NO: 21-5407

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

MR.ROBIN RICK MANNING# 165580
Petitioner,

V

MICHIGAN SUPREME COURT
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

MR.ROBIN RICK MANNING# 165580
Baraga Correctional] Facility
13929 Wadaga Rd.
Baraga Michigan 49908

QUESTIONS PRESENTED

1. THE 4 TO 3 MAJORITY DECISION OF HE MICHIGAN SUPREME COURT FLOUTED U.S. SUPREME COURT PRECEDENT i .e. THE EVOLVING STANDARDS OF DECENCY ON PROPORTIONALITY REVIEW WHEN ADDRESSING WHETHER TO EXTEND THE PRINCIPLE OF *MILLER* V *ALABAMA* TO 18 TO 20 YEAR OLDS, BUT RATHER BASED ITS RULING ON *ROPER* V *SIMMONS* DECIDED 15 YEARS AGO WHERE THE COURT DREW THE LINE AT 18 BECAUSE THAT IS WHERE SOCIETY DRAWS THE LINE AT FOR MANY REASONS

2. THE MICHIGAN SUPREME COURT DENIED PETITIONER HIS FIRST AMENDMENT RIGHT TO REDRESS HIS GRIEVANCES WHEN IT NULLIFIED THE MOTION FOR RECONSIDERATION ...5

3. MR. MANNING IS ENTITLED TO A WRIT OF HABEAS CORPUS WHERE THE 4 TO 3 MAJORITY DECISION OF THE MICHIGAN SUPREME COURT HAS DCIDED A FEDERAL QUESTION IN A WAY THAT CONLICTS WITH BOTH THE WASHINGTON AND ILLINOIS STATE SUPRMEE COURT ON WHETHER THE PRINCIPLE OF MILLER V ALABAMA SHOULD BE EXTENDED TO 18 TO 20 YEAR OLDS;

4. THE MANDATORY LIFE WITHOUT PAROLE SENTENCE MR. MANNING's RECEIVED FOR AN OFFENSE HE COMMITTED AS AN 18 YEAR OLD YOUTH IS UNCONSTITUTIONAL UNDER BOTH MICHIGANS 1963 CONSTITUTION AND THE U.S. CONSTITUTION

(4-A) Miller v Alabama reaffirmed that Children are categorically less culpable than adults for purposes of Sentencing

(4-B) Mr. Manning's Mandatory Life without parole sentence violates the 1963 Michigan Constitution s Ban on Cruel Unusual Punishment

(4-B-I) **Because they share the same qualities of youth as younger children, the severity of mandatory life without parole sentences for 18 year olds outweighs the gravity of their offenses**

(4-B-1-a) There is no meaningful scientific difference between 18 and 20 year olds and younger adolescents

(4-B-1-b) There is an emerging National Consensus that 18 to 20 year olds should not be treated as fully mature adults

(4-B-1-c) The U.S. Supreme Court drew a bright line at age 18 in *Roper*, based on regulated activities, i.e.: voting, marrying without consent , having consensual sex, having medical procedures without consent, entering in contracts , joining the military , serving on juries, that center on characteristics of *LOGICAL REASONING* for which are based on different characteristics than the *EMOTIONALLY AROUSING* characteristics underpinning the U.S. Supreme court decision in *Miller*, establishing a conflict of law *Roper* and *Miller* and existing1aws

(4-B-1-d) The U.S. Supreme Court drew a bright line at age 18 in *Roper* v *Simmons*, based on regulated activities, i.e.: voting, marrying without consent, having consensual sex, having medical procedures without consent, entering in contracts, joining the military, serving on juries, that are in conflict with the U.S. Supreme Court's decision in *Hall* v *Florida* (2014) and *Moore* v *Texas* (2017) , that requires States to refer to the Medical communities current standards;

(4-b-1-e) Michigan's statute mcl 750.316 that mandates a mandatory life sentence for the conviction of first degree murder prohibiting the judge from considering mitigating factors that could allow

a reduced sentence, for which is in direct conflict with the us supreme courts decision in *Eddings* v *Oklahoma* that prohbit states from considering mitigating factors

(4-B-1-f) At a minimum, mandatory life without parole is disproportionate for 18 year olds who did not kill or intend to kill.

(4-B-2) Sentencing 18 year olds to mandatory life without parole is disproportionate compared to other sentences under Michigan Law

(4-B-3) Lass than half of States allow mandatory life without parole sentences for 18 year olds

(4-B-4) Mandatory life without parole will never advance the penological goals of rehabilitation

(4-C) Several other State and Federal Courts have applied Miller v Alabama to 18 year olds like Mr.Manning

(4-D) At a minimum, Mr. Manning's mandatory life without parole sentence is unconstitutional as applied to him

LIST OF PARTIES

All parties appear in the caption of the case on the cover page

TABLE OF CONTENTS

INDEX TO APPENDIX's

APPENDIX A: Michigan Supreme Court Order denying motion for reconsideration dated June 11, 2021 located at 2021 Mich lexis 1053

APPENDIX B: Michigan Supreme Court Opinion, reported at 2020 Mich Lexis 2297 dated December 28, 2020.

APPENDIX C: The Michigan Court of Appeals Order dated February 21, 2019, 2019 Mich App Lexis 1407

APPENDIX D: The Michigan Court of Appeals order dated April 24th 2019 denying Motion for Reconsideration

APPENDIX E: The Trial Court Order dated June 7th 2018 denying Motion for Relief from Judgement

INDEX OF AUTHORITIES

Other:

No: _____

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a Writ of Certiorari issue to review the Judgement below.

OPINIONS BELOW;

(1) The denial of Rehearing by the Michigan Supreme court appears at Appendix A, to the petition and is reported at 2021 Mich lexis 1053 (June 11, 2021)

(2) The 4 to 3 order of the Michigan Supreme Court appears at Appendix B, to the petition and is reported at 2020 Mich Lexis 2297 dated December 28, 2020;

(3) The denial of Reconsideration by the Michigan Court of Appeals appears at Appendix C, to the petition and is reported at 2019 Mich App Lexis 2921 dated April 24th, 2019

(4) The Order of the Michigan Court of Appeals appears at Appendix D, to the petition and reported at 2019 Mich App Lexis 1407 dated February 21, 2019.

(5) The 0rder of the Trial Court, gated June 7, 2018.

JURISDICTION

(1) On June 11, 2021 the Michigan Supreme Court denied Petitioners Motion for Reconsideration.

(2) On December 28, 2020 the Michigan Supreme Court, issued a 4 to 3 order denying Petitioners Application for Leave to Appeal .

(3) This petition for writ of certiorari is filed within 90 days of the Michigan Supreme Court's denial of his motion for reconsideration.

(4) The Jurisdiction of this Court is invoked under 28 USC 1257 (a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Eighth Amendment to the United States Constitution provides as follows:

> Excessive bail shall not be required, nor excessive fines imposed, for cruel and unusual punishments inflicted.

STATEMENT OF THE CASE

Petitioner Robin Rick Manning is serving a life sentence here in the State of Michigan for the felony conviction of first degree murder under an Aiding and Abetting theory for going to back up a friend in a fight that turned into a murder back on August 6, 1984 when he was three months past his 18th birthday.

This is an appeal from the 4 to 3 Majority decision of the Michigan Supreme Court denying Petitioners Application for leave to appeal, challenging whether the principle of ***Miller*** v ***Alabama***, should be extended to 18 to 20 year olds, based on evolving science and the National Consensus of laws issued by both Congress and the States that address what rights 18 to 20 year olds ***DO*** and ***DO NOT*** have until the age of 21, based on their immaturity, irresponsibility and recklessness.

The 4 to 3 Majority decision of the Michigan Supreme Court ***flouted*** the appropriate Standard of Review: The Evolving Standard of Decency embodied in our 8th Amendment, to determine whether to extend the principle of ***Miller*** to 18 to 20 year olds. Instead the 4 to 3 Majority led by Justice Markman before he left office on January 1st, 2021, stated:

> As I asserted in *People* v *Correa*, 488 Mich 989, 992 (2010) ***I BELIEVE*** that ***People*** v ***Morris***, 80 Mich App 634 (1890) correctly held that proportionality review ***IS NOT*** a component of Michigan's "cruel or unusual punishment clause" , and ***People*** v ***Bullock***, 440 Mich 15 (1992) **INCORRECTLY HELD TO THE CONTRARY**.

See **Appendix, Exhibit B.**

Despite the fact that Justice Markman referred to the current standard under ***Bullock***, he did so with a blind eye to the proportionality review of the evolving standards of decency, i.e. the science and national consensus.

