No. 17-952

In The Supreme Court of the United States

STATE OF WYOMING,

Petitioner,

v.

PHILLIP SAM,

Respondent.

On Petition For A Writ Of Certiorari To The Wyoming Supreme Court

BRIEF OF *AMICI CURIAE* STATES OF UTAH, ARIZONA, FLORIDA, GEORGIA, IDAHO, INDIANA, KANSAS, MICHIGAN, NEBRASKA, NEW JERSEY, OKLAHOMA, SOUTH CAROLINA, SOUTH DAKOTA, AND WISCONSIN SUPPORTING PETITIONER

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QUESTION PRESENTED

Where this court's decisions in *Miller v. Alabama*, 567 U.S. 460 (2012), and *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), have generated four different lower-court splits, should this Court grant review to clarify what limits the Eighth Amendment imposes on juvenile sentencing in homicide cases?

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INTEREST OF *AMICI CURIAE*[1]

The States enact and enforce the vast majority of criminal laws in this country, including those applicable to juvenile offenders. They thus have important sovereign interests in knowing what penalties they are permitted to impose on juvenile offenders while retaining flexibility to impose the penalties they deem will best serve public safety. Where, as here, the Eighth Amendment means different things for juvenile sentencing in different jurisdictions, it impedes the States' exercise of essential sovereign powers.

INTRODUCTION AND SUMMARY OF ARGUMENT

This Court's recent Eighth Amendment cases on juvenile sentencing make clear that juvenile offenders cannot be sentenced to death (*Roper v. Simmons*), to life without parole (LWOP) for a non-homicide crime (*Graham v. Florida*), or automatically to life without parole for a homicide (*Miller v. Alabama*). This Court later held *Miller* to have retroactive effect and opined that juvenile LWOP sentences would be rare, applied only to those juveniles who are truly incorrigible (*Montgomery v. Louisiana*).

[1] Counsel of record for all parties received notice at least 10 days before this *amicus curiae* brief was due of the State's intent to file it. The State of Utah, as *amicus curiae*, may file this brief without leave of Court or consent of the parties. Sup. Ct. R. 37.4.

But these decisions leave unclear the proper analysis for homicide crimes with discretionary sentences, term-of-years sentences, and aggregate sentences. Lower courts have split on these issues in four relevant ways.

The first split is over whether *Miller* not only prohibits mandatory LWOP sentences but also limits *discretionary* LWOP sentences for juvenile homicide offenders. Eight State supreme courts, six State intermediate appellate courts, and three federal circuit courts have held that *Miller* applies only to mandatory sentences, with an additional circuit holding that it was not unreasonable to limit *Miller* to mandatory sentences. Five State supreme courts have held that *Miller* applies to lengthy discretionary sentences, but they vary on whether traditional sentencing affords sufficient consideration of an offender's youth.

The second split is over whether *Miller* applies to aggregate term-of-years sentences. One circuit and six States say that *Miller* applies to aggregate sentences, while six other States say that *Miller* does not.

The third split is over the point at which a term-of-years sentence for a juvenile amounts to the effective equivalent of LWOP, and whether he will have a "meaningful opportunity" for release. Some courts look at actuarial numbers to determine if a juvenile is likely to survive to the point of possible release. Others subdivide over whether, even assuming survival, geriatric release is meaningful enough. And the Wyoming court

here answered that question simply by drawing an arbitrary line.

The fourth split is over whether *Montgomery* requires a finding that a juvenile is incorrigible before imposing life without parole or its term-of-years equivalent. Five States have said that it does, three have said that it does not.

The Wyoming Supreme Court decision under consideration implicates all four of these splits. It is further evidence that this Court's Eighth Amendment jurisprudence has led to intolerable inconsistency in the States' exercise of their core sovereign duty to sentence juvenile offenders. This Court should grant review.

ARGUMENT

I. This Court should grant review because lower courts have split four ways on *Miller* and *Montgomery*'s effect on juvenile sentencing.

A. **Eighth Amendment limits on sentencing juveniles.** Because juveniles are different from adults, the law usually treats them differently. *Miller v. Alabama*, 567 U.S. 460, 481 (2012) (noting that "children are different," and that "it is the odd legal rule that does *not* have some form of exception for children"). In criminal justice, this usually means separate juvenile proceedings geared to reform rather than to punish. *See generally* National Center for Juvenile Justice,

Juvenile Offenders and Victims: 2014 National Report, 84-88, 93, available at https://tinyurl.com/mrwn6ju, last accessed January 25, 2018.

