment, in Section 15, to the penological goals of reformation and prevention.[6]

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[5] Available, https://tinyurl.com/4z33rjsx.

[6] In addition, when considering Section 10 concerning the right to counsel, the delegates specifically replaced "or" with "and" in the second line, further indicating that they understood and were sensitive to the significant difference between the two. *Id*.

Thus, the "intent of the framers of the Wyoming constitutional provision pertaining to punishment was clearly stated," and "the use of the word 'or' means that a punishment may be unconstitutional under Wyoming law if it is either 'cruel' *or* 'unusual.'" *Hopkinson v. State*, 632 P.2d 79, 204-05 (Wyo. 1981) (Rose, C.J., dissenting in part and concurring in part); *see also People v. Carmony*, 26 Cal. Rprtr. 3d 365 (Cal. Ct. App. 2005) (explaining that the disjunctive in "cruel or unusual" is "purposeful and substantive rather than merely semantic"); *Bullock*, 485 N.W.2d at 872 (citing ratification history to explain that the "textual difference" between Michigan's "cruel or unusual" clause and the Eighth Amendment "does not appear to be accidental or inadvertent.").

The structure of Wyoming's Constitution, with other mutually reinforcing provisions in Sections 15 and 16, further supports rights broader than those guaranteed by the Eighth Amendment. *See* Keiter, *The Wyoming Constitution*, *supra,* at 86; *see generally* Robert F. Williams, *Enhanced State Constitutional Rights: Interpreting Two or More Provisions Together*, 2021 Wis. L. Rev. 1001 (2021).

First, Section 15's emphasis on reformation and prevention, and Section 16's bar on unnecessary rigor, have historically been read together and construed to enhance Section 14. In 1898, with two Convention delegates among its members, this Court cited all three provisions to declare: "Our constitution expressly adopts the humanitarian theory" of criminal punishment and "in our fundamental law . . . the penal code shall be founded upon the humane principle of reformation and prevention." *State v. Board of Comm'rs of Laramie Cnty.*, 55 P. 451, 459 (Wyo. 1898); *see also Apodaca v. Ommen*, 807 P.2d 939,

943 (Wyo. 1991) (relying on Sections 15 and 16 together in stating that there is a constitutional duty to provide appropriate medical care to people in prison).

Section 15's mandate for a penal code "framed on the humane principles of reformation and prevention" is especially relevant. This Court has already acknowledged that Section 15 can be used to challenge statutory sentencing provisions, which is precisely what Mr. Hicks seeks to do here. *See Jahnke v. State*, 692 A.2d 911, 930 (1984); Keiter, *The Wyoming Constitution*, *supra*, at 86. Further, promoting rehabilitation over other penological goals is one way in which state constitutions generally provide greater rights against excessive punishment. For example, the Michigan Supreme Court recognizes "[r]ehabiliation [as] a specific goal of our criminal-punishment system," and indeed "the only penological goal enshrined in our proportionality test as a criterion rooted in Michigan's legal traditions." *Parks*, 987 N.W.2d at 182 (internal quotation omitted). Accordingly, excessive punishment claims under Michigan's constitution always turn in part on whether the challenged punishment furthers rehabilitation. *See id*. This Court should likewise recognize that the contours of "cruelty" in Wyoming turn in part on the constitutional goals of reformation and prevention.

More generally, interpreting related constitutional provisions together—with each enhancing the meaning of the other—is a common mode of state-constitutional analysis. For example, a state ban on segregation informs Connecticut's constitutional right to an equal education. *See Sheff v. O'Neill*, 678 A.2d 1267, 1281 (Conn. 1996). Reading those provisions "conjointly," the state supreme court held that "the existence of extreme racial

and ethnic isolation in the public school system deprives schoolchildren of a substantially equal educational opportunity and requires the state to take further remedial measures." *Id.*

In Montana, the state supreme court has repeatedly used one constitutional provision to enhance the meaning of another, including its cruel and unusual punishment clause. In *Quigg v. Slaughter*, the court explained that the limitation on cruel and unusual punishments was enhanced by the state guarantee to human dignity. 154 P.3d 1217, 1223 (Mont. 2007). Similarly, that court relied on the state constitutional right to "privacy" to enhance the meaning of its prohibition on unreasonable searches and seizures, parting ways with related federal jurisprudence. *See State v. Staker*, 489 P.3d 489, 494 (Mont. 2021); *State v. Siegal*, 934 P.2d 176, 183 (Mont. 1997).

