STATE OF MICHIGAN
IN THE SUPREME COURT

People of the State of Michigan,

Plaintiff-Appellee,

-vs-

EDWIN LAMAR LANGSTON,

Defendant-Appellant.

Supreme Court No. 163968
Court of Appeals: No. 358537
Circuit Court No. 76-2701-FC

Brief of Amici Curiae of Darryl J. Smith in Support of EDWIN LAMAR LANGSTON

THIS COURT SHOULD HOLD THAT THE LAW ON LWOP PURSUANT TO MCL 750.316 SENTENCING IS UNCONSTITUTIONAL UNDER CONST 1963, ART 1, § 16 OR U.S. CONST, AM VIII TO ALL CASES BEFORE AND AFTER *PEOPLE V AARON*, 409 MICH. 672 (1980), AND SHOULD REVISIT *PEOPLE V. HALL* AS IT RELATES TO THIS CASE, BECAUSE *PEOPLE V. BULLOCK* EFFECTIVELY OVERRULED HALL.

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Dated: July 10, 2025

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STATEMENT OF QUESTIONS PRESENTED

I. **THE MICHIGAN SUPREME COURT'S SEMINAL CASE OF *PEOPLE V. BULLOCK*, 440 MICH. 15; 485 NW2D 866 (1992), WHERE THE COURT HELD A SENTENCE THAT DOES NOT CONSIDER "THE DEFENDANT" IS UNCONSTITUTIONAL EFFECTIVELY OVERTURNED *PEOPLE V. HALL* MAKING THE SENTENCE UNCONSTITUTIONAL AND THE STATUTE MCL 750.316 VOID IN LIGHT OF BULLOCK?**

b) **THE TRIAL COURTS ABUSES THEIR DESCTETION WHEN THEY FAIL TO DISMISS DEFENDANT'S SENTENCES IN LIGHT OF *PEOPLE V. BULLOCK*, 440 MICH. 15; 485 NW2D 866 (1992), WHERE THE STATUTE MCL 750.316 DOES NOT INCLUDE CONSIDERATION OF "THE DEFENDANT" MAKING DEFENDANT'S SENTENCE UNCONSTITUTIONAL CONTRARY TO VERTICAL STARE DECISIS?**

INTEREST AND IDENITY OF AMICI CURIAE

Amici is a similarly situated person and was charged with felony murder as an aider and abettor, and convicted of first degree murder in 1985, at the age of 21 (born April 17, 1963). He was sentenced to a mandatory Life sentence pursuant to MCL 750.316, A-Prefix, by jury trial. At sentencing, Judge Leonard Townsend acknowledging his lack of discretion and reluctantly sentenced Mr. Smith to a *mandatory life sentence* pursuant to MCL 750.316. (Sent. Trans, 5 pages)[1]

[1] The trial Judge Leonard Townsend, at sentencing, expressed his lack of authority to proportion the sentence to Mr. Smith's level of culpability, when he stated:

"*THE COURT*: I agree with you and I told Mr. Smith and I told the other man repeatedly over and over that this would have been an armed robbery. I told him that and I don't particularly like to sentence in this case because I know that Mr. Smith and the other man didn't do the shooting. So all I can do is what I did and I really don't enjoy sentencing people especially on something like this when I know that they aren't the shooters. They didn't listen to your advice. Both of these gentlemen decided that they would do what they wanted to do and they took it out of my hands and I have no discretion.