The 4 to 3 Majority decision of the Michigan Supreme Court is in direct conflict with the laws on proportionality review.

In ***Graham*** v ***Florida***, 560 US 48, 85 (2010) the Court held:

> Society changes, knowledge accumulates. We learn from our mistakes. Punishments that did not seem cruel and unusual at one time, may in light of reason and experience be found cruel and unusual at a later time, unless we are to abandon the moral commitment embodied in the Eighth Amendment. Proportionality review must never become effectively obsolete. Standards of decency have evolved... . They will never stop doing so.

The 4 to 3 Majority of the Michigan Supreme Court abandoned the commitment to ensure that Proportionality review never becomes effectively obsolete, ignoring the longstanding laws on the evolving standards of decency, as noted in Graham.

As a result, the 4 to 3 Majority of the Michigan Supreme Court referred back to the decision made in ***Roper*** v ***Simmons***, decided 15 years ago, where the ***Roper*** court drew the bright 18- because that is where Society draws the line at for many reasons.

The 4 to 3 DISSENT of the Michigan Supreme Court (Chief Justice Bridget M. McCormack; Justices Richard H. Berstein, and Megan K. Cavanagh) held:

> I respectfully DISSENT from the courts order denying leave to appeal. The trial court relied at least in part on MCR 6.502(G) in denying Defendants motion; as the Courts order today makes clear, ***this is error.*** **I WOULD NOT SUMMARILY CONCLUDE** that the defendant cannot show the good cause and actual prejudice necessary to satisfy MCR 6.508(D)(3).
>
> Rather, I would VACATE the trial courts order denying relief and remand to that court for reconsideration under MCR 6.508(D). And I would direct the trial court on remand to hold an evidentiary hearing to allow the Defendant and the prosecution to present evidence about whether the rule from ***Miller*** v ***Alabama***, 567 US 460 (2012) and ***Montgomery*** v ***Louisiana***, 577 U.S. 718 (2016) should be extended to the Defendant. MCR 6.508(D). The Defendant and AMICI make a compelling argument that the advances in studies of brain development since ***Roper*** v ***Simmons***, 543 U.S. 551 (2005) on which ***Miller*** was based, demonstrates that the distinctive attributes of youth that formed!' the basis for the Mil lei' decision continue beyond age 18 Rut because the trial court denied relief here without a hearing, we lack a factual record to review to determine whether this case warrants extending the rule from ***Miller***.

TAKE NOTICE that the AMICI that submitted briefs in this case, was the American Civil Liberties Union (ACLU). the Juvenile Law Center, the State Appellate Defenders Office (SADO)

and the Criminal Defense Attorneys Association. Those briefs were submitted in addition to the briefs submitted by the law firm JONES DAY who was representing Defendant in the Michigan Supreme Court.

Petitioner filed a Motion for Reconsideration based on although the Michigan Supreme Court found that it was error for the lower courts to hold that Petitioner did not satisfy the MCR 6.502(G) procedural threshold, the 4 to 3 Majority refused to remand to allow the lower courts to assess the merits of the issue in the first instance. That Motion was denied on June 11, 2021.

Relief is required where the 4 to 3 Majority of the Michigan Supreme Court has decided an important question of federal law in a way that flouted the relevant decisions of the U.S. Supreme Court, U.S. Court of Appeals and Michigan's own laws.

REASONS FOR GRANTING THE WRIT

Petitioner presents an important question of National Importance 18 to 20 year olds, involving a conflict between both State and Federal law that has not, but should be settled by this Court addressing the following 4 issues.

ARGUMENT I

THE 4 TO 3 MAJORITY DECISION OF HE MICHIGAN SUPREME COURT FLOUTED U.S. SUPREME COURT PRECEDENT i .e. THE EVOLVING STANDARDS OF DECENCY ON PROPORTIONALITY REVIEW WHEN ADDRESSING WHETHER TO EXTEND THE PRINCIPLE OF *MILLER* V *ALABAMA* TO 18 TO 20 YEAR OLDS, BUT RATHER BASED ITS RULING ON *ROPER* V *SIMMONS* DECIDED 15 YEARS AGO WHERE THE COURT DREW THE LINE AT 18 BECAUSE THAT IS WHERE SOCIETY DRAWS THE LINE AT FOR MANY REASONS

Petitioner reiterates the Statement of the Case, herein, as support for this claim.

The 37 years during which Petitioner has been incarcerated, there have been dramatic advances in societies understanding of brain development and adolescent psychology. Those

advances have been recognized by the Courts which have relied on Juvenile brain science in overturning harsh sentences for younger offenders. see e.g. ***Miller***, 567 U.S. at 471-472 a n.5; ***Roper,*** 543 U.S. at 569-570, 573. They have been recognized by legislatures, which have relied on similar scientific research in adopting myriad laws that treat adolescents including 18 year olds differently from adults. For example, no where in the country can an 18 year old, purchase tobacco, alcohol and most firearms; laws regarding student aid, health insurance and foster care generally include 18 year olds with younger adolescents, and in Michigan, 18 year olds have the opportunity to keep many offenses off their records entirely.

Dr. Steinberg, an adolescent development expert on whose research the ***Roper*** Court outlined those scientific developments at an evidentiary hearing in 2018 in ***Cruz*** v ***U.S.***, 2018 U.S. Dist Lexis 52924.

As noted in the Michigan Supreme Court Order, see Appendix A, Justice Markman of the Majority ***flouted*** the Evolving standard of decency regarding proportionality review and reiterated **his belief** as addressed also in a prior ruling he made 10 years ago in ***People*** v ***Correa***, 488 Mich 989, 992 (2010) referring to a case 130 years ago ***People*** v ***Morris***, 80 Mich 634 (1890) stating that he believed that Court correctly held that proportionality review is not a component of Michigan's Cruel or Unusual punishment clause and that ***People*** v ***Bullock***, 440 Mich 15 (1992) INCORRECTLY HELD TO THE CONTRARY. Justice Markman had 3 other Justices ride with him on that point.

This Court in ***Roper,*** recognized that the qualities that distinguish juveniles from adults do not disappear when an individual turns 18. ***Roper*** v ***Simmons***, 543 U.S. 551, 574; 125 S Ct 1183; 161 LEd2d 1 (2005).

This Court also held that the Eighth Amendment Jurisprudence is incremental with each successive decision and scientific development ***leading to, rather than foreclosing the next.*** See

e.g. ***Graham*** v ***Florida***, 560 U.S. 48, 58; 130 S Ct 2011 ; 176 LEd2d 825 (2010) (noting that while the Eighth Amendment remains the same, "its applicability must change as the basic mores of society change. ***Trop*** v ***Dulles***, 356 U.S. 86, 101; 78 S Ct 590; 2 LED2d 630 (1958) (The Eighth Amendment draws its meaning from the evolving standards of decency that mark the progress of a maturing society.)

Justice Markman who left office on January 1st 2021 ***flouted*** the principles on the evolving standards of decency on proportionality review and did not hide that fact in his part of the Court order issued on December 28th, 2020, three days before he left the bench.

ARGUMENT II

THE MICHIGAN SUPREME COURT DENIED PETITIONER HIS FIRST AMENDMENT RIGHT TO REDRESS HIS GRIEVANCES WHEN IT NULLIFIED THE MOTION FOR RECONSIDERATION

Michigan law pursuant to MCR 7 311 (G) permits a party to move for reconsideration of a court order, subject to MCR 2. 119(F)(3)'s palpable error standard. The Rule does not otherwise restrict the Court's broad discretion to reconsider matters where an error has been committed. ***Smith*** v ***Sinai Hosp. of Detroit***, 152 Mich App 716, 722 723; (1986) (noting that courts have "every right" to give a "second chance" to motions they have previously denied and that MCR 2.119(F)(3) does nothing to prevent that exercise of discretion.) accord ***Kokx*** v ***Bylenga***, 241 Mich App 655, 658-659; (2000) (remarking that MCR 6.508(3) allows the court considerable discretion in granting reconsideration to correct mistakes, to preserve judicial economy and to minimize costs to the parties.")

Petitioner reiterates the Statement of the Case herein to point out that Oral Arguments was held in this case on November 12th 2020. The 4 to 3 Majority decision was issued on December 28th, 2020. Justice Markman left the bench on January 1st 2021 .

Petitioner was informed by his attorney that the new Justice that replaced Justice Markman could not participate in the Motion for Reconsideration because that Justice was not apart of the original proceedings.

The Michigan Supreme Court should have never proceeded with this case until after Justice Markman left the beach and replaced with the New Justice where Petitioner would have been provided a Majority decision one way or the other.