But juveniles are not always treated differently. Some enter the adult criminal-justice system because they are sophisticated and have failed to reform despite repeated leniency; others enter by committing serious crimes like murder, robbery, kidnapping, and rape. Once they enter – however they do – they are (mostly) subject to adult punishments. *Id.* at 99-104.

For the two most serious punishments – death and LWOP – this Court has marked out three Eighth Amendment boundaries.

First, *Roper v. Simmons*, 543 U.S. 551 (2005), held that no person can be executed for a capital offense he committed when he was a juvenile. According to *Roper*, doing so violates the Eighth Amendment because there is a national consensus against it, and because juveniles are less culpable than adults. *Id.* at 566-67, 569-70. Juveniles, the Court said, lack maturity and have "an underdeveloped sense of responsibility"; they "are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure"; and their character is "less fixed" and "not as well formed." *Id.* at 569-70.

Second, *Graham v. Florida*, 560 U.S. 48 (2010), held that no juvenile can be sentenced to LWOP for a non-homicide offense. *Graham* reasoned that this followed both from the relative rarity of homicides by juveniles and from *Roper*'s rationale of youthful

immaturity, impressionability, and malleability. *Id.* at 62-70. Though States were "not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime," this Court said that juveniles must have "some meaningful opportunity" for release. *Id.* at 75.

Third, *Miller* held that juveniles convicted of homicide could not be sentenced to mandatory LWOP, but were entitled to individualized sentencing. Such sentencing must take into account the juvenile's maturity, impressionability, and malleability, as well as the crime's circumstances. 567 U.S. at 471, 476-77, 481, 489.

Finally, *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), held that *Miller* applied retroactively to cases on collateral review. *Id.* at 736. In so doing, it explained that after *Miller*, "it will be the rare juvenile offender who will receive" LWOP, as that penalty will be reserved for "those rare children whose crimes reflect irreparable corruption." *Id.* at 734.

B. **Four splits.** Lower courts have struggled to apply these holdings when sentencing juveniles for homicide offenses that involve discretionary sentences, term-of-years sentences, and aggregate sentences. They have split in four different ways.

1. ***Miller*'s applicability to discretionary sentences.** The first split involves mandatory and discretionary sentences. Eight State supreme courts and six State intermediate appellate courts have held that *Miller* does not apply to discretionary sentences. *State*

v. Valle, Case no. 1 CA-CR 15-0539, 2017 WL 4638252, *1 (Ariz. Ct. App., Oct. 17, 2017) (holding *Miller* inapplicable to non-mandatory consecutive sentences for murder and two counts of attempted murder by a juvenile); *Murry v. Hobbs*, Case no. 12-880, 2013 Ark. 64, *4 (Ark., Feb. 14, 2013) (holding *Miller* "simply inapposite" to non-mandatory life sentence); *Lucero v. People*, 394 P.3d 1128, 1133 (Colo. 2017) (holding "analysis in *Miller* is limited to the sentence at issue in that case, mandatory life without parole"); *Foster v. State*, 754 S.E.2d 33, 37 (Ga. 2014) (refusing to apply *Miller* to discretionary sentence); *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012) (holding *Miller* inapplicable to discretionary sentencing); *Ellmaker v. State*, Case no. 108,728, 2014 WL 3843076, *10 (Kan. Ct. App., Aug. 1, 2014) (affirming 50-year sentence, explaining that "*Miller* bans only *mandatory* imposition of life without parole on a juvenile offender"); *People v. Casper*, Case no. 335316, 2018 WL 384605, *5 (Mich. Ct. App., Jan. 11, 2018) (holding *Miller* inapplicable to discretionary term-of-years sentence); *Mason v. State*, Case no. 2015-CP-00523-COA, 2017 WL 2335516, *3 (Miss. Ct. App., Sep. 19, 2017) (holding *Miller* inapplicable to discretionary term-of-years sentence); *State v. Nathan*, 522 S.W.3d 881, 891 (Mo. 2017) (holding *Miller* inapplicable to discretionary sentence); *State v. Gutierrez*, Case no. 33,354, 2013 WL 6230078, *2 (N.M., Dec. 2, 2013) (refusing to apply *Miller* to discretionary, life-with-parole sentence); *Commonwealth v. Rutter*, Case no. 1995 MDA 2016, 2017 WL 4772737, *2-4 (Pa. Super. Ct., Oct. 23, 2017) (holding *Miller* inapplicable to discretionary aspects of sentence); *State v. Charles*, 892 N.W.2d 915,

