STATE OF MICHIGAN
COURT OF APPEALS

People of the State of Michigan

Plaintiff-Appellee,

v.

Michael Paul Parnell

Defendant-Appellant.

Court of Appeals Case No. 357004

Muskegon Circuit Court
Case No. 02-047101-FH
Honorable William C. Marietti

Motion For Leave To File Brief Of Amicus Curiae Roderick & Solange MacArthur Justice Center In Support Of Michael Paul Parnell

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**Motion for temporary admission pending*

Counsel for Amicus Curiae *Roderick & Solange MacArthur Justice Center*

Date: December 6, 2021

The Roderick & Solange MacArthur Justice Center respectfully moves this Court, pursuant to MCR 7.212(H), for leave to file an amicus curiae brief in support of Defendant-Appellant Michael Paul Parnell, and states as follows:

1. The Roderick and Solange MacArthur Justice Center (RSMJC) is a public interest law firm founded in 1985 by the family of J. Roderick MacArthur to advocate for human rights and social justice through litigation. RSMJC has offices at Northwestern Pritzker School of Law, at the University of Mississippi School of Law, in New Orleans, in St. Louis, and in Washington, D.C. RSMJC attorneys have participated in civil rights campaigns in areas that include police misconduct, compensation for the wrongfully convicted, the treatment of incarcerated people, the rights of people with intellectual disabilities or mental disabilities, and extreme sentences.

2. This is an important case involving legal questions of first impression, including whether a sentencing judge can opt to impose the harshest possible sentence for a given crime on a person with an intellectual disability, and whether disregarding rehabilitation as an important function of sentencing renders a sentence unlawful.

3. The proposed amicus brief, attached as **Exhibit 1**, offers an additional perspective that may assist the Court in its resolution of this appeal. The proposed amicus brief analyzes the historical origins and original meaning of Article 1, Section 16 of the Michigan Constitution, showing that this provision sweeps more broadly than the federal Eighth Amendment, and considering the issues in this case in light of the history and intent of Article 1, Section 16. The brief also shows that many state appellate courts have gone

beyond the protections of the federal Eighth Amendment in interpreting their own state constitutions.

4. Counsel for Mr. Parnell consents to the motion for leave to file the amicus brief. Counsel for the State responded to a request for the State's position on the motion by writing, "I will leave it in the Court's discretion."

5. The proposed amicus curiae brief accompanies this motion as **Exhibit 1**.

WHEREFORE, The Roderick & Solange MacArthur Justice Center respectfully requests that this Honorable Court enter an order granting leave to file a brief of amicus curiae in support of Defendant-Appellant Parnell and accept their accompanying brief as filed.

Respectfully submitted,

DATED: December 6, 2021

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CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2021, I electronically served the foregoing paper on counsel of record via the MiFILE system.

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EXHIBIT 1

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STATEMENT OF INTEREST[1]

Amicus Curiae The Roderick and Solange MacArthur Justice Center (RSMJC) is a public interest law firm founded in 1985 by the family of J. Roderick MacArthur to advocate for human rights and social justice through litigation. RSMJC has offices at Northwestern Pritzker School of Law, at the University of Mississippi School of Law, in New Orleans, in St. Louis, and in Washington, D.C. RSMJC attorneys have participated in civil rights campaigns in areas that include police misconduct, compensation for the wrongfully convicted, and the treatment of incarcerated people.