In the absence of Petitioner being able to obtain a Majority vote for or against him, effectively ***nullified*** Petitioners Access to the Courts.

ARGUMENT III

THE 4 TO 3 MAJORITY DECISION OF THE MICHIGAN SUPREME COURT HAS DECIDED A FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH BOTH THE WASHINGTON AND ILLINOIS STATE SUPREME COURT ON WHETHER THE PRINCIPLE OF *MILLER* V *ALABAMA* SHOULD BE EXTENDED TO 18 TO 20 YEAR OLDS

The Washington State Supreme Court, in the case titled: ***In re Pers Restraint Monschke***, 2021 Wash Lexis 152 (March 11, 2021) held that life without parole mandatory sentences for 18, 19 and 20 year olds were unconstitutional and remanded for a new sentencing hearing, at which time the trial court must consider whether the defendants was subject to the mitigating factors of youth.

In Illinois, the Illinois State Supreme Court in *People* v *House*, 2015 IL App (1st) 110580; 2019 IL App (1st) 110580-B the Court set aside a mandatory sentence of life without parole imposed on a 19 year as a violation of the 8th AM prohibition of cruel and unusual punishment.

In the case at bar, as noted in the Statement of Facts, the 4 to 3 Majority decision of the Michigan Supreme Court flouted the appropriate standard of review: The Evolving standard of Decency embodied in our 8th Amendment, to determine whether to extend the principle of Miller

to 18 to 20 year olds. Instead the 4 to 3 Majority led by Justice Markman before he left office on January 1st 2021 stated:

> As I stated in *People* v *Correa,* 488 Mich 989, 992 (2010) , **I BELIEVE** that *People* v *Morris*, 80 Mich 634 (1890) correctly held that Proportionality review **IS NOT** a component of Michigan's cruel or unusual punishment clause, and *People* v *Bullock*, 440 Mich 15 (1992) **INCORRECTLY HELD TO THE CONTRARY**.

Despite the fact that Justice Markman referred to the current standard under *Bullock*, he did so with a blind eye to the proportionality review of the evolving standards of decency, i.e. the science and national consensus.

This Court should GRANT his Petition for Writ of Certiorari and remand this case back to the Michigan Supreme Court.

ARGUMENT IV

THE MANDATORY LIFE WITHOUT PAROLE SENTENCE MR. MANNING's RECEIVED FOR AN OFFENSE HE COMMITTED AS AN 18 YEAR OLD YOUTH IS UNCONSTITUTIONAL UNDER BOTH MICHIGANS 1963 CONSTITUTION AND THE U.S. CONSTITUTION

Mr.Manning is entitled to relief on the merits of his claims. The Statute that mandated life without the possibility of parole for Mr. Manning, MCL 750.316, is unconstitutional both categorically and as applied to him under Art 1, § 16, of Michigan's 1963 Constitution and the 8th AM to the U.S. Const.

Because 18 to 20 year olds exhibit the same "distinctive attributes of youth" as younger children, including lessoned culpability and increased capacity for change, ***Miller v Alabama***, 567 U.S. at 472, imposing the harshest possible sentence of mandatory life without parole on an 18 year old like Mr. Manning is disproportionately severe.

(4-A) Miller v Alabama reaffirmed that Children are categorically less culpable than adults for purposes of Sentencing

The U.S. Supreme Court has made clear time and again that children are "constitutionally different from adults for purposes of sentencing" and are categorically "less deserving of the most severe punishmnets." ***Miller v Alabama,*** 567 U.S. at 471. In ***Roper*** v ***Simmons***, the Court held that imposing the death penalty on children violates the 8th AM's prohibition on cruel and unusual punishments. 543 U.S. at 568. A few years later, in ***Graham*** v ***Florida***, it held that the 8th AM categorically "prohibits the imposition of life without parole sentence on a juvenile offender who did not commit homicide. 560 U.S. at 82. And in ***Miller v Alabama***, it held that "the 8th AM forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders 567 U.S. at 479.

Each of these cases adopted "categorical bans on sentencing practices based on mismatches between the Culpability of a class of offenders and the severity of the penalty. *Id* at 470. The Court grounded its conclusions on scientific research establishing "three significant gaps between juveniles and adults Id at 471; see also ***Graham*** v ***Florida***, 560 U.S. at 68 (noting that "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds.")

> **First**, Children lack maturity and have an "underdeveloped sense of responsibility. 't which leads to recklessness, impulsivity, and heedless risk taking. ***Miller v Alabama***, 567 U.S. a 471;
>
> **Second**, they are more vulnerable...to negative influences arid outside pressures, including from their family and peers, and "lack the ability to extricate themselves from horrific, crime producing settings.
>
> **Finally**, they are "less fixed" in their character and more capable of change than adults.Id.

These "distinctive attributes of youth" make children less culpable, more capable of reform, and "diminish the penological justifications for imposing the harshest sentences" on them, even when they commit terrible crimes." Id at 472.

In invalidating mandatory life without parole sentences for children, ***Miller v Alabama*** reaffirmed that "Youth matters" for purposes of sentencing. Id at 473. Specifically, these mandatory sentences "preclude a sentencer from tasking account of an offenders age and the wealth of characteristics and circumstances attendant to it, including the following "Mitigating qualities of youth":

> Mandatory life Without parole for a juvenile precludes consideration of his chronological age and its Hallmark features, among them, Immaturity, impetuosity, and failure to appreciate risks and consequences;
>
> It prevents taking into account the family and home environment that surrounds him and from which he cannot usually extricate himself, no matter how brutal or dysfunctional;
>
> It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him;
>
> Indeed, it ignores that he might have been charged and convicted of lesser offense if not for incompetencies associated with youth, for example, his inability to deal with pol ice officers or prosecutors (including on a plea agreement) 0T his incapacity to assist his own attorneys ;
>
> And finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it.

Id at 476-77 (emphasis added; citations omitted). "By making youth (and all that accompanies it) irrelevant to imposition of that harshest prisons sentence, " the Court explained, mandatory without parole sentences for children "pose too great a risk of disproportionate punishment!' and violate the 8th AM. *Id* at 479.

Unlike, ***Roper v Simmons***, ***Graham v Florida*** *and* ***Miller v Alabama*** did not impose a categorical ban on life without parole for juvenile homicide offenders. Instead, it requires sentencing courts to consider "the distinctive attributes of Youth" before imposing the harshest punishments on children. Id at 472. ***Miller v Alabama*** announced a substantive rule barring life without parole "for all but the rarest juvenile offenders, those whose crimes reflect permanent incorrigibility," which must be applied retroactively. ***Montgomery v Louisiana*** 136 S Ct at 734. In the wake of ***Miller v Alabama***, Michigan law now provides a process for sentencing juvenile defendants when a prosecutor seeks life without parole and resentencing defendants whose mandatory life without parole sentences were rendered unconstitutional by ***Miller v Alabama***. see MCL 769.25; MCL 769.25a.

(4-B) Mr. Manning's Mandatory Life without parole sentence violates the 1963 Michigan Constitution s Ban on Cruel Unusual Punishment

The Eighth Amendment limits states from imposing cruel and unusual punishments on its citizenry. See U.S. Const. amend viii; *Robinson* v *California,* 370 U.S. 560. 666; 82 S Ct 1417; 8 LEd2d 758 (1962); *La ex rel Francis* v *Resweber,* 329 U.S. 459. 463; 67 S Ct 374; 91 LEd2d 422 (1947). The Eighth Amendment embodies the founding ideal that, in civilized society, punishments meted out by the state must be limited by a basic Principle of human dignity. *Trop* v *Dulles*, 356 U.S. 86. 100; 78 S Ct 590; 2 LEd2d 630(1958). Limits on punishment are drawn by the "evolving standards of decency that mark the progress of a maturing society. " *Id* at 100-101 . A punishment need not threaten torture or death to violate the Eighth Amendments limitations on cruel and unusual punishment. See *Id* at 102 (holding that punishing citizen deserter by revoking their citizenship is cruel and unusual punishment.)

The 8th AM [1]s prohibition on cruel and unusual punishment "guarantees individuals the right not to be subjected to excessive sanctions. Roper, 543 U.S. at 560. This right "flows from the basic precept of justice that punishment for crime should be graduated and proportioned to both the offender and the offense." Miller. 567 U.S. at 469.

