No. 19-2910; No. 19-3019

In the
United States Court of Appeals
for the Eighth Circuit

Norman Brown, et al.,

Appellees/Cross-Appellants,

v.

Anne L. Precythe, et al.,

Appellants/Cross-Appellees.

Appeal from the U.S. District Court for the Western District of Missouri
The Honorable Nanette K. Laughrey

Brief of Amicus Curiae National Association for Public Defense

In support of Norman Brown, et. al., Appellees/Cross-Appellants
Supporting Affirmance in Part and Reversal in Part
of the District Court's Entry of Summary Judgment

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Corporate Disclosure Statement

Amicus Curiae National Association for Public Defense discloses pursuant to Fed. R. App. P. 26.1(a) that is has no parent corporations and that no publicly held corporation owns more than 10% of its stock.

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Statement of Interest

The members of Amicus Curiae National Association for Public Defense ("NAPD") are lawyers and legal paraprofessionals who are on the ground representing indigent juvenile and criminal defendants across the United States. Collectively, we are public defenders and other appointed counsel who seek to protect our clients' constitutional rights in state and federal courts. NAPD attorneys have first-hand experience with the role of defense counsel in upholding and defending the constitutional rights of clients in cases like Norman Brown et al.'s.

More generally, NAPD is an association of more than 14,000 professionals who deliver the right to counsel throughout all U.S. states and territories. NAPD members include attorneys, investigators, social workers, administrators, and other support staff who are responsible for executing the constitutional right to effective assistance of counsel, including regularly researching and providing advice to clients in juvenile and adult criminal cases. NAPD's members are advocates in jails, in courtrooms, and in communities and are experts in not only theoretical best practices, but also in the day-to-day delivery of indigent defense representation. Their collective expertise represents local, county, state, and federal systems through full-time, contract, and assigned counsel delivery mechanisms, dedicated juvenile, trial, capital, and appellate offenses, and through a diversity of traditional and holistic practice models. Accordingly, NAPD has a strong interest in the issues raised in this case.

Counsel for Amicus Curiae National Association for Public Defense respectfully submit that its amicus brief is desirable in this case because NAPD's members represent juvenile offenders across the United States who are awaiting or have had resentencing hearings in light of *Miller v. Alabama,* 567 U.S. 460 (2012). NAPD's boots-on-the-ground perspective, combined with its educational role training lawyers in best sentencing practices in light of *Miller*, bring an informed perspective to this case. In addition, the matters asserted are relevant to the disposition of the case because the experience that NAPD's members have in capital sentencing is instructive to understanding more completely the similarities between capital sentencing proceedings and *Miller* sentencing proceedings.

No party's counsel authored this brief in whole or in part. No party or party's counsel contributed money that was intended to fund preparing this brief, and no other person other than NAPD, its members, and its counsel, contributed money that was intended to fund preparing or submitting this brief. This brief is being submitted with the consent of counsel for all parties, and a motion for leave to file is being concurrently submitted pursuant to Fed. R. App. P. 29(a)(3).

Summary of the Argument

Norman Brown, Ralph McElroy, Sidney Roberts, Theron Roland, and other members of their class were serving mandatory juvenile life-without-parole sentences when *Miller v. Alabama* found such sentences unconstitutional under the Eighth Amendment. *Miller v. Alabama*, 567 U.S. 460 (2012). In *Miller*, the United States Supreme Court held that mandatory life-without-parole sentences for those under the age of 18 at the time of their crimes violated the Eighth Amendment's prohibition on cruel and unusual punishment. 567 U.S. at 465. In so holding, the Court emphasized that the Court's "individualized sentencing decisions make clear that a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles." *Id.* at 489. To this day, neither a judge nor jury has ever considered mitigating circumstances in any of the class members' cases. Rather than receiving the opportunity to appear before a court of law—a judge or jury—to consider mitigating circumstances before imposing a new sentence, they appeared before a parole board. Because Missouri's parole boards fail to uphold *Miller*'s promise that individualized sentencing decisions must allow a judge or jury to consider mitigating circumstances before imposing their sentences, this Court should affirm the portion of the district court's opinion finding that "Defendants' policies, procedures, and customs for JLWOP parole review violate the Eighth and Fourteenth Amendments to the United States Constitution." *Brown et al. v. Precythe et al.*, No. 17-cv-4082, 2019 WL 3752973, at *7 (W.D. Mo. Aug. 8, 2019). This Court should also