INTRODUCTION AND SUMMARY OF ARGUMENT

This court should hold that the law on LWOP sentencing has evolved Over time, and should revisit *People v. Hall* as it relates to this case Amici says Yes! Because MCL 750.316 is void, in part, and therefore it doesn't matter what the age is, because it is repugnant to the Michigan Constitution art. 1 §16, where proportionality is required to be applied to [b]oth the crime and the defendant. *People v. Hall*, 396 Mich 650 and 750.316's sentencing scheme only proportions to the crime, and not the defendant. A sentence that is not proportioned to both the crime and the defendant is unconstitutional, and a statute that contains a mandatory life sentencing scheme that does not allow a judge to proportion a sentence to the defendant, makes the statute repugnant to the both constitutions, and void. Applying a void statute to sentence defendant-appellant to a lifetime of incarceration, deeming him permanently incorrigible without considering the scientific data, as it applied to him, is cruel "or" unusual under the Michigan Constitution of 1963, art. 1 §16, and 8th amendment of the United States Constitution. This argument does away with the arbitrary age line drawn in *People v. Parks*, 2022 Mich. LEXIS 1483; It does away with every mandatory life sentence under MCL 750.316, and the People of the State of Michigan must bear the burden of the

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MR. GREENWOOD (Defense Attorney): There is no negative factor other than this conviction and there's a lot of positive things.

THE COURT: Would you like to say anything Mr. Smith?

THE DEFENDANT: No sir.

THE COURT: You told him, and Mr. Evelyn advised his client that this would have been an armed robbery case and that was it. So the sentence is life and that's all I can give him. The sentence is life. You have a right to appeal. If you wish to appeal, you must notify the Court within fifty-six days and if you have no funds for an attorney, the Court will appoint one at no cost to you.

I'm very sorry about this, but all you can do is give him your advice and thats all you can do. ***Now the killer didn't even come to court. He gets his case dismissed."*** (Exhibit-A, Sent. Trans. p.3-4)

legislature's failures; the Court in *People v. Bullock,* 440 Mich. 15; 485 NW2d 866 (1992) has already spoken.

ARGUMENT

Amici avers that a mandatory life sentence for one convicted under MCL 750.316, [e]specially for those defendants charged under the theory of an aider and abettor pursuant to MCL 767.39, MSA 28.979, violates the Michigan's Constitution Art 1, §16, cruel 'or' unusual clause. It is unconstitutional, in-part, because it contains a mandatory life sentencing scheme that does not allow consideration of mitigating factors for those who did not kill, and can never be a penalty that advances the penalogical goal of rehabilitation under these circumstances.

First, this Court should read its reasons in *People v. Taylor*, 2025 Mich LEXIS 603 (April 10, 2025), section (D) THE CONTINUED VIABILITY OF PEOPLE v. HALL" why *Hall's* viability is no longer applicable in today's norm.

The Courts continued reliance on Hall opens the door to present the rebuttal that MCL 750.316 is void, in part, because it is repugnant to the Michigan Constitution art. 1 §16, where proportionality is required to be applied to [b]oth the crime and the defendant, Hall and 750.316's sentencing scheme only proportions to the crime, and [n]ot the defendant. A sentence that is not proportioned to both the crime and the defendant is unconstitutional, and a statute that contains a mandatory life sentencing scheme that does not allow a Judge to proportion a sentence to the defendant, makes the statute repugnant to the both constitutions, and void.

Applying a void statute to sentence any defendant to a lifetime of incarceration, deeming him permanently incorrigible without considering the mitigating factors, is cruel, unusual, and

excessive under the Michigan Constitution of 1963, art. 1 §16, and 8th Amendment of the United States Constitution.

Discussion:

Defendant-Appellant avers that a mandatory life sentence for one convicted under MCL 750.316, [e]specially for those defendants charged under the theory of an aider and abettor pursuant to MCL 767.39, MSA 28.979, violates the Michigan's Constitution Art 1, §16, cruel 'or' unusual clause, the Eighth Amendment's cruel 'and' unusual clause, and the Fourteenth Amendment[2]. It is unconstitutional, in-part, because it contains a mandatory life sentencing scheme that does not allow consideration of mitigating factors for those who did not kill, and can never be a penalty that advances the penalogical goal of rehabilitation under these circumstances.

In *Lockett v. Ohio*, 438 U.S. 586, 604, 98 S. Ct. 2954, 57 L. Ed. 2d 973 (1978), a plurality of the Supreme Court held that "the Eighth and Fourteenth Amendments require that the sentencer, in all but the rarest kind of capital case, not be precluded from considering, as a mitigating factor, any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death." (emphasis in original).