In another cruel and unusual challenge, Montana's Chief Justice concurred to argue that the state constitution prohibits life without parole sentences for youth. *See State v. Keefe*, 478 P.3d 830, 841-44 (Mont. 2021) (McGrath, C.J., concurring in part and dissenting in part). He explained that a constitutional provision that "encourages laws which enlarge the protections of youth" added meaning to the state's cruel and unusual punishment prohibition. *Id.* at 842. In light of these mutually reinforcing provisions, he would have held that there is a presumption against life without the possibility of parole for youth that the State failed to overcome. *Id.*

Finally, Oregon's constitutional prohibition of "unnecessary rigor" has been interpreted to be part and parcel of other state constitutional provisions that reflect a "commitment to humanizing penal laws and the treatment of offenders to rank with other

principles of constitutional magnitude independently of any concern of the Congress or of Madison's Bill of Rights." *Sterling v. Cupp*, 625 P.2d 123, 129 (Or. 1981).

In sum, there are strong textual, historical, and structural bases to conclude that Section 14 is not only independent from and broader than the Eighth Amendment, but is animated by "the humanitarian theory" of criminal sanctions and specifically directed toward the goals of reformation and prevention. In applying these principles, this Court is not anchored to the prevailing facts and norms at the state's founding. Rather, the Wyoming Constitution is "a flexible living document" that "accommodate[s] new conditions and circumstances in a changing society." *County Court Judges Ass'n v. Sidi*, 752 P.2d 960, 967 (Wyo. 1988)—accounting for not only evolving norms and moral standards, but also scientific advancement and other empirical evidence. Thus, a punishment once thought properly tailored to the goal of prevention may, based on new evidence, be later found cruel or unusual. This Court has reasoned similarly in the context of unreasonable searches and seizures. *See O'Boyle*, 117 P.3d at 411. It should do the same here with mandatory death-in-prison sentences for emerging adults.

III. Mandatory LWOP For Emerging Adults Is "Cruel" In Violation Of Section 14

A. The Principles Set Forth In Miller v. Alabama *Control This Case*

First, we agree with Mr. Hicks that this case requires only applying the constitutional principles established in *Miller v. Alabama* to an enlarged but materially indistinguishable class of offenders. *See* App. Op. Br. at 24. That was the Washington Supreme Court's rationale when it held that Washington's state constitutional bar on

"cruel" punishments prohibits mandatory LWOP for people under age 21. *In re Monschke*, 482 P.3d at 280. There, the court recognized that "[t]here is no meaningful cognitive difference" between 17-year-olds on the one hand, and people ages 18 through 20 on the other, and therefore it need only "apply existing constitutional protections" to "an enlarged class of youthful offenders older than 17." *Id*. Rather than consider anew whether this punishment practice was unconstitutionally cruel, the outcome, the court said, "flows straightforwardly from our precedents." *Id*.

The same is true here. This Court is not bound by the limits of Eighth Amendment case law and its outdated bright-line rules. To the contrary, it is obligated to build upon that case law to properly enforce Section 14 and Wyoming's broader commitment—explicitly set forth in two constitutional provisions—to the "humane" treatment of people subject to criminal punishment. Wyo. Const. art. I., §§ 15, 16; *State Board of Comm'rs*, 55 P. at 459. Here, as in Washington, there is no dispute that the evidentiary record shows that "no meaningful neurological bright line exists" between youth convicted of criminal offenses before age 18 and emerging adults like Mr. Hicks, *see* App. Op. Br. at 26-33; instead, each group shares the same mitigating and constitutionally significant characteristics of youth. *In re Monschke*, 482 P.3d at 287; *Parks*, 987 N.W.2d at 259 ("the logic articulated in *Miller* about why children are different from adults for purposes of sentencing applies in equal force to 18-year-olds."). Accordingly, as in *Miller* and *In re Monschke*, imposing mandatory LWOP on this age category of offenders "creates an unacceptable risk that youthful defendants without fully developed brains will receive a cruel LWOP sentence." *In re Monschke*, 482 P.3d at 286; *Miller*, 567 U.S. at 479 ("By making youth (and all that

accompanies it) irrelevant to imposition of that harshest prison sentence, such a scheme poses too great a risk of disproportionate punishment.").