The U.S. Supreme Court has made clear that the "concept of proportionality is central to the 8th AM." Id. To determine whether a sentencing practice is cruel and unusual, the Court looks to "the evolving standards of decency that mark the progress of maturing society. *Graham*, 560 U.S. at 58. It considers "objective indicia of society's standards, as expressed in legislative enactments and State practice, but ultimately "must determine in the exercise of its own independent judgement whether the punishment in question violates the Constitution. *Id.* at 61. This "requires consideration of the culpability of the offenders at issue, " the severity of the punishment, and "whether the challenged sentencing practice serves legitimate penological goals." Id at 67. A sentence lacking any leitimate penological justification is, by its nature disproportionate to the offense. *Id* at 71.

In light of the evolving scientific and societal consensus that 18 to 20 year olds are just as immature, reckless, and impulsive as younger adolescents, the reasoning of ***Miller,*** applies equally to them. Like younger adolescents, 18 to 20 year olds have diminished culpability and greater prospects for reform, ***Miller***, 567 U.S. at 471 . Their "distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences" on them, "even when they commit terrible crimes." *Id* at 472. "Because [t]he heart of the retribution rationale to an offender's blameworthiness, the case for retribution is not, as strong with a minor as an adult" quoting *Graham*, 560 U.S. at 71.

18 to 20 year alas, who share the same qualities of youth as younger children, likewise have diminished culpability and blameworthiness. Nor does deterrence justify a mandatory life without parole sentence for 18 to 20 year olds because "the same characteristics that render [them) less culpable than [older] adults -their immaturity, recklessness and impetuosity make then less likely to consider potential punishment. *Id* *Graham*, 560 U.S. *Id* at. 72 Similarly, incapacitation requires a determination of incorrigibility, which is inconsistent with youth. Id at 473. Quoting *Graham*, 560 U.S. at 73. And a life without parole sentence "forswears altogether the rehabilitative ideal." Id quoting *Graham* 550 U.S at 74. Finally. because life without parole sentences "share some characteristics with death sentences that are shared by no other sentences." *Graham*, 560 U.S. at 69, individualized consideration of a defendants age end the wealth of characteristics attendant to it, *Miller*, 567 U.S at 476 , is just as important for 18 to 20 year old as it was in *Miller.*

The 8th AM requires Courts to consider the scientific consensus on adolescent development in determining the constitutionality of mandatory lfe without parole for 18 to 20 year olds. As the Supreme Court instructed, the 8th AM acquires meaning as public opinion becomes enlightened by a humane justice." *Hall* v *Florida*, 572 U.S. 701, 134 S Ct 1986; 188 LEd2d 1007 (2014); In *Atkins* v *Florida*, the U.S. Supreme Court held that the 8th AM prohibits the imposition of the on intellectually disabled individuals. 536 U.S. at. 321 . In *Hall* v *Florida*, 572 U.S 701, supra, the Court held that It was unconstitutional to execute a man because he scored 71 instead of 70 on an I.Q. test, based although a I.Q. (Intelligence quotient) was of considerable significance, state use of I ,Q. scores to determine death eligibility must afford these test scores the same studied skepticism that those who design and use these tests do, and understand that I.Q. test score **represents a range, rather than a fixed number**. The U.S. Supreme Court invalidated the Florida Statute requiring an

IQ score of 70 or below before permitting a capital defendant to present evidence of an intellectual disability to avoid the death penalty. The Court noted that that the Florida Statute was inconsistent with "established medical practice" because it took an IQ score as conclusive evidence of intellectual disability "when experts in the field would consider other evidence. Id at 712.

The Court further noted that [in] determining who qualifies as intellectually disabled, it is proper to consult with the medical community's opinions. *Id* at 710; see also *Moore* v *Texas*, 137 S Ct 1039, 1050, 1053; 197 LEd2d 416 (2017) (holding that in determining whether an offender has an intellectual disability for purposes of the 8th AM, states must defer to the "medical community's current standards" that reflect "improved understanding over time" and that the Texas Court's consideration of the issue "deviated from prevailing clinical standards") .

Similarly, here, the law must follow the science and recognize that 18 to 20 year olds are entitled to the constitutional protections afforded to youth. Just as **"[i]ntellectual disability is a condition, not a number**", Hall, 572 U.S. at 723. **"Youth is more than a chronological fact,"** *Miller*, 567 U.S. at 476, quoting *Eddings* v *Oklahoma*, 455 U.S. 104, 115; 102 S Ct 869; 71 LEd2d 1 (1982) .

Given the given current scientific and societal consensus, the U.S. Supreme Court's observation 15 YEARS ago that age of 18 is the point where society draws the line for many purposes between childhood and adulthood," Roper, 543 U.S. at 574 is **OUTDATED**.

Although the 8th AM standard remains the same, "its applicability must change as the basic mores of society change. " *Graham* 560 U.S. at 58. *Roper*, itself is proof that the line between childhood and adulthood is not etched in stone.

In 1988, the U.S. Supreme Court held that the death penalty was unconstitutional for children under the age of 16 at the times of their crimes. *Thompson* v *Oklahoma*, 487 U.S. 815, 838; 108 S Ct 2687; 101 LEd2d 702 (1988). The Court reasoned that "[i]nexperience, education

and less intelligence make the teenager less able to evaluate the consequences of his or her conduct while at the same time he or she is much more apt to be motivated by mere emotion or peer pressure than is adult. *Id* at 835, 17 YEARS later, the *Roper* Court concluded that the logic of *Thompson* extends to those who are under 18 " 543 U.S. at 574.

There is nothing in *Roper, Graham or Miller*, that prohibits this Court from holding mandatory life without parole unconstitutional for 18 to 20 year olds.

Indeed, Roper, involved a State Supreme Courts exercise of its own independent judgement in extending the holding of *Thompson*, to those under 18. The case began as a successive habeas petition filed in Missouri's State Court, arguing that the "reasoning of *Atkins*, established that the Constitution prohibits the execution of a juvenile was under 18 when the crime was committed. *Roper*, 543 U.S. at 559 The Supreme Court of Missouri agreed. holding that, in the 15 years since the U.S. Supreme Court had last addressed the question, a national consensus ha[d] developed against the execution of juvenile offenders. " *Id* at 559-560, quoting *State ex rel Simmons v Roper*, 112 SW3d 397, 399 (MO 2003) (en banc) Notwithstanding that it had previously drawn the line at age 16 'in Thompson, the U.S. Supreme Court affirmed the Missouri Supreme Court's decision. Id at 560.

Ultimately, it would be cruel and unusual to cling to an arbitrary line at age 18 for purposes of imposing the harshest possible prison sentence when scientific and societal mores have shifted toward the recognition that 18 to 20 year olds are not truly adults. Imposing a mandatory life without parole sentence on 18 to 20 year olds "poses too great a risk of disproportionate punishment" and violates the 8th AM *Miller*, 569 U.S at 479

Just as there is no ***MEANINGFUL SCIENTIFIC DIFFERENCE*** between an18 year old and under 18, there is no ***MEANINGFUL CONSTITUTIONAL DIFFERENCE*** between them.

(4-B-I) Because they share the same qualities of youth as younger children, the severity of mandatory life without parole sentences for 18 year olds outweighs the gravity of their offenses

In People v Bullock. 440 Mich 15; 485 NW2d 866 (1992), the Michigan Supreme Court addressed the "Proportionality Test" for which considers the following factors:

(1) the severity of the sentence imposed compared to the gravity of the offense;
(2) the penalty imposed compared to penalties imposed on other offenders in the same jurisdiction;
(3) the penalty imposed for the offense in Michigan compared to the penalty imposed for the same offense in other States; and
(4) whether the penalty imposed advances the penological goal of rehabilitation.

Bullock, 440 Mich at 33-34.

The First Bullock factor is the severity of the sentence imposed compared to the gravity of the offense.

There is no question that Mr. Manning received the harshest penalty available to anyone in this State, juvenile or adult. NO sentence is more severe, As the *Miller* Court observed , "[i}mprisoning on offender until he dies alters the remainder of his life "by a forfeiture that is irrevocable." *Miller*, 567 U.S. at 475, quoting *Graham*. 560 U.S. at 69. And mandatory life without parole is an "especially harsh punishment [11] for 18 to 20 year olds, JUST as it for someone younger. Id. In both cases, the sentence necessarily requires the defendant to serve "more years and a greater percentage of his life in prison than an adult offender. " Id, quoting Graham, 560 U.S. at 70. "The penalty when imposed on a teenager, as compared with an older person, is therefore "the same. . . in name only. quoting *Graham*, 560 U.S. at 70.