INTRODUCTION

This Court should hold that Mr. Parnell's life sentence is unlawful for two independent reasons. First, a sentencing judge cannot opt to impose the harshest possible sentence for a given crime on a person with an intellectual disability. Second, Mr. Parnell's sentence is cruel because the sentencing judge disregarded rehabilitation as an important function of sentencing. This Court should reach these holdings under Article 1, Section 16 of the Michigan Constitution, which sweeps more broadly than the federal Eighth Amendment. Whereas the Eighth Amendment prohibits penalties only if they are both "cruel *and* unusual," US Const, Am VIII (emphasis added), this state's Constitution forbids any punishment that is either "cruel *or* unusual," Mich Const, art 1, § 16 (emphasis added). As the Michigan Supreme Court has repeatedly recognized, that linguistic difference has

[1] Counsel for a party did not author this brief, in whole or in part, and did not make a monetary contribution intended to fund the preparation or submission of this brief.

real bite and commands a broader interpretation of the Michigan Constitution as compared to the federal Eighth Amendment. A sentence may violate the Michigan Constitution based on cruelty alone, regardless of whether the penalty is usual or unusual.

Sentencing an intellectually disabled person to the maximum penalty—a life sentence—is cruel, regardless of whether it is unusual. In this case, Mr. Parnell's sentence is doubly cruel because the sentencing judge refused to consider rehabilitation as an important factor in sentencing, declaring "I believe that deterrence, disciplining the offender, and protection of the public are by far the more important variables in sentencing." *See* Appellant's Br at 18-19.

While the text of the Michigan Constitution does not define "cruel," the debates at the 1850 Constitutional Convention shed light on the meaning of the term. The Constitution of 1850 adopted the current wording of art 1, § 16; every subsequent Michigan Constitution has followed suit. The 1850 debates make it clear that the delegates believed that a punishment could be cruel if it disregarded the possibility of reformation—precisely what the sentencing judge did in this case.

State appellate courts like this one are the arbiters of their state's own foundational documents. They must not hesitate to go beyond the federal Constitution where their own constitutions demand that they do so. "State courts cannot rest when they have afforded their citizens the full protections of the federal Constitution. State constitutions, too, are a font of individual liberties, their protections often extending beyond those required by the Supreme Court's interpretation of federal law." Brennan, Jr. *State Constitutions and the Protection of Individual Rights,* 90 Harv L Rev 489, 491 (1977).

ARGUMENT

I. The Michigan Constitution Commands Stricter Limitations On Criminal Punishment Than The Federal Eighth Amendment.

The stricter limitations on criminal punishment in Michigan begin with the text of its Constitution. While the federal Eighth Amendment prohibits "cruel *and* unusual punishments," Article 1, Section 16 of the Michigan Constitution prohibits either "cruel *or* unusual" punishment (emphasis added). The Michigan Supreme Court has affirmed that this state's constitution offers broader protections than the federal Eighth Amendment. The support for stricter limitations on criminal punishment in Michigan can be traced back to the framers of Michigan's 1850 Constitution. There, delegates repeatedly asserted that a key function of punishment is reformation—a purpose wholly negated in this case when the sentencing judge disregarded rehabilitation as a key function of criminal sentencing. The text, judicial interpretation, and legislative history of Article 1, Section 16 of the Michigan Constitution confirm that Michigan requires stricter limitations on criminal punishment than the federal Eighth amendment.

A. By Its Plain Text, Article I, Section 16's Rule Against "Cruel or Unusual Punishment" Is Broader Than The Eight Amendment's Prohibition of "Cruel and Unusual Punishment."

The plain language of the Michigan Constitution leaves no doubt that its rule against unlawful punishment sweeps more broadly than the federal Eighth Amendment. Whereas the federal Bill of Rights prohibits cruel *and* unusual punishment, the Michigan Constitution forbids punishment that is *either* cruel *or* unusual.

More specifically, the Eighth Amendment to the U.S. Constitution provides:

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

US Const, Am VIII.

In contrast, Article I, Section 16 of the Michigan Constitution provides:

> Excessive bail shall not be required; excessive fines shall not be imposed; cruel or unusual punishment shall not be inflicted; nor shall witnesses be unreasonably detained.

Const 1963, art 1, § 16.