This Court's holding in *Nicodemus v. State*, 392 P.3d 408 (Wyo. 2017) does not preclude this result. There, the Court held that Section 14 did not extend *Miller*'s protections to 18-year-olds. But the analysis in *Nicodemus* focused on a very different argument than what Mr. Hicks and Amici advance here. There, the Court reasoned that Mr. Nicodemus was not a "child" for sentencing purposes merely because the state age-of-majority at the time was 19. *Id*. at 415. The opinion does not even mention the body of cognitive and social science on which Mr. Hicks relies, and which shows that there is no material difference between the youth at issue in *Miller* and slightly older emerging adults. That is perhaps why *Nicodemus* relied on a decades-old case upholding the death penalty to reason that LWOP is "humane" and consistent with "reformation and prevention"—ignoring the contemporary empirical evidence showing that Wyoming condemns young people with inherently reduced culpability and a heightened capacity for change to die in prison. *Id*. (citing *Hopkinson v. State*, 664 P.2d 43, 64 (Wyo. 1983)). That would also explain why Mr. Nicodemus failed to meet his "substantial burden of proving the unconstitutionality" of the sentencing statute at issue. *Id*. at 416. Here, conversely, Mr. Hicks provides evidence that is overwhelming and undisputed. Moreover, as set forth below, this Court erred in imposing such an evidentiary burden on a constitutional claim in the first place. *See* note 8, *infra*. For that reason alone, this Court should revisit *Nicodemus* and overrule it to the extent it precludes extending *Miller* protections to emerging adults.

B. A Full Excessive Punishment Analysis Under Section 14 Yields The Same Result

The same result follows from a full excessive punishment analysis under Section 14. Again, under Section 14 a sentence is excessive and unconstitutional if it is cruel, unusual, or both. As we show below, Mr. Hicks's sentence is "cruel" because it fails to serve any legitimate penological purpose, let alone the goals of reformation and prevention enshrined in Wyoming's Constitution.

i. Legal Standard: The Evolving Standards of Decency Test Applies To Excessive Sentencing Claims

Given Section 14's more expansive protections, this Court should conduct a Wyoming-specific analysis under the two-part inquiry known as the "evolving standards of decency" framework.[7] This test presents two questions: First, whether the sentencing

[7] This Court should dispense with its confusing and unfounded rule that requires proof "beyond a reasonable doubt" before holding that a state statute is unconstitutional. *Bear Cloud v. State*, 294 P.3d 36, 41 (Wyo. 2013). As scholars and other courts have explained, that rule is of dubious origin and in any case makes no sense, particularly when civil rights are at stake. See Hugh Spitzer, *Reasoning v. Rhetoric: The Strange Case of "Unconstitutional Beyond a Reasonable Doubt,"* 74 Rutgers U. L. Rev. 1429 (2022); *Reiter v. State*, 36 P.3d 586, 589 (Wyo. 2001). First, the reasonable doubt standard is generally an evidentiary one that asks whether certain facts are proven, while the question of constitutionality is one of law. That legal question may turn on the evidentiary record,

practice at issue violates contemporary standards of decency, including emerging social and scientific consensus against challenged punishment practices, *see Mattis*, 224 N.E.3d at 418-19 ("current scientific consensus regarding the characteristics of the class can help determine the contemporary standards of decency pertaining to that class"); and second, whether the punishment fails to meaningfully serve legitimate penological goals "more effectively than a less severe punishment," *Furman v. Georgia*, 408 U.S. 238, 280 (1972) (Brennan, J., concurring) in light of modern scientific and other empirical evidence.[8] *See*