reverse the portions of the district court's opinion mandating procedures that deny the class members' right to meaningful advocacy by state-funded counsel in a court of law. *Id.* at *7–11 (ordering Defendant to implement twenty-three specific procedures, including: providing only sixty days' notice before a hearing date (listed by the district court as procedure #2 of 23), limiting the number of delegates (#3), allowing documents to be added to the parole file used against the class members up to two weeks before the hearing date (#12), not enabling class members access to state-funded counsel who can retrieve records on their behalf instead of seeking records through an Institutional Parole Officer (#16), denying a right to counsel at state expense (#20), denying a right to counsel at state expense at the pre-hearing interview (#21), and limiting the number of expert witnesses the class members may call to testify by including the expert witnesses within the four delegate limit (#22)).

Argument

I. Sentencing Children to Life Without the Possibility of Parole When Their Crimes Reflect "Transient Immaturity" is Disproportionate Punishment that Violates the Eighth and Fourteenth Amendments.

Norman Brown was sentenced to life without the possibility of parole on March 19, 1993. *See* Judgment & Sentence, State v. Brown, No. 2191R-06139-01 (Div. 14 Ct. Mar. 19, 1993), https://www.courts.mo.gov/casenet/cases/searchDockets.do. To this day, Mr. Brown has never received a meaningful opportunity to explain the mitigating circumstances that existed when he participated in the underlying offense when he was fifteen years old, nor to demonstrate his subsequent rehabilitation in the

26 years he has been incarcerated. Neither Norman Brown nor any member of his class has had a meaningful opportunity to advocate for a just sentence before a court of law.

On June 25, 2012, the United States Supreme Court held that mandatory sentences for defendants like Norman Brown—who were younger than 18 years old at the time of their crime—were unconstitutional under the Eighth Amendment's prohibition against cruel and unusual punishment. *See Miller*, 567 U.S. 460. *Miller* recognized that the Supreme Court's "individual sentencing decisions make clear that a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles." *Id.* at 489. More than seven years after *Miller*, Mr. Brown has still not had the opportunity to appear before a judge or jury in order for that judge or jury to consider mitigating circumstances before imposing a sentence.

Instead of appearing before a court of law for resentencing in light of *Miller*, on May 24, 2017, Mr. Brown appeared before a Missouri parole board. Created through Missouri Senate Bill 590 (S.B. 590), the standard procedures the parole board followed were later codified in Section 558.047 of the Missouri Revised Statutes. The Missouri legislature proposed S.B. 590 in light of the Supreme Court's clarification that a "State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them." *Montgomery v. Louisiana,* 136 S.Ct. 718, 736 (2016). While acknowledging the role that parole boards might serve in

re-evaluating the sentences of defendants whose sentences were unconstitutional under *Miller*, the Supreme Court anticipated that such parole boards would "ensure[] that juveniles whose crimes reflected only transient immaturity—and who have since matured—will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment." *Montgomery*, 136 S.Ct at 736.

When Mr. Brown appeared before the parole board, he submitted the report of a forensic psychologist who had evaluated him and determined that he had "long since outgrown the antisocial behavior of his youth" and had "developed a skill set that would allow him to be [a] viable and productive member of society should he be granted parole." J.A. A-532, J.S.A.-115. Despite evidence that his crime reflected only transient immaturity and that he had matured in the more than 25 years of his incarceration, the parole board denied him parole based on the circumstances of the offense. *Id.* This denial of parole flies in the face of the Supreme Court's observation that "*Miller* . . . does not leave States free to sentence a child whose crime reflects transient immaturity to life without parole. To the contrary, *Miller* established that this punishment is disproportionate under the Eighth Amendment." *Montgomery*, 136 S.Ct. at 735. Both *Montgomery* and *Miller* emphasized that a punishment of life without the possibility of parole is disproportionate and therefore unconstitutional under the Eighth Amendment to the United States Constitution when a "child whose crime reflects transient immaturity" is sentenced to "life without parole." *Id.*

At the same time that *Montgomery* highlighted the role that parole boards might serve in giving "effect to *Miller*'s substantive holding that life without parole is [an] excessive sentence for children whose crimes reflect transient immaturity," the Court also explained that "*Miller*'s holding has a procedural component." *Montgomery*, 136 S.Ct. at 734–35. Clarifying what it meant by a procedural component, the Court noted that "*Miller* requires a sentencer to consider a juvenile offender's youth and attendant characteristics before determining that life without parole is a proportionate sentence." *Montgomery*, 136 S.Ct. at 734. To this day, neither a judge nor a jury, nor the parole board before whom Mr. Brown appeared, has acknowledged any meaningful consideration of Mr. Brown's "youth and attendant characteristics." Under *Miller*, *Montgomery*, the Fourteenth Amendment, and the Eighth Amendment's protection against disproportionate punishment, the uncontroverted evidence of Mr. Brown's transient immaturity and subsequent rehabilitation warrants relief.