Moreover, although first degree murder is one of the most. serious offenses a person can commit in Michigan, it cannot justify such a severe sentence for 18 to 20 year without any individualized consideration of youth. As the Court explained, "to be constitutionality proportionate, punishment must be tailored to a defendants personal responsibility and moral guilt. " *People* v *Bullock*, 440 Mich 15, 39; 485 NW2d 866 (1992) , quoting *Hamelin* v *Michigan*, 501 U.S. 957, 1023; 111 S Ct 2680; 115 LEd2d 835 (1991) (White, J. dissenting). *Miller*, the U.S. Suprema Court recognized that the fundamental differences between children and adults, transient rashness, proclivity for risk and inability to assess consequences, lesson a child's "moral culpability" and enhance the prospect that, " as the years go by and neurological development occurs, his deficiencies will be reformed. ***Miller v Alabama***. 567 U.S. at 472 (quotation marks omitted). The same underlying rationale applies here: based an emerging scientific and societal consensus, 18 year olds share these same qualities of youth and therefore have the same diminished culpability and greater prospects for reform. *Id* at 471. Thus just as mandatory life without parole sentence for a 17 year cannot be constitutionality tailored to his personal responsibility and moral guilt," ***People*** v ***Bullock*** 440 Mich at 39, the same is true for 18 to 20 year olds.

(4-B-1-a) There is no meaningful scientific difference between 18 and 20 year olds and younger adolescents

The ***Miller v Alabama*** Court rested its decision not only on "common sense - on what ' any parent knows' - but on science and social science as well. ***Miller v Alabama***, 567 U.S. at 471,

quoting ***Roper v Simmons,*** 543 U.S. at 569. There is now a growing scientific consensus confirming what any parent knows: Youth does not magically end at 18.

In the years since ***Roper v Simmons***, empirical research in neurobiology and developmental psychology has shown that the "hallmark features of youth" continue beyond the age of **18** and into a person's mid 20's. see e.g.: Scott, et. al ., ***Young Adulthood as a Transitional Legal Category: Science, .Social Change, and Justice Policy***, 85 Ford L. Rev. 641 , 653(2016) ("It is clear that the psychological and neurobiological development that characterizes adolescence continues into the mid 20 's."); see also, ***Beaulieu & Lebel , Longitudinal Development of Human Brian Wiring Continues from Childhood into Adulthood***, 27 J. Neuroscience 31 (2011). One widely cited study tracked the brain development of 5,000 children and found that their brains were not fully developed until they were at least 25 years old. ***Dosenbach et al . , Prediction of Individual Brain Maturity Using fMRI***, 329 Sci 1358-59 (2010). In particular, the development of the prefrontal cortex which plays a key role in "higher order cognitive functions" such as "planning ahead, weighing risks and rewards, and making complicated decisions" continues into a person's early 20's. ***Monahan et al . , Juvenile Justice Policy and Practice: A Developmental Perspective***, 44 Crime J. 557, 582 (2015).

The research also confirms that **18** year olds are more akin to Children than they are to fully mature adults. They "are more likely than somewhat older adults to be impulsive, sensation seeking and sensitive to peer influence in ways that influence their criminal conduct") ***Icenogle et. al., Adolescents' Cognitive Capacity Reaches Adult Levels Prior to Their Psychosocial Maturity: Evidence for a "Maturity Gap" in a Multinational Cross Sectional Sample,*** 43 L & Hum Beh 69, 83 (2019) see also e.g. ***Michaels A Decent Proposal : Exempting 18 to 20 Year Olds From the Death Penalty***, 40 NYU Rev L & Soc Change 139, 163(2016)(noting that "peer pressure towards antisocial behaviors continue[s] to have an important influence" in emerging

adults ages 18 to 25). They show "diminished cognitive capacity, similar to that of adolescents, under brief and prolonged negative emotional arousal." ***Cohen et al . , When Does a Juvenile Become an Adult ? Implications for Law and Policy***, 88 Temple L. Rev 769, 786 (2016). And the period of "emerging adulthood" is a time of peak risk behavior. ***Arnett, Emerging Adulthood: A Theory of Development From the Late Teens Through the 20's***, 55 AM Psychol 469,475 (2000): see also e.g. ***Gardner & Steinberg, Peer Influence and Risk Taking. Risk Preference, and Risky Decision Making***, 41 Dev Psychol 625, 63132 (2005) (finding that adolescents (ages 13-16) and youths (ages 18-22) "were more oriented toward risk than were adults" and that "peer pressure had a greater impact on risk orientation" among both groups as compared to adults) .

This very same kind of scientific research that led the ***Miller v Alabama*** Court to conclude that children are categorically less culpable for their crimes likewise applies to "18" year olds like Mr.Gibbs. See, ***Young Adulthood as a Transitional Legal Category***, 85 Ford L. Rev. at 662 (noting that developmental scientific research supports "a presumption that mandatory minimum adult sentencing regimes should exclude young adult offenders"); ***Adolescents' Cognitive Capacity***, 43 L & Hum Beh at 83 (noting that teens -and young adults - are relatively less likely to have the self-restraint necessary to deserve the privileges and penalties we reserve for people we judge to be fully responsible for their behavior").

Indeed, the American Bar Association has recognized in the death penalty Context, that drawing the constitutional line at "18" **no longer fully reflects the state of the science on adolescent development American Bar Association ABA Resolution 111 : Death Penalty Due Process Review Project Section of Civil Rights and Social Justice Report to the House of Delegates** (February 2018, page 6).

The above scientific findings establish that "18 to 20" year olds are still legally and developmentally a child.

(4-B-1-b) There is an emerging National Consensus that 18 to 20 year olds should not be treated as fully mature adults

The U.S. Supreme Court in ***Roper v Simmons***, drew a bright line at age 18 between childhood and adulthood, because as stated by the Court, 18 is Society draws the line for many purposes.

Obviously any challenge here would be directly to the point of where the Court asserted that Society draws the line for many purposes.

The States undoubtedly draw bright line rules to regulate the Age at which 18 year olds can:

> Vote, Serve on juries, Have consensual sex, Marry, Gamble, Enter into Contracts, Choose how Doctors treat them. Have abortions, join the Military

These categorical rules granting 18 year olds affirmative rights over their conduct amount to crude determinations that young who turn are mature enough to act in Society in some aspects as adults. 18 to 20 year olds can test out certain adult privileges in spite of the special risks of learning periods involved.

State and Federal legislators have increasingly recognized that the unique characteristics of youth extend beyond age 18.

The United States Age of majority was largely set at 21, until it changed to 18 for reasons unrelated to capacity. ***Vivian E. Hamilton, Adultthood In Law And Culture***, 91 Tulane L. Re. 55, 57 (2116). 21 had been the "near universal age of majority in the United States from its founding until 1942 when "wartime needs prompted Congress to lower the age of conscription from 21 to 18. The Age of Majority at common law was always 21 and "it was not until the 1970's that States enacted legislation to lower ['it] to "18" ***Rifle Ass'n of Am v Bureau of Alcohol ,***

Tobacco, Firearms Explcsives, 700 F3d 185. 201 (5th Cir. 2012). This was prompted by an evolving societal consensus on adolescent maturity, but largely as a result, the Vietnam War," the military draft for men age 18 and up, and the subsequent decrease in the voting age from 21 to 18. Barnes, ***Arrested Envelopment:: Rethinking the Contract Age of Majority for the 21st Century Adolescent,*** 76 Rev, 405, 406-407 (2017) .

The law continues to recognize - especially in light of the developing scientific evidence that I8 year olds should not be treated the same as fully mature adults in many contexts. Of importance here, has also drawn out numerous rights that 18 to 20 year old's "**DO" AND "DO NOT**" until they reach the Age of 21, as addressed below:

(1) **NATIONAL GUN CONTROL ACT** 18 USC § 922(b)91)(c)(1) ;

(2) **MICHIGANS CARRYING A CONCEALED WEAPON PERMIT**, MCL 28.4250(B) (7) (a);

(3) **NATIONAL MIMMUM DRINKING AGE ACT OF 1984**, 23 USC 158;

(4) **MICHIGANS LIQUOR CONTROL CODE**, MCL 436 1109(6)

(5) **MICHIGANS JUVENILE COURT SYSTEM**, MCLA 803.307 (2) that includes 1st degree murder;

(6) **MICHIGAN HOLMES YOUTH TRAINING ACT** (HYTA) 762.11,

(7) **MICHIGANS VEHICLES CODE**, PUBLIC ACT 300 at 1949

- (A) defines people 20 and under as MINORS;
- (B) Prohibits people 20 and under with a Commercial driving License from driving across State lines;
- (C) Penalizes people 20 and under with more points, i.e; They get 4 points if they have a Blood Alcohol Concentration (BAC) or higher in contrast to people over 21 will only receive a DUI if they have a .08% BAC; anyone under 20 years old will receive DUI if they refuse the breathe test;