The Court held that the sentencer must have full access to "highly relevant" information. Id. at 603. A majority of the Court adopted the Lockett ruling in *Eddings v. Oklahoma*, 455 U.S. 104, 110, 102 S. Ct. 869, 71 L. Ed. 2d 1 (1982). The Lockett and *Eddings* decisions were revisited in

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2 USCS Const. Amend. 14, § 1

Sec. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Johnson v. Texas, 509 U.S. 350, 113 S. Ct. 2658, 125 L. Ed. 2d 290 (1993). The Court read these cases narrowly:

> "Lockett and its progeny stand only for the proposition that a State may not cut off in an absolute manner the presentation of mitigating evidence, either by statute or judicial instruction, or by limiting the inquiries to which it is relevant so severely that the evidence could never be part of the sentencing decision at all."

This is what Michigan has done with the mandatory life sentence for murder; they made the determination of incorrigibility absolute without use of any mitigating factors—such as whether they committed their crime at a time in their life when they lacked the capability to fully understand the consequences of their actions. The Michigan Supreme Court in *People v. Barber*, 14 Mich. App. 395; 165 N.W.2d 608; 1968 Mich. App. LEXIS 934 stated:

> "we bear in mind the norms governing the review of legislative enactments, norms expressed well by Justice Butzel in *Township of Dearborn v. Dearborn Township Clerk (1952)*, 334 Mich. 673: "We are mindful of the restrictions upon the power of this Court to declare a challenged statute in conflict with our Constitution. It is too well settled to require citation that a statute must be treated with the deference due to a deliberate action of a co-ordinate branch of our State government. If the legislature enacted a statute which does not violate the provisions of the Constitution, this Court may not inquire into the wisdom of the legislation or substitute its judgment for that of the legislature. The conflict between the statute and constitutional provisions must be clear and inevitable before we strike down a statute as unconstitutional." 334 Mich. 673, 680.

There is a clear and inevitable conflict between the statute MCL 750.316 that requires a mandatory life sentence be imposed upon a finding of guilt, and Michigan Supreme Court's holding in *People v. Bullock,* 440 Mich. 15; 485 NW2d 866 (1992), that Mich. Const. art 1, §16 is violated when a sentence is not proportionate to both the defendant and the crime; a statute that is repugnant

to the constitution must be declared void.

MCL 750.316 is a state statute created by the legislative branch of the government; the statute contains two components, (1) the cause and effect by which murder is committed, and (2) a sentence. The Plaintiff challenges that component of the statute that states "and shall be punish by imprisonment for life" which is a mandatory sentence that leaves the Judge without discretion to proportion a sentence to a defendant.

The Michigan Supreme Court held in *Bullock* that a life sentence is unconstitutional if it does not consider both the crime and "the defendant." In *People v. Parks*, 2022 Mich. LEXIS 1483, the Court addressed the difference between the Federal Court's use of cruel "and" unusual in the 8th amendment in comparison to Michigan's use of cruel "or" unusual in its State statute and because the conjunction "and" is used, both adjectives must be present or the court must declare the sentence disproportionate and the defendant's right violated. [3]

In *Hall*, the Supreme Court held that "the punishment exacted is proportionate to the crime",