II. The Eighth Amendment Requires a Sentencer to Consider How Children Are Different, and How Those Differences Counsel Against Sentencing Them to Life Without the Possibility of Parole.

The parole board denied Mr. Brown's parole based on the "circumstances of the offense." J.A. A-532, J.S.A.-115. No matter how terrible the circumstances of an offense may be, the Supreme Court has emphasized that "the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes." *Miller*, 567 U.S. at 472. When the *Miller* Court recognized the centrality of the concept of the proportionality

to its Eighth Amendment analysis, it viewed proportionality "according to 'the evolving standards of decency that that mark the progress of a maturing society.'" *Id.* at 469 (quoting *Estelle v. Gamble*, 429 U.S. 97, 102 (1976) and *Trop v. Dulles*, 356 U.S. 86, 101 (1958) (plurality opinion)).

More than 25 years after Mr. Brown's offense, if this Court were to give Mr. Brown a meaningful opportunity to present evidence of mitigation and his potential for rehabilitation, a sentencing body reviewing such information would have the unusual benefit of hindsight. Indeed, the sentencing body would examine the evolving standards of Mr. Brown's maturing mind and his rehabilitative actions in order to assess the actions of 15-year-old Mr. Brown at the time of the offense, as well as 40(plus)-year-old Mr. Brown at the time of his sentencing review.

Even though those who sentence youthful offenders when they are still young do not have the benefit of knowing how a child will mature and the degree to which they will be able to rehabilitate years down the road, *Miller* observed that this difficulty in predicting the future was precisely one of the reasons why courts should rarely impose life without parole sentences, rather than why courts should readily dispense them. According to *Miller*, "appropriate occasions for sentencing juveniles to the harshest possible penalty will be uncommon," particularly "because of the great difficulty we noted in *Roper* and *Graham* of distinguishing at this early age between 'the juvenile offender whose crime reflects unfortunate yet transient immaturity and the rare juvenile offender whose crime reflects irreparable corruption.'" *Miller*, 567 U.S. at

479–80 (citing *Roper v. Simmons*, 543 U.S. 551, 573 (2005) and *Graham v. Florida*, 560 U.S. 48, 68 (2010)). Although *Miller* did not "foreclose a sentencer's ability to make that judgment in homicide cases," *Miller* "require[d] [the sentencer] to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Miller*, 567 U.S. at 480. The fact that *Miller* required the sentencer to take into account how children are different reflects the Court's observation that children can have a distinct capacity for change: "Life without parole 'foreswears altogether the rehabilitative ideal'" and "reflects 'an irrevocable judgment about [an offender's] value and place in society'" that is "at odds with a child's capacity for change." *Id.* at 473 (citing *Graham*, 560 U.S. at 74).

III. A Person Facing a Possible Sentence of Life Without the Possibility of Parole Requires Access to the Highly Specialized Advocacy of a State-Funded Lawyer.

Representing a child client who is facing a possible life sentence, let alone a possible sentence of life without the possibility of parole, requires "highly specialized advocacy." *See* Jeff Howard et al., *Trial Defense Guidelines: Representing a Child Client Facing a Possible Life Sentence*, THE CAMPAIGN FOR THE FAIR SENTENCING OF YOUTH, Mar. 2015, https://www.prisonpolicy.org/scans/cfsy/trial_defense_guidelines.pdf (hereafter "*Defense Guidelines*"). Developed in response to *Miller*'s requirement that trial proceedings must "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison," *Miller*, 567 U.S. at 480, the *Defense Guidelines* outline a team approach. *See Defense Guidelines'*

Executive Summary at n.1 (observing that the *Defense Guidelines* are "intended to establish a standard of representation for children facing life sentences" and that they draw from the American Bar Association's Guidelines for the Appointment and Performance of Defense in Death Penalty Cases). *See also* ABA Guidelines for the Appointment and Performance of Defense in Death Penalty Cases (ed. 2003), https://www.americanbar.org/groups/committees/death_penalty_representation/resources/aba_guidelines/.