(8) **MICHIGANS MOTORCYCLE HELMET LAW:** MCL 257,658(5);

(9) **MICHIGANS LAW ONN TRANSPORTING HAZARDOUS MATERIALS:** MCL 480.12d(2)b);

(10) **MICHIGANS DRIVER INSTRUCTOR AGE:** MCL 256.637(3)(B);

(11) **NATIONAL LAW PROHIBITS INDIVIDUALS UNDER 21 FROM DRIVING MOST COMMERCIAL VEHICLES ACROSS STATE LINES:** 49 CFR 391.11(b)(1);

(12) **NATIONAL CONSENSUS AGAINST THE DEATH PENALTY FOR YOUTH THE AGE OF 21**; see Commonwealth v Bredhold, case No: 14-161 decided August 1, 2017, and the American Bar Association (ABA) issued a Resolution 111;

(13) **NATIONAL MARIJUANA ACT** is AGE 21; Cohen eal; When does a juvenile become a adult ? supra at 778;

(12) **MICHIGANS MARIJUANA ACT:** MCL 333.27955 (2018);

(13) **NATIONAL TOBACCO ACT**, Further consolidated appropriations act 2020, Pl 116-94. $ 603 133 Stat 2534, 3123 (2019) amending 21 U.S.C. 387f(d);

(14) **MICHIGANS GAMBLING ACT:** MCL 432,209(9);

(15) **MICHIGANS FIREWORKS ACT,** MCL 28.466(4) adopting the National Fire protection association code 1123);

(16) **NATIONAL RIGHT TO FREE EDUCATION:** Argon free and compulsory school age requirements (2015) PP. 3-6;

(17) **MICHIGANS RIGHT TO FREE EDUCATION:** MCL 388. 1606(4)(1)

(18) **NATIONAL PUBLIC SCHOOL ACT,** Public School Act: 94-142, (1975);

(19) **NATIONAL INDIVIDUALS WITH DISABILITIES EDUCATION ACT.** See 20 USC 1411, 1412(a)(1)(A).(a)(11)(C) (2017);

(20) **NATIONAL NEGLECTED AND DELIQUENT STATE AGENCY AND LOCAL EDICATIONAL AGENCY ROGRAM (TITLE I PART D) SEE ELEMENTARY AND SECONDARY EDUCATION ACT:** PUB L. NO. 107-110, 1416, 115 STAT 1425, 1585 (2002) AMENDED (2015); **SECONDARY EDUCATION**,

(21) **NATIONAL SOCIAL SECURITY BENEFITS FOR YOYUH UP TO AGE 21;**

(22) **NATIONAL FOSTERING CONNECTIONS TO SUCCESS AND INCREASINGLY ADOPTIONS ACT OF 2008.**

(23) **MICHIGANS FOSTER CARE ACT**, see MCL 400.647 ;

(24) **NATIONAL AFFORDABLE CARE ACT, 452 U.S.C. 300gg-14;**

(23) **BALLENTINFS LAW DICTIONARY**, 3rd Ed. Copyright 2010, definition of AGE OF MAJORITY AGE 21;

(24) **NBA ELIGIBILITY**, The National basketball Association acknowledged concerns with young adults as the NBA Commisioner made it clear that pushing back the leagues minimum age to 20, is at the top of his priority list. See ESPN April 18, 2014; USA TODAY April 24, 2014; and NBC SPORTS February 15, 2014;

(25) **NATIONAL INTERNAL REVEUE SERCVICE** considers full time college students to be dependants for tax purposes until the age of 24. 26 U.S.C. 152 (2008);

(26) **NATIONAL CAR RENTAL COMPANIES:** Most car rental companies have set rental ages at 20 or 21 with higher rental fees for individals under the age of 25. See American bar association report resolution 111

(27) **NATIONAL RAISE THE AGE, 45 STATES EXTEND JUVENILE COURT JURISDICTIONAL UNTIL AGE 21 AS MICHIGAN DOES**

(28) **FREE APPLICATION FOR FEDERAL STUDENT AID** (FASFA). See American Bar Association Report Resolution 111

The above factors establish that 18 to 20 year olds are not considered legally and developmentally an adult.

(4-B-1-c) The U.S. Supreme Court drew a bright line at age 18 in *Roper*, based on regulated activities, i.e.: voting, marrying without consent , having consensual sex, having medical procedures without consent, entering in contracts , joining the military , serving on juries, that center on characteristics of *LOGICAL REASONING* for which are based on different characteristics than the *EMOTIONALLY AROUSING* characteristics underpinning the U.S. Supreme court decision in *Miller*, establishing a conflict of law *Roper* and *Miller* and existing1aws

Although States continue to set 18 as the relevant age marker for certain other regulated activities including voting, marrying without consent, entering the Military, and serving on juries - the rationales sustaining those laws are based on different characteristics than those underpinning the U.S. Supreme Court's decision in ***Miller*** v ***Alabama***.

For example, voting, marrying without consent, and serving on juries are not activities that are highly susceptible to **IMPULSIVE BEHAVIOR**: they allow a person time to make a decision, and center on characteristics of "**LOGICAL REASONING**" which society and the medical community explain develop at a much earlier age. Steinberg, A 16 year old is as Good as an 18 year old or a 40 year old at Voting, Los Angeles Times (November 3, 2014).

<http:www.latimes.com/opinion/op-ed/la-oe-steinberg-lower-voting-age-20141104-story. html >

(explaining that there is a difference when considering laws such as "voting or granting informed consent for procedures" where "adolescents can gather evidence, consult with others and take time before making a decision" because while "adolescents may make bad choices. statistically speaking, they won't make them any more often than adults.").

By contrast, the purchase or use of tobacco or alcohol, firearm and explosive use, and motor vehicle operation are all potentially emotionally arousing activities where maturity, vulnerability and susceptibility to influence, and underdeveloped character come into play - much as they do when young people engage in criminal acts.

Of particular relevance, the National Gun Control Act and the National Minimum Drinking Age Act prohibits youth under the age of 21 from purchasing guns and alcohol based on they are immature, irresponsible and reckless and prone to violence.

It is a ***CONFLICT OF LAW***, to hold:

18 to 20 year olds cannot purchase guns and alcohol until the age of 21 because they are immature, irresponsible and reckless and prone to violence

BUT YET

Congress and Michigan laws hold that 18 to 20 year olds who use guns and alcohol to commit violence, that they are mature, responsible and not reckless and deserving of societies harshest penalties

Thus, the fact that the legal boundary for adulthood remains 18 in some instances does not undercut the trend towards raising the age of majority, but instead reflects the growing National census that the line for adulthood should be set at age 18 (or lower) for activities characterized by "***LOGICAL DECISION MAKING***", and should be raised above age 18 for circumstances characterized by "***EMOTIONALLY AROUSING CONDITIONS***". Scott et al, supra, at 652.

(4-B-1-d) The U.S. Supreme Court drew a bright line at age 18 in *Roper* v *Simmons*, based on regulated activities, i.e.: voting, marrying without consent, having consensual sex, having medical procedures without consent, entering in contracts, joining the military, serving on juries, that are in conflict with the U.S. Supreme Court's decision in *Hall* v *Florida* (2014) and *Moore* v *Texas* (2017) , that requires States to refer to the Medical communities current standards;

In 2005, the U.S. Supreme Court in *Roper* drew a bright at 18 asserting that the reason for drawing the line at age 18 was because chat is where Society draws the line at for many reasons and therefore that is where the death penalty ought to pest.

As addressed above, the bright line of 18 drawn in *Roper* was based on regulated activities that center on characteristics of logical reasoning for which are based on different characteristics than the emotional arousing characteristics underpinning the U.S. Supreme Court's decision in *Miller*.

In a another line of cases by the U.S. Supreme Court, i .e. ***Hall*** v ***Florida***, 572 U.S. 701 ; 134 S Ct 1986; 188 LEd2d 1007 (2014) and ***Moore*** v ***Texas***, 137 S Ct 1039; 197 LEd2d 416

(2017) (holding that in determining whether an offender has an intellectual disability for purposes of the 8th AM, States must defer to the medical communities current, standards that an improved understanding over time.