919 (S.D. 2017) (declining to apply *Miller* to discretionary sentence); *State v. Davis*, Case no. M2016-01579-CCA-R3-CD, 2017 WL 6329868, *25 (Tenn. Crim. App., Dec. 11, 2017) (citing cases holding "that *Miller* does not apply to Tennessee's sentencing scheme" for homicides because it is not mandatory); *Turner v. State*, 443 S.W.3d 128 (Tex. Crim. App. 2014) (limiting *Miller* to mandatory sentences).

Three Circuits have likewise held on direct review that *Miller* does not apply to discretionary sentences. *Evans-Garcia v. United States*, 744 F.3d 235, 240-41 (1st Cir. 2014) (explaining *Miller* applies to mandatory, not discretionary, sentences); *United States v. Walton*, 537 Fed. Appx. 430, 437 (5th Cir. 2013) (holding *Miller* inapplicable to discretionary sentence); *United States v. Jefferson*, 816 F.3d 1016, 1019 (8th Cir. 2016) (same). And another Circuit has held on federal habeas review that it was not unreasonable to confine *Miller* to mandatory sentences. *Davis v. McCollum*, 798 F.3d 1317, 1321 (10th Cir. 2015) ("*Miller* said nothing about non-mandatory life-without-parole sentencing schemes").

In contrast, five State supreme courts have held that *Miller* applies to discretionary sentences, though they differ on whether traditional sentencing affords adequate consideration of youth as a mitigating circumstance. *Steilman v. Michael*, 407 P.3d 313, 318-19 (Mont. 2017) (holding *Miller* applicable "irrespective of whether the life sentence was discretionary" and requiring sentence "to adequately consider the mitigating characteristics of youth"); *State v. Long*, 8 N.E.3d 890, 899 (Ohio 2014) (requiring lower court to clearly

consider youth as mitigating factor under *Miller* at discretionary sentencing); *Luna v. State*, 387 P.3d 956, 961-63 (Okla. Crim. App. 2016) (requiring express consideration of youth in discretionary sentencing); *Bear Cloud v. State*, 334 P.3d 132, 141-43 (Wyo. 2014) (requiring individualized sentencing under *Miller* under discretionary scheme); *State v. Houston*, 353 P.3d 55, 75 (Utah 2015) (upholding discretionary LWOP sentence as compliant with *Miller*); *see also Casiano v. Comm'r of Corr.*, 115 A.3d 1031, 1043 (Conn. 2015) ("*Miller* implicates not only mandatory sentencing schemes, but also discretionary sentencing schemes that permit a life sentence.").

The Wyoming Supreme Court's decision implicates this well-established, square split and warrants this Court's review. This case is an excellent vehicle for reviewing that question on the merits because the Wyoming Supreme Court erroneously extended *Miller*'s holding to discretionary sentencing. As the better-reasoned opinions on this question recognize, *Miller* says nothing about discretionary sentencing, and its rationale cannot reasonably be extended to that meaningfully different context.

2. ***Miller*'s applicability to aggregate term-of-years sentences.** The second split involves juvenile offenders who receive lengthy aggregate term-of-years sentences for multiple offenses. Four State supreme courts and two State intermediate appellate courts have held that *Miller* does not apply to aggregate sentences. *Lucero*, 394 P.3d at 1133 (explaining that "*Miller* is limited to the sentence at issue in that

case" and "does not extend to lengthy aggregate sentences" and upholding 84-year aggregate sentence composed of 32-, 32-,10-, and 10-year terms); *State v. Ali*, 895 N.W.2d 237, 246 (Minn. 2017) (refusing to extend *Miller*/*Montgomery* to aggregate consecutive sentences, upholding 90-year sentence composed of three 30-year-to-life terms); *Casper*, 2018 WL 384605, *5 (holding *Miller* inapplicable to aggregate 42-year sentence); *Nathan*, 522 S.W.3d. at 891 (Mo.) (explaining that "*Miller* did not address the constitutionality of consecutive sentences, let alone the cumulative effect of such sentences," and upholding aggregate sentence of four life terms plus additional terms-of-years); *State v. Castaneda*, 889 N.W.2d 87, 97 (Neb. 2017) (holding *Miller* inapplicable to aggregate sentence of 105-years with partly consecutive 40-, 40-, 10-, 5-, 5-, 5-, and 5-year terms); *Rutter*, 2017 WL 4772737, *3-4 (Pa.) (holding *Miller* inapplicable, upholding aggregate 54-year sentence composed of various 35-, 10-, 5.5-, and .75-year terms).