The district court erred when it denied the class access to state-funded counsel who have specialized training to provide relevant evidence and expertise through the unique process of helping the sentencer determine what justice requires when sentencing a person who was younger than 18 years old at the time of the offense. Indeed, *Miller* "mandates" that "a sentencer follow a certain process—considering an offender's youth and attendant characteristics—before imposing a particular penalty." 567 U.S. at 483. As the *Defense Guidelines* explain, defense counsel's investigation into and advocacy concerning the client child's life and history is extensive—well beyond the training of non-specialized attorneys, and well beyond the capabilities of a pro se defendant who has been incarcerated since he was 15 years old. For example, the evidence the defense attorneys present to the sentencer should include an array of evidence obtained, analyzed, and presented by a defense team comprised of a minimum of two qualified attorneys, an investigator, and a mitigation specialist.

Defense Guidelines, § 1.1. Within the defense team, at least one member must have "specialized training" in

> identifying symptoms of mental and behavioral impairment, including cognitive deficits, mental illness, development disability, post-traumatic stress disorder, and neurological deficits; long-term consequences of deprivation, neglect, and maltreatment during developmental years; social, cultural, historical, political, religious, racial, environmental, and ethnic influences on behavior; effects of substance abuse; and the presence, severity, and consequences of exposure to trauma.

Defense Guidelines, § 1.1. The defense team must also "obtain all relevant records and documents relevant to the child client's life and multi-generational family history that enable defense counsel to develop and implement an effective mitigation strategy for sentencing." *Defense Guidelines*, § 4.2. This investigation into the child client's life and history should include, but is not limited to, the following information:

- age;
- immaturity;
- impetuosity;
- ability to appreciate risks and consequences;
- intellectual capacity;
- intellectual development;
- language impairments;
- existence of and susceptibility to peer and/or familial pressure;
- circumstances of the offense;
- ability to meaningfully participate in his/her defense;
- capacity for rehabilitation and remorse;
- education records;
- special education evaluations and services;
- juvenile and/or criminal records, including probation and parole;
- current and prior incarceration/detention records, including availability and competition of correctional programming and relationships with correctional staff and other detainees/inmates;

- trauma history, including traumatic brain damage;
- possible organic brain damage;
- faith and community involvement;
- history of maltreatment or neglect, and/or involvement in the child welfare system;
- multi-generational family history;
- employment and training;
- pediatric/medical history, including history of genetic disorders and vulnerabilities;
- mental health history;
- physical health history;
- exposure to harmful substances in utero and in the environment;
- history of physical or sexual abuse;
- history of substance abuse;
- gang involvement;
- religious, gender, sexual orientation, ethnic, racial, cultural, and community influences;
- and socio-economic, historical, and political factors.

Defense Guidelines, § 4.2. Such a thorough mitigation investigation is an "extremely time-consuming, labor-intensive, and lengthy process" that is well beyond the available resources available to incarcerated pro se defendants, in addition to being well beyond the educational capabilities of pro se defendants who have been incarcerated since their youth. *Defense Guidelines*, § 4.2.

Just as the Sixth Amendment to the United States Constitution recognizes the right to counsel in capital sentencing because "death is different," so does the Sixth Amendment provide the right to counsel in *Miller* sentencing hearings because "children are different, too." *Miller*, 567 U.S. at 481 (discussing *Harmelin v. Michigan*, 501 U.S. 957 (1991)).

IV. The Parole Board Procedures Fail to Provide the Constitutional Equivalent of a Court of Law for *Miller* Resentencing.

In its decision filed on October 12, 2018, the district court correctly found that the "evidence establishes that certain [of the state of Missouri's] policies, procedures, and customs for parole review for those serving JLWOP sentences violate the class members' constitutional rights." *Brown et al. v. Precythe et al.*, No. 2:17-cv-04082, 2018 WL 4956519 at *11 (W.D. Mo. Oct. 12, 2018). The Court then directed the Defendants to present a plan that included "revised policies, procedures, and customs designed to ensure all Class members are provided a meaningful and realistic opportunity for release based on demonstrated maturity and rehabilitation." *Id.* Ten months later, when the district court entered its Declaratory and Injunctive Relief Order on August 8, 2019, the court's Order detailed 23 separate procedures that the parole board must follow to "remedy the constitutional violations that Plaintiff raised in this case." *Brown et al. v. Precythe et al.*, No. 17-cv-4082, 2019 WL 3752973 at *7 (W.D. Mo. Aug. 8, 2019).