The language of the Michigan Constitution "is worded differently from . . . the Eighth Amendment." *People v Bullock*, 440 Mich 15, 27; 485 NW2d 866 (1992). Michigan adopted the current language in the 1850 Constitution, and that language was carried forward to Michigan's current constitution, which was ratified in 1963, "more than 171 years after" the federal Eighth Amendment. *Id.*

A textual comparison of the two provisions makes it clear that the drafters of the 1850 Michigan Constitution had the Eighth Amendment at the forefront of their minds when they devised the current language. After all, they borrowed several phrases directly from the federal provision in drafting Michigan's analogue. *Compare* US Const, Am VIII, *with* Const 1963, art 1, § 16. At the same time, the Michigan drafters broadened the federal language in two significant—and plainly deliberate—ways. First, they added a provision regarding the detention of witnesses. *Compare* US Const, Am VIII, *with* Const 1963, art 1, § 16. Second, they replaced the conjunctive federal prohibition on "cruel *and* unusual punishment," *see* US Const, Am VIII, with a disjunctive and broader rule against "cruel *or* unusual punishment," *see* Const 1963, art 1, § 16. The second difference—the rejection of

a "cruel and unusual" standard and the adoption of a "cruel or unusual" standard—is relevant to cases like this one that address the constitutionality of an extremely harsh sentence.

By the time the delegates to the 1850 convention gathered in Lansing, two primary but conflicting models for proscribing punishment had taken root in the United States—a "cruel and unusual" prohibition on the one hand, and a "cruel or unusual" prohibition on the other. Indeed, the U.S. Supreme Court itself has underscored the textual difference between the term "cruel or unusual" in several state constitutions and the term "cruel and unusual" in the Eighth Amendment: "In 1791, five State Constitutions prohibited "'cruel or unusual punishments,'" while others, including the Virginia Declaration of Rights, prohibited only "cruel and unusual punishment" *Harmelin v Michigan*, 501 US 957, 966; 111 SCt 2680; 115 L Ed 2d 836 (1991). The Virginia model followed the 1689 English Declaration of Rights. *Id.*

By contrast, the Northwest Ordinance of 1787 contained a broad, disjunctive prohibition: "[N]o cruel *or* unusual punishments shall be inflicted." *Bullock*, 440 Mich at 31 (emphasis added). In 1791, the framers of the federal Bill of Rights opted to limit the rule to "cruel *and* unusual punishments." *See* US Const, Am VIII (emphasis added); *see also Harmelin*, 501 US at 966. But Michigan took a different path—in 1850, it decisively adopted the broader formulation—"cruel or unusual" punishment. *See* Const 1850, art 1, § 16.

In prohibiting "cruel or unusual" punishment, Michigan did not only depart from the text of the Eighth Amendment, the Virginia Declaration of Rights, and the English

Constitution of 1689. In fact, Michigan also changed a prior version of its own Constitution to broaden the prohibition of unlawful penalties. Initially, Michigan followed neither model. This state's "first Constitution, adopted in 1835, provided that 'cruel *and unjust* punishments shall not be inflicted.'" *Bullock*, 440 Mich at 31 (citing Const 1835, art 1, § 18).

Fifteen years later, however, Michigan decisively adopted the sweeping language of the Northwest Ordinance—a rule against "cruel or unusual punishment"—in the Constitution of 1850. *See* Const 1850, art 6, § 31. The amendment was proposed at the 1850 convention by Benjamin Witherell, an experienced judge who would later serve on the Michigan Supreme Court. *See* 1 Official Record, Constitutional Convention 1850, p 68 (hereinafter "*Report of the Proceedings*") ("On motion of Mr. WITHERELL, [Article I, § 17] was amended by striking 'and unjust' and inserting 'or unusual.'").[2] When this state adopted new constitutions in 1908 and 1963, it maintained and reenacted Justice Witherell's broad formulation—a rule against "cruel or unusual punishment." *See Bullock*, 440 Mich at 31 (citing Const 1908, art 2, § 15; Const 1963, art 1, § 16).