The U.S. Supreme court has instructed that the 8th AM acquire[s] meaning as public opinion becomes enlightened by a humane justice." ***Hall*** v ***Florida***, 572 U.S. 701, 708; 134 S Ct 1986; 188 LEd2d 1007 (2014) ; In ***Atkins*** v ***Florida***, the U.S. Supreme Court held that the 8th AM prohibits the imposition of the death penalty on intellectually disabled individuals. 536 U.S. at 321 In ***Hall*** v ***Florida***, 572 U.S. 701, the U.S. Supreme Court invalidated a Florida Statute requiring an IQ score of 7Ò or lower before permitting a capital defendant to present evidence of an intellectual disability to avoid the death penalty. The Court noted that the Florida Statute was inconsistent with "established medical practice" because it took an 1Q score as conclusive evidence of intellectual disability "when experts in the field would consider other evidence." *Id* at 712. The Court further noted that in determining who qualifies as intellectually disabled, it is proper to consult with the medical community's opinions. Id at 710; see also ***Moore*** v ***Texas***, 137 S Ct 1039, 1050, 1053; 197 LEd2d 416 (2017)(holding that in determining whether an offender has an intellectual disability for purposes of the 8th AM, states must defer to the "medical community [t] s current standards" that reflect [N] improved understanding over time [l]! and that the Texas Court's consideration of the issue "deviated from prevailing clinical standards") .

Similarly here, the law must follow the science and recognize that 18 to 20 year olds are entitled to the constitutional protections afforded to youth. Just as "[i Intellectual disability is a condition, not a number,' *Hall*, 572 U.S. at 723. "Youth is more than a chronological fact, *Miller*, 567 U.S. at 476, quoting ***Eddings*** v ***Oklahoma***, 455 U.S. 104, 115; 102 S Ct 869; 71 LEd2d 1 (1932) .

Given the current scientific and societal consensus, the U.S. Supreme Court's observation 15 YEARS ago that "[t]he age of 18 is the point where society draws the line for many purposes between childhood and adulthood," ***Roper*** v ***Simmons***, 543 U.S. at 574 is OUTDATED.

(4-b-1-e) Michigan's statute mcl 750.316 that mandates a mandatory life sentence for the conviction of first degree murder prohibiting the judge from considering mitigating factors that could allow a reduced sentence, for which is in direct conflict with the us supreme courts decision in *Eddings* v *Oklahoma* that prohbit states from considering mitigating factors

In the case a bar, MCL 750.31 carries a mandatory life sentence prohibiting the Sentencer from considering any migrating factors before imposing a sentence, which for which is clearly in direct conflict with U.S. Supreme court precedent.

The U.S. Supreme Court in ***Eddings*** v ***Oklahoma***, 102 S Ct 869 (1982) HELD;

> Just as the States **MAY NOT** by Statute preclude the Sentencer from considering any mitigating factors, neither may the Sentencer refuse to consider as a matter pf law any relevant mitigating factors.

The U.S.Supreme Court in ***Miller v Alabama***, held:

> An offenders age is relevant, to the 8th AM and so criminal procedure laws that fail to take defendants youthfulness into account at all, **WOULD BE FLAWED**. 132 s Ct at 2466.

The U.S. Supreme Court in ***Montgomery v Louisiana***, 136 S Ct 718 TO 720 (2016) held:

> By making Youth and all that accompanies it, irrelevant to imposition of that harshest prison sentence, mandatory life without parole, poses too great a risk of disproportionate punishment.

The above factor establishes that there is a conflict of law that must be resolved in favor of ruling that MCL 750.316 is unconstitutional for not providing consideration of mitigating

factors of youth before imposing a mandatory life sentence, that is the equivalent of the death penalty

(4-B-1-f) At a minimum, mandatory life without parole is disproportionate for 18 year olds who did not kill or intend to kill.

At the very least, mandatory life without parole is a disproportionate sentence for 18 to 20 year olds, like Mr.Manning, who was convicted of 1st degree murder under an Aiding & Abetting theory but who neither killed nor intended to kill .

It is unfair "to impute full personal responsibility and moral guilt" to youthful defendants who did not kill intend to kill , but are held responsible under the for acts committed by others.

Like children, 18 to 20 year olds who do not kill intend to kill have "a twice diminished moral culpability." ***Graham v Florida***, 560 U.S. at 69 (emphasis added). see also ***Miller v Alabama*** 567 U.S. at 490 (Breyer,J. concurring)(concluding that the 8th AM forbids life without for a juvenile homicide offender who did not kill or intend to kill).

Given this lessoned culpability, a mandatory sentence of life without the possibility of parole is too severe.

(4-B-2) Sentencing 18 year olds to mandatory life without parole is disproportionate compared to other sentences under Michigan Law

The 2nd ***Bullock*** factor is comparison of the punishment at issue to penalties for other crimes under Michigan law.

Mr.Manning received the harshest penalty available to anyone under Michigan law for a crime he committed at the age of 18. There are only a handful of offenses in Michigan that mandate such an extreme sentence without any discretion or individualized consideration by the sentencing Court. See MCL 791.234(6) (providing that defendants sentenced to mandatory life for first degree murder, a few other serious felonies resulting in death, and first degree criminals sexual conduct are not eligible for parole). For any other offense in Michigan, an 18 year old would have the opportunity to present mitigating evidence including evidence relating to the mitigating factors of youth before the court imposed a sentence. Indeed, defendants ages 17 through 23 have the opportunity to keep many offenses off their records entirely under Michigan's Holmes Youthful Trainee Act. MCL 762.11.

In addition, defendants who are a matter of months, days, or even hours younger then at the time of their crimes cannot constitutionally face mandatory without parole in this State for the very sane conviction Mr.Manning received. Instead, a defendant who commits first degree murder one day shy of his 18th birthday must receive consideration of the ***Miller v Alabama*** factors - including his youth and capability for rehabilitation - before the court can impose a sentence.

Yet a defendant who commits the same offense just a day later, on his 18th birthday automatcally receives mandatory life without parole - the same sentence that a **70** year old defendant would receive for committing the same offense.

Given that the mitigating factors of youth do not disappear at the stroke of midnight on a persons 18th birthday, such a disparity is profoundly unfair. But it is exactly what happened here.

(4-B-3) Lass than half of States allow mandatory life without parole sentences for 18 year olds

The 3rd ***Bullock*** factor is the penalty imposed for the offense in Michigan compared to the penalty imposed for the same offense in other States. Only 19 states and the federal government impose a mandatory sentence for life without parole on defendants age 18 and over, with another six requiring such a sentence under aggravating circumstances.

In contrast, in *Graham* the U.S. Supreme Court prohibited life without parole sentences for juvenile non homicide offenders despite the fact that 39 jurisdictions permitted that sentence. 560 U.S. at 62.

Similarly, in *Miller* v *Alabama*, the Court banned mandatory life without parole sentences for juvenile homicide offenders even though 29 jurisdictions permitted that sentence. *Miller* v *Alabama*, 567 U.S. at 482.

In addition, several States have enacted laws providing greater protections to adolescence and young adult offenders at least 16 States, including Michigan, recognize intermediate classification of "youthful offenders" between juveniles and adults, who are entitled to special protections within the criminal justice system.

(4-B-4) Mandatory life without parole will never advance the penological goals of rehabilitation

The 4th and final factor in the State constitutional analysis is whether imposing mandatory life without parole on 18 to 20 year olds advances the penological goal of rehabilitation. "Michigan has long recognized rehabilitative considerations in criminal punishments ***People*** v ***Lorentzen***, 387 Mich 167, 179; 194 NW2d 827 (1972). Yet, mandatory life without parole '*forswears altogether the rehabilitative ideal . " ***Miller v Alabama***, 567 U.S. at 473, quoting ***Graham***, 550 U.S. at 74; see also ***Carp***, 496 Mich at 520-21 (agreeing that life without parole "does not serve the penological goal of rehabilitation") . "It reflects an irrevocable judgement

about [a defendants] value and place in society, at odds with a child's capacity for change," ***Miller v Alabama***, 567 U.S. at 473, quoting ***Graham***, 560 U.S. at 74. Because 18 year olds share the same qualities of youth as younger children, they have a similar capacity for change. Accordingly, the 4th factor of the ***Bullock*** tests supports a finding that a mandatory life without parole sentence for an 18-year-old is disproportionate,

For all of those reasons, 18 to 20 year olds are categorically less culpable than adults. This reduced culpability mitigates the gravity of their offenses even when they commit the most terrible crimes. And considering the profound severity of the punishment, mandatory life without parole sentences for 18 year olds are disproportionally harsh. This not to say that 18 be sentenced life without parole under any circumstance; ***Miller v Alabama***, itself did not go that far. As with children under 18, though, courts must consider the "mitigating qualities of youth" before imposing this States harshest sentence on an 18 year old. Nothing the U.S. Supreme Court said in ***Roper***, and ***Miller v Alabama***, forecloses such an interpretation of Michigan law. Ultimately this Court is free to draw its own line Between childhood and adulthood under our Constitution.