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but applying constitutional analysis to a set of facts is separate from proving those facts in the first place. *See Oberson v. U.S. Dep't of Agriculture*, 171 P.3d 715, 722-23 (Mont. 2007) (Leaphart, J., concurring) (arguing that the reasonable doubt standard of constitutionality is "an absurd standard of decision for a question of law") (internal quotation omitted). Second, and more to the point, there are already doctrinal tests for whether a particular right has been violated, including the right to be free from cruel or unusual punishment. To then layer on top of such tests an amorphous and nonsensical "beyond a reasonable doubt" requirement improperly dilutes fundamental constitutional rights and undermines the very purpose of express individual rights on which the state cannot infringe. *See Gallardo v. State*, 336 P.3d 717, 720 (Ariz. 2014) ("We . . . disapprove the use of the 'beyond a reasonable doubt' standard for making constitutionality determinations").

[8] *See also* Hon. Scott Kafker, *The Supreme Judicial Court of Massachusetts Provides Greater Protections Against Cruel or Unusual Punishment for Juveniles and Young*

Graham, 560 U.S. at 67; *Roper v. Simmons*, 543 U.S. 551 (2005); Smith et. al, *State Constitutionalism*, *supra*, at 567. The first inquiry into contemporary standards of decency effectively maps onto the "unusual" prong of cruel and/or unusual clauses, while the assessment of whether punishments adequately serve a proper purpose determines "cruelty." *See* William Berry, *Cruel State Punishments*, 98 N.C.L Rev. 1201, 1208-10 (2020). Especially in states with a disjunctive cruel *or* unusual clause, a punishment is unconstitutionally excessive if it fails under either factor. *See Id*. at 1241-49.

This is the doctrinal test that the U.S. Supreme Court has applied in cases challenging the death penalty, youth LWOP, and other punishment practices as applied to a category of offenders. *See*, *e.g.*, *Graham*, 560 U.S. at 67, 71. Other state supreme courts have applied this doctrine in state-specific ways, looking to intra-state indicators of contemporary standards and acceptable purposes of punishment. For example, the Massachusetts Supreme Judicial Court applied this framework to decide that life without parole sentences for emerging adults under age 21 violate the state constitution. *See Mattis*, 224 N.E.3d at 418 n.12. The Michigan Supreme Court conducted a similar analysis to strike down mandatory LWOP for 18-year-olds, but with an explicit emphasis on pursuing rehabilitation. *Parks*, 987 N.W.2d at 182 ("Rehabilitation is . . . the only penological goal enshrined in our [state constitutional] proportionality test as a criterion rooted in Michigan's legal traditions.") (internal quotation marks omitted).

Adults: A Convergence of Science And Law (2025), forthcoming Rutgers Law Review, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4942033.

The doctrinal alternative is the narrower "gross disproportionality" test that both this and the U.S. Supreme Court have used to assess whether individual terms-of-years sentences are excessive. To decide whether an individual sentence is "grossly disproportionate," Wyoming courts consider "(i) the gravity of the offense and the harshness of the penalty; (ii) the sentences imposed on other criminals in the same jurisdiction; and (iii) the sentences imposed for commission of the same crime in other jurisdictions." *Martinson v. State*, 534 P.3d 913, 921 (Wyo. 2023) (cleaned up). Typically, though, courts will not reach the last two factors unless the length of prison term is extreme when compared to the gravity of the offense. *Id*. This mirrors the narrow test set forth in Justice Kennedy's *Harmelin* plurality opinion, *Harmelin*, 501 U.S. at 1004-05, which has rendered the Eighth Amendment all but dead letter in protecting individual liberty against the extremes of over-incarceration. *See* Rachel Barkow, *The Court of Life & Death: The Two Tracks of Constitutional Sentencing Law and the Case for Uniformity*, 107 Mich. L. Rev. 1145 (2009).