Michigan's deliberate rejection of a rule against "cruel and unusual punishment" means that Michiganders *must* enjoy broader protections under their state Constitution than the federal Eighth Amendment provides. After all, the distinction between conjunctive and disjunctive rules is one of the most fundamental distinctions in legal drafting, and certainly

[2] *Available at* https://babel.hathitrust.org/cgi/pt?id=mdp.39015071175213&view=1up&seq=7

one that would be elementary to a learned jurist like Justice Witherell. "Under the conjunctive/disjunctive canon, *and* combines items while *or* creates alternatives . . . With a conjunctive list, *all . . . things are required*—while with the disjunctive list, at least one of the [things] is required, but *any one . . . satisfies the requirement*." Scalia & Garner, *Reading Law: The Interpretation of Legal Texts*, § 12 at 116 (St. Paul: Thomson/West, 2012) (emphases added). As one scholar recently explained, if a state constitution prohibits "cruel or unusual punishment," then it "bars a punishment that meets one of the parameters of cruelty and unusualness. A cruel punishment violates the state constitution irrespective of whether it is also unusual; an unusual punishment violates the state constitution irrespective of whether it is also cruel." Berry III, *Unusual State Capital Punishments*, 72 Fla L Rev 1, 18 (2020).

B. The Michigan Supreme Court Rightly Interprets Article I, Section 16 More Broadly Than The Federal Eighth Amendment.

The Michigan Supreme Court recognizes that the Michigan Constitution commands a broader interpretation than the federal Eighth Amendment. Almost half a century ago, the Court highlighted the contrast by capitalizing the conjunctions "and" and "or" when it recited the differing provisions: "The United States Constitution prohibits cruel And unusual punishments. The Michigan Constitution prohibits cruel Or unusual punishment." *People v Lorentzen*, 387 Mich 167, 171-72; 194 NW2d 827 (1972) (citations omitted). The Court explained: "The prohibition of punishment that is unusual but not necessarily cruel carries an implication that unusually excessive imprisonment is included in that prohibition." *Id.* In *Lorentzen*, the Court ultimately held that a mandatory minimum

sentence of 20 years in prison for the sale of marijuana violates both the Eighth Amendment and the Michigan Constitution. *Id.* at 181.

In *Bullock*, 440 Mich at 31, the Court explicitly relied on the disjunctive language of the Michigan Constitution to go beyond the U.S. Supreme Court in restricting harsh criminal punishments. The Court decided *Bullock* against the backdrop of the U.S. Supreme Court's decision one year earlier in *Harmelin*, 501 US at 965, which reviewed a judgment of the Michigan Court of Appeals in a sentencing case. Writing for himself and Chief Justice Rehnquist in *Harmelin*, Justice Scalia flatly concluded: "[T]he Eighth Amendment contains no proportionality guarantee." *Id*. (opinion of Scalia, J.). The Michigan Supreme Court, however, refused to apply Justice Scalia's understanding of the federal Eighth Amendment to article 1, section 16 and instead held that the Michigan Constitution *does* recognize a proportionality constraint on criminal punishment. *Bullock*, 440 Mich at 37. Ultimately, the Court held that a mandatory sentence of life without parole for possession of 650 grams or more of cocaine constituted cruel or unusual punishment under the Michigan Constitution. *Bullock*, 440 Mich at 21, 37. In adopting a broader analysis under Michigan's "cruel or unusual" punishment clause, the Court found it "self-evident that any adjectival phrase in the form 'A *or* B' necessarily encompasses a broader sweep than a phrase in the form 'A *and* B.'" *Bullock*, 440 Mich at 30 n11. Therefore, "the set of punishments which are *either* 'cruel' or 'unusual' would seem necessarily broader than the set of punishments which are *both* 'cruel' and 'unusual.'" *Id.*

C. The Framers Of The Michigan Constitution Of 1850 Considered It Cruel To Disregard Rehabilitation As A Fundamental Objective Of A Criminal Sentence.