Six State supreme courts and one State intermediate appellate court squarely disagree, holding instead that *Miller* extends to aggregate term-of-years sentences that, in the courts' view, constitute de facto LWOP. *People v. Franklin*, 370 P.3d 1053, 1059-60 (Cal. 2016) (applying *Miller* to aggregate sentence of 50 years composed of two 25-year terms that was the "functional equivalent of LWOP"); *Purdy v. State*, Case no. 5D16-370, 2017 WL 384094, *3 (Fla. Dist. Ct. App., Apr. 28, 2017) (applying *Miller* to aggregate 49-year sentence comprised of 40- and 9-year consecutive terms);

People v. Reyes, 63 N.E.3d 884, 888 (Ill. 2016) (per curiam) (applying *Miller* to 97-year aggregate sentence of 45-, 26-, and 26-year terms); *Steilman*, 407 P.3d at 319 (Mont.) (holding *Miller* applicable to 110-year sentence composed of 100- and 10-year terms that were "the practical equivalent" of LWOP); *State v. Zuber*, 152 A.3d 197, 448 (N.J. 2017) (applying *Miller* to 75-year aggregate sentence composed of 30-, 15-, 15-, 15- and 4-year terms); *State v. Ramos*, 387 P.3d 650, 660-61 (Wash. 2017) (applying *Miller* to 85-year aggregate sentence for extensive convictions, the longest carrying a 25-year term), *cert. sought sub nom. Ramos v. Washington*, Case no. 16-9363; *Bear Cloud*, 334 P.3d at 144-45 (Wyo.) (applying *Graham* and *Miller* to 45-year aggregate sentence, with longest individual sentence of 25 years); *see also McKinley v. Butler*, 809 F.3d 908 (7th Cir. 2016) (vacating 100-year aggregate sentence under *Miller* and imposing stay for juvenile to exhaust State process); *Brown v. State*, 10 N.E.3d 1, 8 (Ind. 2014) (reducing 150-year aggregate sentence to 80 years under state constitution, but relying on *Graham* and *Miller*); *State v. Null*, 836 N.W.2d 41, 71 (Iowa 2013) (similar, vacating 52-year aggregate sentence).

This Court should grant review and make clear that *Miller* does not apply to aggregate sentences. *Cf. Graham*, 560 U.S. at 124 (Alito, J., dissenting) ("Nothing in the Court's opinion affects the imposition of a sentence to a term of years without the possibility of parole."). Guidance on this issue is important because recidivism is unquestionably "a legitimate basis for increased punishment" that has long animated State

sentencing policy. *Ewing v. California*, 538 U.S. 11, 25 (2003). And as this Court has recognized, it "cannot be doubted" that States have a "legitimate and compelling" interest "in protecting the community from crime." *Schall v. Martin*, 467 U.S. 253, 264 (1984) (quoting *De Veau v. Braisted*, 363 U.S. 144, 155 (1960)). It also has "stressed" that "this interest persists undiluted in the juvenile context." *Id.*; *see also Willbanks v. Mo. Dept. Corr.*, 2015 WL 6468489, *16 (Mo. Ct. App., Oct. 27, 2015) (rejecting rule of parole eligibility during life expectancy as failing to account for number of crimes, criminal episodes, victims, and offender's role).

If the Eighth Amendment entitles juvenile offenders committing multiple crimes to the prospect of release – no matter how many or serious their offenses – they would essentially have an automatic volume discount on crimes, which would undercut the States' legitimate penal interests. This Court should grant certiorari to make clear that aggregated consecutive sentences for multiple crimes do not fall within *Miller*'s scope.

3. ***Miller*'s application to LWOPs-in-effect**. *Amici* disagree with the Wyoming Supreme Court's holding that lengthy aggregated sentences run afoul of *Miller*. But if that holding is correct, it implicates a third split presented here: When does a term-of-years sentence constitute de facto LWOP, and are homicide offenders entitled to some "meaningful opportunity" to obtain release? This case is an excellent vehicle for this Court to provide further guidance on precisely when an opportunity for release is "meaningful."