In our view, the evolving standards of decency framework "is the approach that best fits with the power and responsibility of state courts interpreting their own constitution." Smith et. al, *State Constitutionalism*, *supra*, at 578. It also accounts for the principle that Wyoming's Constitution is a "flexible" and "living" document "intended to accommodate new conditions and circumstances in a changing society." *County Court Judges Ass'n*, 752 P.2d at 967. Accordingly, it should apply to all excessive punishment claims under Wyoming's constitution—regardless of the punishment at issue, the characteristics of the offender, or whether the claim is "categorical" or "as-applied." Most clearly, it applies to

Mr. Hicks's challenge to mandatory LWOP for emerging adults under age 21, because that claim puts "a sentencing practice itself [] in question" and "implicates a particular type of sentence as it applies to an entire class of offenders[.]" *Graham*, 560 U.S. at 61. In this context, the "gross disproportionality" test's "threshold comparison between the severity of the penalty and the gravity of the crime does not advance the analysis[.]" *Mattis*, 224 N.E.3d at 418 n.12 (quoting *Graham*, 560 U.S. at 61). But it should also apply to Mr. Hicks's claim that mandatory LWOP is unconstitutionally cruel as individually applied to him. "Gross disproportionality" review is fundamentally inadequate and inapposite when the claim is that the mitigating characteristics of youth render a particular sentence unconstitutionally cruel. Such limited inquiry would foreclose proper consideration of Mr. Hicks's claim and omit the critical question—central to evolving standards review and the proper understanding of Section 14—of whether his mandatory LWOP sentence adequately serves a legitimate state purpose. *See* William Berry, *The Evolving Standards, As Applied*, 74 Fla. L. Rev. 775 (2022) (arguing "for the adoption of heightened standards of Eighth Amendment review for individual as-applied proportionality challenges in capital and JLWOP cases.").

Applying the evolving standards test here, we focus on the second prong, which asks courts to assess the efficacy of a challenged punishment practice against legitimate penological goals. At a minimum, criminal punishments must make a "measurable contribution to acceptable goals of punishment," *Coker v. Georgia*, 433 U.S. 584, 592 (1977), and punishments that cannot be justified by their purported purpose are "cruel" and therefore unconstitutionally excessive. *See Graham*, 560 U.S. at 71 ("A sentence lacking

any legitimate penological justification is by its nature disproportionate to the offense."); Berry, *Cruel State Punishments*, 98 N.C. L. Rev. at 1210 ("This inquiry … focuses on whether the punishment at issue is cruel in the sense that it is excessive and otherwise unjustified by some legitimate purpose."). This inquiry is fact-intensive and accounts for a wide range of factors. These include any mitigating circumstances surrounding the offense, the mitigating or vulnerable characteristics of the offender, and contemporary empirical evidence—including social and cognitive science, advancements in criminology, and other relevant data showing how punishments are applied and the outcomes they produce. *See Cohee v. State*, 110 P.3d 267, 274 (Wyo. 2005); (explaining that whether punishments serve their purpose depends on "the crime and its circumstances" and "the character of the criminal"); *Parks*, 510 Mich. at 248-49 ("in the punishment context, science has always informed what constitutes 'cruel' or 'unusual' punishment in regards to certain classes of defendants."). Finally, given the clear text of Section 15, excessive sentence review in Wyoming must prioritize "the humane principles of reformation and prevention." Wyo. Const. art. I, § 15.

ii. Mandatory LWOP For Emerging Adults Is "Cruel" Because It Fails To Serve—And In Fact Undermines—The Goals Of Reformation And Prevention

Both state and federal courts have recognized that LWOP "forswears altogether the rehabilitative ideal." *Miller*, 567 U.S. at 473. Instead of affording the opportunity for people to return as productive, law-abiding members of society, LWOP "means denial of hope; it means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit of [the convict], he will

remain in prison for the rest of his days." *Graham*, 560 U.S. at 70 (quoting *Naovarath v. State*, 779 P.2d 944 (Nev. 1989)). Indeed, LWOP "shares some characteristics with," *Parks*, 510 Mich. at 257, and is "strikingly similar" to the death penalty. *Diatchenko*, 1 N.E.3d at 284. "Unlike any other sentence" besides death, "imprisonment without hope of release for the whole of a person's natural life is a forfeiture that is irrevocable." *Parks*, 510 Mich. at 257.