While the text of the Michigan Constitution prohibits cruel punishment, the text does not define the term "cruel." However, the current text of Article 1, Section 16 dates back to the Convention of 1850, which voted down a provision that would have permanently barred people convicted of infamous crimes from voting. The debate over this provision makes it clear that in the view of the delegates, a punishment is likely to be cruel if it disregards the possibility of reform. That is precisely what the sentencing judge did in this case by disregarding reformation as a crucial objective of criminal punishment. *See* Appellant's Br at 18-19.

Specifically, the delegates considered a provision which would have stated: "Laws may be passed excluding from the right of suffrage, and from holding any office under the laws of this State, persons who may be convicted of an infamous crime, are *non compos mentis* or insane." 1 Official Record, Constitutional Convention 1850 at 298. The convention ultimately adopted a much narrower provision that only excluded people who had engaged in duels. Const 1850, art 7, § 8. This narrow provision likely had no practical effect; several delegates commented that duels were practically nonexistent in Michigan, with one delegate noting that he had "never heard of a duel fought in this State." 1 Official Record, Constitutional Convention 1850, p 189-190.

Multiple delegates criticized the broader (and ultimately rejected) provision, which would have allowed the legislature to permanently disenfranchise anyone convicted of an infamous crime, on the ground that such a punishment disregarded the capacity for

rehabilitation. For instance, in these debates, Judge Witherell "said there were two reasons for inflicting punishment—warning to the community and reformation of the offender." *Id.* at 298. Delegate Joseph H. Bagg noted, "I know several persons in Detroit who have been convicted of crimes . . . They are now good citizens, and are no doubt reformed of their sins, and vote at our elections." *Id.* at 476. Similarly, Delegate DeWitt C. Walker "believed the object of punishment to be the reformation of crime. If it does not produce that effect, we ought not to place odium upon him after he has had the wholesome lesson of instruction imparted to him." *Id.* at 352. To Delegate Ebenezer Raynale, "[i]t seemed . . . illiberal and unjust, after a man had suffered what the law required, that he should remain forever a proscribed man." *Id.* at 297. And Delegate Alfred H. Hanscom declared: "There was no reason to suppose that an individual who underwent imprisonment may not be made a good and moral citizen by the operation of the reformatory training which had been adopted in our prison." *Id*. at 476.

One of the most ardent opponents of the defeated measure, Delegate Isaac E. Crary, stated: "If a man go to prison, it is for the purpose of being reformed . . ." *Id.* at 476. Railing against the provision, Crary declared:

> The amendment said in effect that a man who had been guilty of a burglary, or larceny, because he had been guilty of that act, and had been punished by the law of the land, must be forever disqualified from being one of our citizens! By such a proposition in the fundamental law, we asserted that those individuals who had been sent to the penitentiary, and there reformed and made good citizens, should have a constitutional provision hanging over them during the remainder of their life, however well they might conduct themselves—however good citizens of the community they might become, yet we were to fix this stigma upon them . . .

Id. at 475. Crary even likened permanent disenfranchisement to a mark of Cain that would stigmatize people and prevent reformation:

> After a man is convicted, he is sentenced to punishment as an example to others and to reform the individual; yet you propose to fix a mark upon him, like that of Cain, which shall follow him through life, though you may have reformed him. If a man who has committed a crime shall have been confined so long as to deter others and reform himself, you should not fix a stigma on him. The probability is that he will not reform, if the people are constantly pointing at the black mark upon him."

Id. at 298.

The sentencing record in this case stands in stark contrast to the original meaning that the delegates to the 1850 convention intended to enact. They devised Article 1, Section 16 as a bulwark against cruel sentences. The framers of the 1850 Constitution recognized reform as the primary function of punishment, but the sentencing judge in this case disregarded it entirely: "I believe that deterrence, disciplining the offender, and protection of the public are by far the more important variables in sentencing." *See* Appellant's Br at 18-19.