The term "meaningful opportunity" comes from *Graham*, *see* 560 U.S. at 75, which did not involve a homicide offense. But because *Miller* quoted that term, *see* 567 U.S. at 479, some courts have imported the "meaningful opportunity for release" requirement into homicide cases involving aggregate sentences. Just how "meaningful" an opportunity for release must be has defied consensus, and spawned various approaches.

Some states have statutorily required parole hearings after as little as 15 years, and others after as many as 40 years. *See, e.g.*, Ariz. Rev. Stat. Ann. § 13-716 (2014) (juvenile offenders eligible for parole "on completion of service of the minimum sentence"); Cal. Pen. Code § 3051 (2016) (parole hearing required after, at most, 25 years); Colo. Rev. Stat. Ann. § 17-22.5-104(2)(d)(IV) (2006) (parole hearing required after 40 years); Conn. Gen. Stat. Ann. § 54-125a(f) (2015) (parole hearing required after, at most, 30 years); Del. Code Ann. tit. 11, §§ 4209A, 4204A(d) (2013) (maximum sentence of 25 years to life for juvenile homicide offender); Fla. Stat. § 921.1402(2) (2014) (requiring parole review after, at most, 25 years for juvenile offenders); La. Rev. Stat. Ann. § 15:574.4(E) (2014) (requiring parole review after 35 years for juvenile homicide offenders); W. Va. Code § 61-11-23(2)(b) (2014) (requiring parole review after fifteen years for juvenile offenders); Wyo. Stat. Ann. § 6-10-301(c) (2016) (juvenile offender eligible for parole after 25 years).

Courts have struggled with whether a "meaningful opportunity" for release exists after a lengthy term-of-years sentence – whether imposed by such a state statute or in the trial court's discretion. The supreme courts of Nebraska, South Dakota, and Virginia, as well as the Tennessee Court of Criminal Appeals, have concluded that possible release at or around age 60 constitutes a "meaningful opportunity" for release. *See State v. Smith*, 892 N.W.2d 52, 66 (Neb. 2017) (parole eligibility at age 62 provides meaningful opportunity); *Charles*, 892 N.W.2d at 920-21 (S.D.) (parole eligibility at age 60 provides meaningful opportunity); *State v. Hampton*, No. W2015-469-R3-CD, 2016 WL 6915581, *10 (Tenn. Ct. Crim. App., Nov. 23, 2016) (parole eligibility at age 55 complies with *Graham*); *Johnson v. Commonwealth*, 793 S.E.2d 328, 331 (Va. 2016) (holding potential release at age 59 complies with *Miller*); *see also Demirdjian v. Gipson*, 832 F.3d 1060, 1077 (9th Cir. 2016) (holding that offender eligible for release at 66 did not "necessarily" receive LWOP sentence); *Ellmaker*, 2014 WL 3843076, *10 (rejecting argument that 50-year sentence, with possible release when offender is 67, is the "functional equivalent" of LWOP); *Mason*, 2017 WL 2335516, *4 (similar, for offender who would be 57 when eligible for release).

But the Connecticut and Iowa supreme courts have held that the prospect of release at or after age 60 does not afford the offenders a "meaningful opportunity" for release. *Casiano*, 115 A.3d at 1047 (Conn.) (release at age 66 does not afford meaningful opportunity); *Null*, 836 N.W.2d at 71 (Iowa) (holding

possibility of "geriatric release" at age 68 not meaningful opportunity).

The Wyoming Supreme Court, in turn, drew a unique line. It set a maximum upper bound for juvenile sentences: if the minimum sentence is for 45 years or more, or the offender will not be released until he is 61 years old or older, then the offender has received a de facto LWOP sentence. Pet. App. 59.

Such "unpredictable and inconsistent" results cry out for resolution. *Casiano*, 115 A.3d at 1069 (Espinosa, J., dissenting) (opining that such "uneven application of *Miller* cannot be reconciled with eighth amendment principles"); *see also Null*, 836 N.W.2d at 67-68.