In some ways, Wyoming's LWOP sentencing scheme is even more at odds with reformation than is capital punishment. While death sentences in the United States require an individualized sentencing hearing and the weighing of mitigating and aggravating factors before the opportunity for reformation is foreclosed, *see Furman*, 403 U.S. 952, Wyoming imposes LWOP without regard to a particular person's culpability or capacity to change. Even assuming that some people are incapable of safely re-entering society (and assuming further that trial courts can identify such people at the time of sentencing) Wyoming's LWOP scheme is necessarily over-inclusive because it applies to young people with developing brains and provides no mechanism by which courts can limit the sentence to "the rare [youthful] offender whose crime reflects irreparable corruption." *Graham*, 560 U.S. at 68 (quoting *Roper*, 543 U.S. at 573).

Indeed, people released from life terms have shown extraordinary success and have among the lowest recidivism rates of any offender category.[9] For example, a recent study

[9] *See generally* Ashley Nellis, *No End In Sight*, *America's Enduring Reliance On Life Imprisonment* (2021), https://www.sentencingproject.org/app/uploads/2022/08/No-End-

looked at youth previously serving LWOP who were resentenced and released after *Miller*. It found that only 5.2% of people received new criminal charges within seven years post-release, and a majority of those were for nonviolent offenses.[10] Combined, studies of released lifers in Michigan, Pennsylvania, Maryland, New York, and California "find recidivism rates less than 5% among people who previously committed violence and were sentenced to life," and that "people released from prison who were originally convicted of homicide are less likely than other released prisoners to be arrested for a violent crime."[11] It is indisputable that mandatory LWOP treats as irredeemable and beyond reformation many people who are, in fact, fully capable of safely returning to society. To the extent that Wyoming is committed to reformation "if possible," *Board of Comm'rs*, 55 P. at 459, imposing mandatory LWOP on emerging adults is a failure.

Of course, reformation and prevention go hand-in-hand, and forever confining people who could meaningfully contribute to their communities is one way in which mandatory LWOP for young people undermines public safety and crime prevention. *See* Keiter, *The Wyoming Constitution*, *supra*, at 86 (explaining how this Court once observed

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in-Sight-Americas-Enduring-Reliance-on-Life-Imprisonment.pdf; *see also* Prescott, Pyle, & Starr, *Understanding Violent-Crime Recidivism*, 95 Notre Dame L. Rev. 1643 (2020).

[10] Sbeglia et al., *Life after Life, Recidivism Among Individuals Formerly Sentenced to Mandatory Juvenile Life Without Parole*, 35 J. Res. Adolesc. 12989 (June 6, 2024), https://pubmed.ncbi.nlm.nih.gov/38845089/.

[11] Nellis, *supra*, n.11.

that "protection of society should be [the] sole object [of penal codes]; and as punishment never made a sincere convert," the prisoners should be trained and educated, where possible, and encouraged to become good citizens.) (quoting *Bd. of Comm'rs*, 55 P. at 459). "Prevention" can also refer to both specific and general deterrence—that is, separating truly dangerous people from society while generally deterring people from violent behavior. *See Wright v. State*, 670 P.2d 1090, 1093 (Wyo. 1983) (explaining that "removal from society" and setting an "[e]xample to others" can be in accord with Section 15 because they "result[] in prevention."). Mandatory LWOP, however, promotes neither.

Over 40 years of experience and empirical study have thoroughly discredited the theory—which originally drove policymakers around the country to impose increasingly long prison terms—that severe punishments deter criminal conduct. If anything, it is the *certainty* of punishment, not *severity*, that deters. "[S]tudy after study [] has shown that people do not order their unlawful behavior around the harshness of sentences they may face, but around their perceived likelihood of being caught and facing any sentence." Nelson, Feineh, & Mapolski, *A New Paradigm for Sentencing in the United States*, Vera Institute of Justice (Feb. 2023); *see also* Daniel S. Nagin, *Deterrence in the Twenty-First Century*, 42 Crime & Just in Am: 1975-2025 (Aug. 2013) ("lengthy prison sentences and mandatory minimum sentencing cannot be justified on deterrence"). This is even more true for younger people with developing brains who are less likely to weigh the long-term consequences of their actions. *See* Jeffrey Fagan & Alex R. Piquero, *Rational Choice and Developmental Influences on Recidivism Among Adolescent Felony Offenders*, 4 J. Emp.