In its Order filed August 8, 2019, the district court erred when it failed to recognize that class members' access to State-funded defense counsel was necessary to preserve their constitutional right to assistance of counsel, especially where the sentencer is contemplating the harshest penalty available under law for persons under the age of 18 when they committed their offense. Although the district court

recognized that "[c]ounsel's ability to present evidence and make arguments before the Board, and their access to information presented to the Board, may not be limited in any fashion consistent with this Order," this procedure (#4 in the court's order) is antithetical to the procedure listed immediately before it (#3 in the court's order), which limits the number of "delegates" whom class members may bring to their parole hearings to four total delegates—a number which "may include one or more attorneys, lay witnesses, or expert witnesses." *Id.*

Were the class members to be resentenced in a court of law, rather than in the newly constituted parole boards, the judge or jury would not so restrict state-funded counsel's ability to mount a defense and present mitigation. Such hearings are similar to the sentencing phase of a capital trial because defense counsel in both proceedings present detailed and complex mitigation so that sentencers can make a meaningful individualized sentencing determination when contemplating the harshest sentence available to the defendant. In its death penalty jurisprudence, the Supreme Court has recognized that "rudimentary knowledge" from a "narrow set of sources" does not constitute effective assistance of counsel. *Wiggins v. Smith*, 539 U.S. 510, 524 (2003). The Supreme Court has also looked to the American Bar Association's standards, including the ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases, as "guides to determining what is reasonable." *Wiggins*, 539 U.S. at 524 (observing that the "ABA Guidelines provide that investigations into mitigating evidence 'should comprise efforts to discover *all reasonably available* mitigating evidence

and evidence to rebut any aggravating evidence that may be introduced by the prosecutor,'" and citing ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases, 11.4.1.(C), 93 (1989) (emphasis provided by the Court in *Wiggins*)). Even if one attorney worked alone—in direct breach of the *Defense Guidelines*' instruction that no fewer than four team members should comprise the defense team—that attorney would only be allowed to call three witnesses under the Court's four-person limit. Given the extensive mitigation that only these three witnesses must be able to address, it is impossible to envision how the procedures provide a constitutionally adequate defense.

The right to state-funded counsel is integral to the class's ability to present mitigation that would enable the factfinder to make the kind of meaningful sentencing determination that *Miller* mandates. Moreover, even if the class were able to secure their own private attorneys, any procedures restricting counsel's ability to meaningfully explain mitigation and to allow sufficient time to prepare for such a hearing would likewise deprive the class of their constitutional right to resentencing under *Miller*. Because such procedures fail to provide the constitutional equivalent of a court of law for purposes of *Miller* resentencing, this Court should reverse that portion of the trial court's Order and remand for resentencing in a court of law.

The United States Supreme Court has not expressly recognized the right to be resentenced in a court of law. The Court never veered from the bedrock assumption that courts of law have exclusive authority over *Miller* sentencing hearings until

Montgomery—citing a Wyoming statute—noted that "[a] State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them." *Montgomery,* 136 S.Ct. at 736. Even when deviating from traditional reliance on judicial sentencing rather than parole proceedings, the *Montgomery* Court spelled out that all *Miller* hearings must comply with specific procedures to uphold the mandate of *Miller*. *Montgomery,* 136 S.Ct. at 734. *Miller* "mandates" that "a sentencer follow a certain process—considering an offender's youth and attendant characteristics—before imposing a particular penalty." *Miller*, 567 U.S. at 483. The process the district court envisions in its Order does not uphold the mandate of *Miller*.

In closing, Amicus Curiae also respectfully calls this Court's attention to a different case pending before the Missouri Supreme Court that is relevant to this Court's consideration in the case of Norman Brown and his fellow class members. In *Hicklin v. Schmitt*, No. SC97692, the Missouri Supreme Court is analyzing the constitutionality of the Missouri parole board's procedures in the case of the *Miller* resentencing of youthful offender Jessica Hicklin. In that case, briefs filed by two different Amici Curiae provide additional arguments of note.