(4-C) Several other State and Federal Courts have applied Miller v Alabama to 18 year olds like Mr.Manning

Some examples of other State court rulings that have applied the principles announced in ***Miller v Alabama*** to young adults and considered Youth as a Mitigating factor in sentencing, see e.g.:

NEW JERSEY: ***State*** v ***Norris***, unpublished opinion of the Superior Court of New Jersey Appellate Division, issued May 15, 2017 p.5 (remanding for

resentencing in light of ***Miller v Alabama***, where 21 year old was sentenced to a de facto life in prison);

WISCONSIN ***U.S.*** v ***Walters***, unpublished opinion of the U.S. District Court for the Eastern District of WISCONSIN, issued May 15, 2017 (case No: 16-CF-198) , p.5 (remanding for resentence of time served on 19 year old, in part, because "[C]ourts and researchers have recognized that given their immaturity and under developed sense of responsibility, teens are prone to doing foolish and impetuous things);

WASHINGTON: *In re Pers Restraint of Monschke* **2021** Wash Lexis 152 (March 11, 2021) the Washington supreme court held that life without parole mandatory sentences for 18, 19, 20 year olds were unconstitutional and remanded for a new sentencing hearing, at which the trial court must consider whether the defendants was subject to the mitigating factors of youth;

State v ***O'Dell***, 183 Wash 2d 680, 696; 358 P3d 359 (2015) (holding that "a trial court must be allowed to consider youth as a mitigating factor when imposing a sentence on an offender ... who committed his offense just a few days after he turned 18 ")

INDIANA *Sharp* v *State*, 16 ne 3d 470 (ind ct of app 2014) vacated on other grounds by sharp v state 42 ne 3d 512 (ind 2015) (finding 65 year sentence for felony murder inappropriate where defendant was just 3 months past turning 18 years of age at the time of the crime.

KENTUCKY *Commonwealth* v *Bredhold*, unpublished publication (ASE NO: 14-CR-161 August 1, 2017 the court considering similar scientific evidence held that the death penalty is unconstitutional for 18 to 20 year olds;

ILLINOIS *People* v *House* 2015 Ill App (1st) 110 80; 2019 Il app (1st) 110580-B the court set aside a mandatory sentence of life without parole imposed on a 19 year old as a violation of the 8th am prohibition of cruel and unusual punishment.

CONNECTICUT ***Cruz*** v ***U.S.,*** 2018 U.S. Dist Lexis 52924 (March 29, 2018) the U.S. District Court for the District of Connecticut engaged in an extensive analysis of national trends and scientific evidence in holding that ***Miller v Alabama*** applies to 18 year olds...the 8th AM forbids a sentencing scheme that mandates life without possibility of parole for offenders who were 18 years old at the time of their crimes.

CALIFORNIA ***U.S.*** v ***Howard***, 773 F3d 519, 532 (CA 4. 2014) finding district courts upward departure life sentence substantively unreasonable because it "failed to appreciate" that the three predicate convictions occurred when the defendant was between 16 and 18 years old, and that "Youth is a mitigating factor derived from the fact that the signature qualities of youth are transient.)

OTHER STATES LEGISLATION

Some examples of legislation from other States that show an evolving standard, e.g.:

ILLINOIS The legislatures in Illinois enacted a statute effective June 1, 2019 that allows offenders who were convicted of first degree murder when they were under the age of **21**to become Parole Eligible after they have served **20** years.

CALIFORNIA In 2019, the legislatures required that people serving life sentences for crimes committed under the age 26 receive specialized parole hearings giving greater weight to the diminished culpability of youth and young adults. See *People* v *Edwards*, 34 Cal App 5th 183 (2019); *People* v *Caballero*, 55 Cal 4th 262; *People* v *Conteras*, 4 Cal 5th 381.

CONNECTICUT The Governor and Correct ions department developed a more rehabilitative venue of incarceration for the group of 18 to 25 years old

MASSACHUSETTS Legislation has been 'introduced 'in Massachusetts to ensure that prisoners are eligible for parole after serving 25 years. The change applied retroactively to those currently serving life without parole sentences.

VERMONT VT stat ann. Tit 33 sec 5281 (allowing defendant under2 2 years of age to move to be treated as a youthful offender);

Vermont passed a law in 2018 to place certain 18 year olds in the juvenile courts jurisdiction in 2020, expanding to 19 year olds in 2022, see s. 234, 2018 leg. Gen. ass. (VT 2018). The Vermont legislature was motivated by the greater likelihood of success in putting 18 year old through "combined juvenile and adult system, rather than the adult system in rehabilitating criminal behavior.

CALIFORNIA, CONNECTICUT, MASSACHUSETTS AND ILLINOIS have imposed similar bills. See Nancy skinner, Sen. Nancy skinner announces bill to raise the age to be tried as an adult (Jan 28. 2020).

COLORADO COL. rev. stat sec 18-1-.3-407(2)(a)(III)-(b) (defining young adult offender "to mean" a person who is at least 18 years of age but under 21 years of age when the crime is committed and under 21 years of age at the time of sentencing;

D.C. D.C. code 24-901(6) (defining youth offender as a person 24years of age or younger at the time that the person committed a crime other than murder or several other specific crimes);

FLORIDA Fla stat Ann sec 958-04 (permitting court to sentence as youthful offenders between 18 and 21 of a non capital or life felony);

GEORGIA GA code Ann sec 42-7-2(7) (defining youthful offender to mean any male offender who is at least 17 but less than 25 years of age at the time of conviction and who in the opinion of the department has the potential and desire for rehabilitation);

SOUTH CAROLINA S.C. code Ann sec 24-1910(d)(ii) (defining youthful offender to include persons 17 but less than 25 years of age at the time of conviction for a offense that not a violent crime and meet other specifications);

ALABAMA ALA code sec 26-1-1 setting age of majority at 19;

NEBRASKA NEB rev stat sec 43-245 (age of majority means 19 years of age);

(4-D) At a minimum, Mr. Manning's mandatory life without parole sentence is unconstitutional as applied to him

Given the circumstances of Mr.Manning's case, a mandatory life without parole sentence is un-constitutionality excessive as applied to him under Michigan's 1963 Constitution and the U.S. Constitution. Although there is no denying that he committed a serious offense, the weight of the evidence at trial established that Mr.Manning was not the shooter an instead aided and abetted his friend, Gilbert Morales, who actually shot and killed the victim. *Manning* 434 Mich at 5. And the Court does not have to look far to see the "distinctive attributes of youth" at play in Mr. Manning's offense. Just three months his 18th birthday, Mr. Manning went along with his friends in a teenage fight. These facts reflect the same kind of classic adolescent immaturity, impulsivity, poor judgment, risk taking and susceptibility to peer pressure that led the U.S. Supreme Court to decide *Miller*. Mr. Manning rejected a plea offer against the advice of counsel – one that resulted in his codefendant receiving a sentence of 10 to 20 years.

Plea bargaining is a particularly problematic stage for young defendants. *Miller* specifically requires sentences to consider the possibility that the defendant might have been charged and convicted of a lesser offense, if not for the incompetence's associated with youth – for example his inability to deal with police officers or prosecutors (including on a plea agreement)." *Miller* 567 U.S. at 478.

All of these facts are apparent on the face of his motion. Of course, Mr.Manning has not been given the opportunity to develop additional evidence regarding his immaturity at the time of his offense, his family arid home environment, and other factors that would support the conclusion that his sentence is unconstitutional.

The Trial Court was expressly prohibited from taking any of these relevant facts into account in sentencing Mr. Manning. Yet a defendant who was 18 years old at the time of his offense would now be entitled to a resentencing nearing where the Court would be required to consider the defendants individual circumstances and the Mitigating factors of youth.

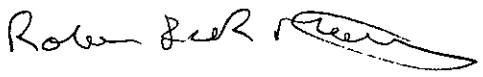
Given the circumstances of his case, depriving Mr. Manning of that individualized consideration is grossly disproportionate Under both Art 1, § 16 of the Michigan Constitution and the 8th Amendment to the U.S. Constitution.

CONCLUSION

After *Miller* and *Montgomery*, Mr.Manning should be given the opportunity to explain why Sentencer must take into account how 18 year olds like him "are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison. [H] *Miller*, 567 U.S. at 480. This Court should reverse the decisions of the lower courts and remand for further proceedings, including a sentencing mitigation hearing.

The petition for writ of certiorari be granted.

Respectfully submitted,



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