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3 We decline the prosecution's request to revisit *Lorentzen* and *Bullock*, because we see no basis for overturning the well-established precedent that our Constitution provides broader protection to criminal defendants from disproportionate punishments than that offered under the federal Constitution. See *People v Feezel*, 486 Mich 184, 212; 783 NW2d 67 (2010) ("Indeed, this Court should respect precedent and not overrule or modify it unless there is substantial justification for doing so."). *Moreover, Chief Justice Roberts's dissent in Miller indicates that the words "cruel and unusual" are meant to be read together in Eighth Amendment jurisprudence; thus, it remains logical to us that the Michigan Constitution's choice of the word "or" deliberately and meaningfully provides broader protection to criminal defendants.* See *Miller*, 567 US at 493 (Roberts, C.J., dissenting) ("Today, the Court invokes that Amendment to ban a punishment that the Court does not itself characterize as unusual, and that could not plausibly be described as such."). Additionally, the original meaning of a constitutional provision is not easily definable and should not be used to overturn 50 years of precedent. See *People v Stovall*, __ Mich __, __; __ NW2d __ 2022 Mich. LEXIS 1486, *27 (2022) (Docket No. 162425) (MCCORMACK, C.J., concurring). This is particularly true when there is an unambiguous, meaningful textual difference between the federal constitutional provision and our own. See *People v Collins*, 438 Mich 8, 32; 475 NW2d 684 (1991) (explaining that a compelling reason for "independent state construction" of a constitutional provision "might be found if there were significant textual differences between parallel provisions of the state and federal constitutions" in addition to if history provides a reason to believe a different interpretation is warranted). Given this long-established understanding that our Constitution offers broader protection than the federal Constitution, we decline the invitation to revisit the precedent that supports this broader interpretation.

meaning a mandatory life without parole sentence for first degree felony murder did not constitute cruel or unusual punishment.

In *People v. Parks*, 2022 Mich. LEXIS 1483, the Michigan Supreme Court stated: "Further, we have held that our Constitution requires that sentencing decisions be proportional. Our seminal opinion on the principle of proportionality is *People v Bullock*, 440 Mich. 15; 485 NW2d 866 (1992). In that case, we held that a life-without-parole sentence for possession of 650 grams or more of a mixture containing cocaine was unconstitutional under the state Constitution because of a lack of proportionality. Id. at 27, 30." *Bullock*, also held that for a punishment to be "constitutionally proportionate" it "must be tailored to a defendant's personal responsibility and moral guilt." *Bullock*, 440 Mich. at 39. Since the Court held *Bullock* to be in accordance with the Michigan Constitution, any statute (meaning MCL 750.316) containing a disproportionate sentence is void ab initio.

It is a general rule of statutory interpretation that an unconstitutional statute is void ab initio. This principle is stated in 16 Am Jur 2d, Constitutional Law, § 177, pp 402-403, as follows:

> "The general rule is that an unconstitutional statute, though having the form and name of law, is in reality no law, but is wholly void, and ineffective for any purpose; since unconstitutionality dates from the time of its enactment, and not merely from the date of the decision so branding it, an unconstitutional law, in legal contemplation, is as inoperative as if it had never been passed."

That this rule has been consistently followed in Michigan there can be no doubt. See *Adsit v Secretary of State*, 84 Mich. 420; 48 NW 31 (1891); *Michigan Sugar Co v. Auditor General*, 124 Mich. 674; 83 NW 625 (1900); *Briggs v Campbell, Wyant & Cannon Foundry Co*, 379 Mich. 160; 150 NW2d 752 (1967); *People v Carey*, 382 Mich. 285; 170 NW2d 145 (1969) (opinion of T.M. Kavanagh, J.); and *Horrigan v Klock*, 27 Mich. App. 107; 183 NW2d 386 (1970).

In *Horrigan v Klock, supra,* the Court of Appeals followed the rule that an unconstitutional statute is void *ab initio,* which was reaffirmed in *Briggs,* in holding that *Maki v East Tawas,* 18 Mich. App. 109; 170 NW2d 530 (1969), *aff'd* 385 Mich. 151; 188 NW2d 593 (1971), which declared a state statute to be unconstitutional, was "fully retroactive". See *Pittman v Taylor,* 398 Mich. 41, 46; 247 NW2d 512 (1976). MCL 750.316 effective date is September 18, 1931; Pub Act 1931, No 328, Ch XLV §316.