One is the *Brief of Amici Curiae Law Faculty Experts in the Areas of Criminal, Juvenile, Civil Rights and Parole Law ("Experts' Brief")*. That brief asserts the basis for a constitutional right to be sentenced in a court of law, rather than by a parole board. *Experts' Brief, Hicklin v. Schmitt*, No. SC97692 (Mo.) (filed Feb. 10, 2020) (attached in

appendix). It draws largely from a law review article by Mae C. Quinn, *Constitutionally Incapable: Parole Boards as Sentencing Courts*, 72 SMU L. REV. 565 (2019) (attached in appendix).

The second was filed by Joseph Dandurand. *Brief of Amicus Curiae Joseph P. Dandurand ("Judge Dandurand Brief"), Hicklin v. Schmitt,* No. SC97692 (Mo.) (filed Feb. 7, 2020) (attached in appendix).[1] Joseph P. Dandurand served as Circuit Judge of the 17th Circuit of Missouri (Cass and Johnson Counties) from 1986 through 2007. In that capacity, he presided over the trial and sentencing of Jessica Hicklin. Throughout his legal career Dandurand has served numerous roles, including serving as Missouri Deputy Attorney General. He currently serves as Executive Director for Legal Aid of Western Missouri. In his amicus brief, Dandurand asserts that the parole process in Missouri is "ill-equipped" to assess whether juvenile offenders are one of the "rare individuals who should receive this harshest punishment available to juveniles." *Id.* at 15. Dandurand also asserts that *Miller* recognizes a constitutional right to be sentenced in a court of law by recognizing that a "judge or jury must have the opportunity to

[1] Pursuant to Fed. R. App. P. 28(f), copies of the Experts' Brief, the Judge Dandurand Brief, and Professor Quinn's article are provided in an attached appendix because these documents may assist the court's determination of the issues presented and, at the time of this filing, these documents are not easily available in a publicly accessible electronic database. Counsel for Amicus Curiae National Association for Public Defense notes that the co-chair of the Amicus Committee of the National Association for Public Defense, Emily Hughes, also appears on *Brief of Amici Curiae Law Faculty Experts in the Areas of Criminal, Juvenile, Civil Rights and Parole Law.*

consider mitigating circumstances before imposing the harshest possible penalty for juveniles." *Id.* at 11 (citing *Miller*).

To uphold the class's right to counsel and effective representation, this Court should also reverse the district court's finding that denied the class members access to state-funded counsel. Because the revised parole board procedures fail to provide a constitutional equivalent to a court of law for purposes of *Miller* resentencing, this Court should remand for resentencing in a court of law.

Conclusion

The district court correctly entered summary judgement for the class when it found that the Eighth Amendment requires the State to provide a meaningful opportunity for release based on evidence that the crime reflected transient immaturity and that the defendant has the capacity to rehabilitate. Because the standard procedures codified in Section 558.047 of the Missouri Revised Statutes (created through Missouri Senate Bill 590) denied the class that meaningful opportunity under *Miller* and *Montgomery*, the district court correctly found that such procedures violated the class's constitutional protection against cruel and unusual punishment under the Eighth Amendment.

Because a sentencer must assess a complex host of *Miller* factors when deciding the constitutionally appropriate sentence to impose on a juvenile offender who was younger than 18 years old at the time of the offense, the district court erred when it

denied the class access to state-funded counsel and other constitutional protections that the class would receive if they were resentenced in a court of law.

Dated: February 19, 2020

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Certificate of Filing and Service

I certify that on February 19, 2020, I electronically filed the foregoing Amicus Brief with the Clerk of Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. Participants in the case who are registered CM/ECF users were served by the CM/ECF system. The Brief was scanned for viruses pursuant to Eight Circuit Local Rule 28A(h)(2) and is virus free.

I also certify that after receipt of notice that the Amicus Brief is filed, I will serve a paper copy of the Amicus Brief to each party separately represented, specifically one copy to counsel for Appellees/Cross-Appellants and one paper copy to counsel for Appellants/Cross-Appellees, by regular mail as noted below. I further certify that after receipt of notice that this Amicus Brief is filed, I will transmit 10 paper copies of the Amicus Brief to the Clerk of Court via Federal Express.

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Certificate of Compliance

I hereby certify that this document complies with the typeface requirements of Federal Rule of Appellate Procedure Rule 32(a)(5)(A), and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6), because it has been prepared using Microsoft Word with 14-point Garamond, a proportionally-spaced, serif typeface.

I further certify that the foregoing Brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B)(i). According to Microsoft Word for Office 365 MSO, the brief contains 4,400 words excluding the table of contents, table of authorities, appendix, and certificates of counsel.

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