This Court's recent *per curiam* decision in *Virginia v. LeBlanc*, 137 S. Ct. 1726 (2017), confirms that this issue still needs definitive resolution. The Virginia Supreme Court had held in a prior case that a juvenile who would be eligible for parole at age 60 would have a meaningful opportunity for release under *Graham*. *See Angel v. Commonwealth*, 704 S.E.2d 386 (Va. 2011). LeBlanc moved in Virginia court to modify his sentence so it would allow for parole at age 60; that motion was denied based on *Angel*. He then sought relief through federal habeas, and the Fourth Circuit held that this Court's cases clearly established that so-called "geriatric release" did not comply with *Graham*. *LeBlanc v. Mathena*, 841 F.3d 256, 268-69 (4th Cir. 2016).

This Court reversed, holding that *Graham* did not clearly establish that geriatric release could not constitute a meaningful opportunity for release. *LeBlanc*, 137 S. Ct. at 1728-29. As the Court explained, "Perhaps the next logical step from *Graham* would be to hold that a geriatric release program does not satisfy the Eighth Amendment, but perhaps not." *Id.* (citation and quotation marks omitted). This Court should grant review and make clear that geriatric release is adequate for homicide offenders under *Miller*.

4. ***Montgomery*'s incorrigibility factor.** The fourth and final split – which primarily involves decisions from State intermediate appellate courts – concerns *Montgomery*'s impact on *Miller*. *Montgomery* was clear that *Miller* itself "did not impose a formal factfinding requirement" regarding incorrigibility on States when imposing LWOP for a homicide offense. 136 S. Ct. at 735. Yet courts have split over whether *Montgomery*'s language that LWOP should be reserved for "those rare children whose crimes reflect irreparable corruption" did impose such a requirement. *Id.* at 734. Five State courts have held that no formal finding is required. *People v. Phung*, 9 Cal.App.5th 866, 880 n.7 (Cal. Ct. App. 2017); *People v. Hoy*, 2017 Ill. App (1st) 142596, ¶47 (Ill. Ct. App. 2017); *Cook v. State*, Case no. 2016-CA-00687-COA, 2017 WL 3424877, *8 (Miss. Ct. App., Nov. 28, 2017); *State v. Garza*, 888 N.W.2d 526, 536 (Neb. 2016); *State v. Bassett*, 394 P.3d 430, 436-37 (Wash. Ct. App. 2017). But three have held that such a finding is required. *State v. Simonds*, 2017 Ohio 2739, ¶21 (Ohio Ct. App. 2017); *Commonwealth v. Batts*, 163 A.3d 410, 454-55 (Pa. 2017); Pet. App. 57-58.

Two concurrences in *Adams v. Alabama*, 136 S. Ct. 1796 (2016), illustrate the disagreement. Adams was convicted of a "heinous murder" he committed when he was 17 years old and ultimately sentenced to death. *Id.* at 1979 (Alito, J., concurring). Following *Roper*, Adams's sentence was converted to life without parole. *Id.* After this Court decided *Miller*, Adams sought *Miller*'s retroactive application to his case. After deciding that question in *Montgomery*, the Court granted Adams's petition, vacated the decision below, and remanded for further proceedings under *Montgomery*. *Id.*

Justice Alito, joined by Justice Thomas, concurred in the decision to grant, vacate, and remand, and opined that given the prior individualized death sentence, it could "be argued that the original sentencing jury fulfilled the individualized sentencing requirement that *Miller*" later imposed because "the sentencer necessarily rejected the argument that the defendant's youth and immaturity called for the lesser sentence of" LWOP. *Id.* Justice Sotomayor, joined by Justice Ginsburg, also concurred separately, but took issue with Justice Alito's conclusion that mere consideration of youth sufficed to comply with *Miller*. In her view, *Montgomery* had required a definitive answer to the question of "whether petitioners' crimes reflected 'transient immaturity' or 'irreparable corruption.'" *Id.*, quoting *Montgomery*, 136 S. Ct. at 734.

This Court should grant review and clarify that *Miller* and *Montgomery* require no explicit finding of incorrigibility, but rather permit sentencers to exercise traditional discretion to decide the appropriate

punishment, as long as the exercise of that discretion includes considering the juvenile's age as a mitigating factor.

CONCLUSION

This Court's recent Eighth Amendment jurisprudence about sentencing for juveniles has raised at least as many questions as it has answered. The Wyoming Supreme Court's opinion reflects confusion on four questions arising from that jurisprudence. This case is an excellent vehicle for resolving them. This Court should grant review and reverse the judgment of the Wyoming Supreme Court.

Respectfully submitted.

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