Applying a void statute to sentence a defendant, to a lifetime of incarceration, deeming him permanently incorrigible without considering the scientific data or mitigating circumstances violates his rights to be free from excessive punishment, and is cruel "or" unusual under the Michigan Constitution of 1963, art. 1 §16. "[A] conviction under an unconstitutional law "is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment. It is true, if no writ of error lies, the judgment may be final, in the sense that there may be no means of reversing it. But . . . if the laws are unconstitutional and void, the Circuit Court acquired no jurisdiction of the causes." *Id.*, at 376-377, 25 L. Ed. 717. *Montgomery v. Louisiana,* 577 U.S. 190, 202; 136 S. Ct. 718, 730; 193 L. Ed. 2d 599, 616; 2016 U.S. LEXIS 8624 The Legislature can't subscribe to the

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4 Thus, this is also true in other sister states; a statute which is unconstitutional upon its face is void and cannot serve as the basis for a valid conviction. *Id.* (citing *State v. Dixon,* 530 S.W.2d 73, 74 (Tenn. 1975); *State v. Broyles,* 2021 Tenn. Crim. App. LEXIS 234; 2021 WL 2156935 *HN2. *In State v. Daniel,* 2006-Ohio-4627; 2006 Ohio App. LEXIS 4482, the court stated "[b]ecause subject-matter jurisdiction goes to the power of the court to adjudicate the merits of a case, it can never be waived and may be challenged at any time." *Pratts,* at P11, citing *United States v. Cotton* (2002), 535 U.S. 625, 630, 122 S. Ct. 1781, 152 L. Ed. 2d 860; *State ex rel. Tubbs Jones v. Suster* (1998), 84 Ohio St.3d 70, 75, 1998 Ohio 275, 701 N.E.2d 1002, reconsideration denied (1999), 84 Ohio St. 3d 1475, 704 N.E.2d 582. Jurisdiction "is a 'condition precedent to the court's ability to hear the case. If a court acts without jurisdiction, then any proclamation by that court is void.' " *Pratts,* at P11, quoting *Tubbs Jones,* supra, at 75; *Patton v. Diemer* (1988), 35 Ohio St.3d 68, 518 N.E.2d 941, paragraph three of the syllabus. In *State v. Woodard,* 2017 Tenn. Crim. App. LEXIS 513; 2017 WL 2570821 "[W]hen a statute is unconstitutional on its face, "'no set of circumstances exists under which the statute, as written, would be valid.'" *Bonds,* 502 S.W.3d at 161 (quoting *Waters v. Farr,* 291 S.W.3d 873, 882 (Tenn. 2009)). Such "[a]n unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed." *Norton v. Shelby Cty.*, 118 U.S. 425, 442, 6 S. Ct. 1121, 30 L. Ed. 178 (1886). In consequence, a claim that the proscriptive statute is unconstitutional on its face strikes at the jurisdiction of the convicting court and, as a result, may be raised at any time before the sentence

principle of proportionality and at the same time impose mandatory life sentences, this is *constitutionally impermissible*.

In the Federalist Papers Written by Alexander Hamilton (Independent Journal, Saturday, June 14, 1788, Federalist No. 78 - The Judiciary Department), Hamilton recognized that legislative act is void if it be contrary to the Constitution:

> "The complete independence of the courts of justice is peculiarly essential in a limited Constitution. By a limited Constitution, I understand one which contains certain specified exceptions to the legislative authority; such, for instance, as that it shall pass no bills of attainder, no ex post facto laws, and the like. *Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing.* [emphasis mine]
>
> Some perplexity respecting the rights of the courts to pronounce legislative acts void, because contrary to the Constitution, has arisen from an imagination that the doctrine would imply a superiority of the judiciary to the legislative power. It is urged that the authority which can declare the acts of another void, must necessarily be superior to the one whose acts may be declared void. As this doctrine is of great importance in all the American constitutions, a brief discussion of the ground on which it rests cannot be unacceptable.