L. Stud. 715, 715 (Dec. 2007) (showing "that both mental health and developmental maturity moderate the effects of perceived crime risks and costs on criminal offending").

Further, the extraordinarily low recidivism rates, *supra*, prove that LWOP does not imprison the most dangerous and therefore does not serve the goal of incapacitating people who pose a threat to the public. This is partly explained by the fact that people age out of crime, especially violent crime. Studies consistently show that "the peak age for murder is 20, a rate that is more than halved by one's 30s and is less than one quarter of its peak by one's 40s." Nellis, *No End In Sight*, *supra*, at 25. Yet more than a quarter of people serving some form of life sentence (LWOP, life with the possibility of parole, or virtual life sentences of 50 years or longer) in Wyoming were younger than 25 at the time of offense, and now 43% of Wyoming's lifers are age 55 or older. Ashley Nellis & Celeste Barry, *A Matter of Life: The Scope and Impact of Life and Long Term Imprisonment in the United States*, The Sentencing Project (Jan. 8, 2025).[12] Wyoming's aging prison population therefore presents an extraordinarily low public safety risk and is not remotely tailored to the purpose of incapacitating dangerous people.

As applied to emerging adults, mandatory LWOP neither reforms offenders nor prevents crime, and because it makes no "meaningful contribution" to those penological goals, it is unconstitutionally cruel under Section 14.

[12] Available at, https://www.sentencingproject.org/reports/a-matter-of-life-the-scope-and-impact-of-life-and-long-term-imprisonment-in-the-united-states/.

iii. Even if this Court Accepts Retribution As A Proper Purpose Of Punishment, Mandatory LWOP For Emerging Adults Does Not Punish The Most Culpable

Finally, if life without parole—in practice Wyoming's most severe punishment, and one that is "strikingly similar" to capital punishment—meaningfully served the goal of retribution, then it would be reserved for the most culpable and deserving. *See Graham*, 560 U.S. at 71 ("[t]he heart of the retribution rationale is that a criminal sentence must be directly related to the personal culpability of the criminal offender.") (internal quotation omitted). But a mandatory punishment imposed without any individualized sentencing determination, and that completely disregards mitigating factors, necessarily fails this objective. That is especially true when such harsh punishment is applied to emerging adults. As both state and federal courts have recognized, and as the record in this case makes clear, "juveniles have lessened criminal culpability as compared to adults," in part due to "mental traits and environmental vulnerabilities [that] . . . are not crime specific." *Sen v. State*, 301 P.3d 106, 126 (Wyo. 2013). As with youth under 18, the neuroplasticity of the 19- and 20-year-old brain causes a "general deficiency in the ability to comprehend the full scope of [one's] decisions as compared with order adults," and contributes to a "lack [of] impulse control." *Parks*, 987 N.W.2d at 178 n.12. And yet, Wyoming's scheme automatically treats all 19- and 20-year-olds as equivalent to "the most culpable defendants committing the most serious offenses." *Miller*, 576 U.S. at 476. Aside from age, mandatory LWOP ignores myriad other potential mitigating factors that bear on culpability, including

someone's role in a particular offense, a personal history of trauma, any influence of mental illness or addiction, or an intellectual disability.

Thus, not only does imposing mandatory LWOP on emerging adults break from Wyoming's constitutional commitment to the goals of reformation and prevention, it is also applied without regard to individual culpability, and therefore cannot be justified by seeking retribution.

CONCLUSION

For the foregoing reasons, this Court should hold that mandatory life without parole for youth and emerging adults under age 21 violates Wyoming's constitutional ban on "cruel or unusual" punishment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 11, 2025, he served a true and correct copy of the foregoing via the Wyoming Supreme Court C-Track Electronic Filing System as follows:

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