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has expired, even in a petition for writ of habeas corpus. *See Archer v. State*, 851 S.W.2d 157, 160 (Tenn. 1993) ("[T]he writ is available to contest convictions imposed under unconstitutional statutes, because an unconstitutional law is void and can, therefore, create no offense."); *see also, e.g., John H. Williams, Jr., v. Kevin Myers, Warden*, No. M2002-00855-CCA-R3-CO, 2002 Tenn. Crim. App. LEXIS 1090 (Tenn. Crim. App., Nashville, Dec. 20, 2002) ("If the statute were unconstitutional, it would be void from its date of enactment, and therefore, the trial court would have lacked the subject matter jurisdiction to hear the Petitioner's case, rendering its judgment of conviction void."). Under this doctrine, as our supreme court has repeatedly recognized, a criminal statute that is unconstitutional on its face is "void from the date of its enactment" and cannot, therefore, provide the basis for a "valid conviction." *State v. Dixon*, 530 S.W.2d 73, 74 (Tenn. 1975) (citing *Papachristou v. City of Jacksonville*, 405 U.S. 156, 92 S. Ct. 839, 31 L. Ed. 2d 110 (1972); *Stone v. Wainwright*, 478 F.2d 390 (5th Cir. 1973); *Bannister v. United States*, 446 F.2d 1250 (3rd Cir. 1971); *O'Brien v. Rutherford Cty.*, 199 Tenn. 642, 288 S.W.2d 708 (Tenn. 1956); *State v. Hobbs*, 194 Tenn. 323, 250 S.W.2d 549 (Tenn. 1952)); *see also Capri Adult Cinema v. State*, 537 S.W.2d 896, 900 (Tenn. 1976) (observing the general rule that "an unconstitutional criminal statute is 'void from the date of its enactment', and that there can be no valid conviction thereunder."); *see also, e.g., State v. Mark Spencer King*, No. 01C01-9608-CR-00343, 1997 Tenn. Crim. App. LEXIS 893 (Tenn. Crim. App., Nashville, Sept. 18, 1997) ("In this jurisdiction, an unconstitutional statute or an amendment to a constitutional statute is *void ab initio*-from the date of its enactment."); *cf. State v. Driver*, 598 S.W.2d 774, 776 (Tenn. 1980) ("An unconstitutional act designed to amend or supersede an existing law does not repeal or change the former valid act but leaves it in full force and effect."); *Leech v. American Booksellers Ass'n, Inc.*, 582 S.W.2d 738, 740 (Tenn. 1979) (same).

> There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. *No legislative act, therefore, contrary to the Constitution, can be valid. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid."* [emphasis mine]

Chief Justice Marshall wrote long ago in *Marbury v Madison*, 5 US 137, 177; 2 L. Ed. 60 (1803), "It is emphatically the province and duty of the judicial department to say what the law is. . . . If two laws conflict with each other, the courts must decide on the operation of each." Chief Justice Marshall expounded on this in further detail:

> "The powers of the legislature are defined, and limited; and that those limits may not be mistaken, or forgotten, the constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained?
> The distinction, between a government with limited and unlimited powers, is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed, are of equal obligation.
> It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it; or, that the legislature may alter the constitution by an ordinary act.
> Between these alternatives there is no middle ground. The constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and like other acts, is alterable when the legislature shall please to alter it.
> If the former part of the alternative be true, then a legislative act contrary to the constitution is not law: if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power, in its own nature illimitable.
> Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be, that an act of the legislature, repugnant to the constitution, is void.
> This theory is essentially attached to a written constitution, and is consequently to be considered, by this court, as one of the fundamental principles of our society. It is not therefore to be lost sight of in the further consideration of this subject.
> If an act of the legislature, repugnant to the constitution, is void, does it, notwithstanding its invalidity, bind the courts, and oblige them to give it effect? Or, in other words, though it be not law, does it constitute a rule as operative as if it was

> a law? This would be to overthrow in fact what was established in theory; and would seem, at first view, an absurdity too gross to be insisted on." [*Marbury*, 5 U.S. at 176-177.]

While Chief Justice Marshall was addressing a case in which Congress exceeded the limits of its powers in enacting legislation. The legislative body cannot legitimately enact a statute that is repugnant to the Constitution.

The question then becomes whether the legislature's authority allows for establishing sentences that are both disproportionate and proportionate? If the former is true, the Supreme must overturn *Bullock* because their proportionality ruling is based on constitutional grounds. It is unchallengeable whether the legislature has the authority to create statutes and sentences that protect citizens from criminal activity, and therefore, the answer is an unequivocal yes, but the "disproportionate sentence" cannot he repugnant to the Constitution.

MCL 750.316 contains a mandatory life sentence component that does not allow a Judge to proportion a sentence to a defendant making the statute repugnant to Michigan's Constitution thru *Bullock*. Applying a voidable statute to sentence any person to a lifetime of incarceration without complying with *Bullock* is cruel, unusual, and excessive.

Why cannot a court of law fashion a different sentence for a mandatory life sentenee that is declared void due to being repugnant to the state's constitution? A Court cannot change a legislatively created mandatory sentence in a statute, but the court has the authority to declare it unconstitutional and void. The Michigan Supreme Court wrote, "we alone are the ultimate authority with regard to the meaning and application of Michigan law." *Bullock*, 440 Mich at 27. Therefore, if the court holds that the sentencing component of the statute is void, the sentencing court would have lacked jurisdiction to sentence upon conviction under this statute, and the defendant must be

released forthwith.

There is the question whether a statute is automatically void without the Court declaring it void, or does the Court have to declare the statute that is repugnant to the constitution void before a defendant can challenge the trial court's jurisdiction to sentence.

The question then becomes whether the entire statute is voidable when a part of the statute is declared void? Jurisdiction to convict is not lost when jurisdiction to sentence is declared void, and the statute cannot stand without a sentencing component.

There is no other sentence available under MCL 750.316 should the court void the sentencing component; the court could either the sentence and conviction, but one cannot be dismissed without the other. The court could in theory allow a plea to second degree murder, or the legislature may create an indeterminate sentence for this statute, limited to these circumstances. If the remedy is dismissal, there would be no need to take a plea to second degree murder because double jeopardy would attach, and you cannot be tried twice for the same crime. A legislative amendment to MCL 750.316 implementing an indeterminate sentence could only work prospectively.

In conclusion, *Bullock* defines what is required to make Hall's life sentence constitutional. Applying Hall without applying Bullock establishes the Court's failure to proportion the sentence, making the sentence unconstitutional. A required mitigation hearing, as held in Parks, settles whether a life sentence is constitutional or repugnant to the constitution, or whether it requires the Court to void the sentence and perhaps the statute containing the sentence. Therefore, the need to keep drawing an arbitrary age line based on the brain science is no longer necessary for 21-year olds, or all those sentence pursuant to MCL 750.316.

The science excepted by the Court in *People v. Parks*, 2022 Mich LEXIS 1483, that now apply to 17 thru 20 year olds via *People v. Taylor* (docket No. 166428) and *People v. Czarneki* (Docket No. 166654), decided April 10, 2025, should not be limited under an arbitrary age line; If the Court sees fit to selectively apply the brain science that applies to all defendants considered juveniles up to 25 years of age, the court mightiest well get rid of finger-print science, ballistic science, science behind drug testing, medical science, science of the law etc., and apply it all selectively as well.

Since 1992, the effective date the Supreme Court held in *Bullock id.*, that a sentence is unconstitutional if the crime and the defendant is not considered, effectively overturning the 1976 case of *Hall id.,* where the court held a mandatory life sentence is constitutional; every person of legal stature is responsibility for the failure to act to correct the sentences of those persons incarcerated under a sentence pursuant to MCL 750.316, to date.

Lower courts must follow precedent and hold MCL 750.316 unconstitutional in accordance with *People v Milbourn*, 435 Mich. 630, 636 (1990), and *Bullock*; the court must declare MCL 750.316 void ab initio. Without a valid statute there is no conviction thereunder.

CONCLUSION

For the above reasons this Court should overturn Hall, the Legislature must bear its burden.

Dated: July 10, 2025

Respectfully submitted,

Darryl J. Smith #179933
in pro per
Amici Curiae