II. This Court Should Join Other State Appellate Courts That Have Held That Their Own Constitutions Go Beyond The Federal Eighth Amendment In Limiting Harsh Sentences.

When interpreting state Eighth Amendment analogues, state courts have not hesitated to go beyond the minimum protections provided by the federal Eighth Amendment. This Court should do the same in striking down Mr. Parnell's sentence.

Washington: The Washington Supreme Court recently interpreted its Eighth Amendment analogue to extend to criminal defendants under age 21, prohibiting

mandatory life-without-parole sentences for this age group. *See Matter of Monschke*, 197 Wash 2d 305; 482 P3d 276 (2021). In *Monschke,* the two petitioners had received mandatory life without parole sentences for offenses committed at ages 19 and 20. *Id.* at 277. They challenged the mandatory sentences as "unconstitutionally cruel when applied to youthful defendants like themselves." *Id.* at 308.

Like the Michigan Constitution, the Washington Constitution prohibits cruel punishments, whether or not they are unusual. *See* Wash Const, art 1, § 14 ("Excessive bail shall not be required, excessive fines imposed, nor cruel punishment inflicted."). In *Monschke*, the Washington Supreme Court noted that "the Washington State Constitution's cruel punishment clause often provides greater protection than the Eighth Amendment." *Monschke*, 482 P3d at 279 n.6 (quoting *State v Bassett*, 192 Wash 2d 67, 78; 428 P3d 343 (2018) (alterations in original)). Applying this greater protection under state constitutional law, the court concluded that the petitioners "were essentially juveniles in all but name at the time of their crimes." *Id.* at 280.

Earlier, in *State v Bassett*, Basset, a sixteen year old, had received a life without the possibility of parole sentence for the aggravated first-degree murder of his mother, father, and brother. *Bassett*, 428 P3d at 345-346. Basset challenged his sentence by arguing that the Washington Constitution prohibits sentencing juveniles to life without parole. *Id.* at 347. The Washington Supreme Court noted that the state Eighth Amendment analogue "often provides greater protection than the Eight Amendment." *Id.* at 348. The Court concluded that because the characteristics of youth do not align with the penological goals of life without parole sentences, the diminished criminal culpability of children, and the

trend of states rapidly abandoning juvenile life without parole sentences, such sentences are categorically unconstitutional under the Washington Constitution. *Id.* at 354.

The Supreme Court of Washington also holds that the Washington Constitution extends beyond the Eighth Amendment to prohibit the death penalty. In *State v Gregory*, the Washington Court begins by stating that "this court has repeatedly recognized that the Washington State Constitution's cruel punishment clause often provides greater protection than the Eighth Amendment." 192 Wash 2d 1, 15; 427 P3d 621, 631 (2018) (quoting *State v Roberts*, 142 Wash 2d 471, 506; 14 P3d 713 (2000)). The court found Washington's administration of the death penalty to be racially biased and arbitrary, and thus unconstitutional under Washington's Eighth Amendment analogue. *Gregory*, 427 P3d at 632, 636.

Connecticut: The Connecticut Supreme Court holds that the death penalty violates Connecticut's Eighth Amendment analogue, which is interpreted with the state's unique history and constitutional traditions in mind. *State v Santiago*, 318 Conn 1; 122 A3d 1, 9 (2015). After Connecticut repealed the future imposition of the death penalty, *Santiago* struck down capital punishment for people already sentenced to death. *Id.* The Court explained that Connecticut's "history reveals a particular sensitivity" to harsh punishment and "warrants our scrupulous and independent review of allegedly cruel and unusual practices and punishments, and informs our analysis thereof." *Id.* at 26-27.

West Virginia: The West Virginia Supreme Court of Appeals has concluded that the state's Eighth Amendment analogue prohibits a life sentence imposed under a recidivist statute, in a case where the defendant's third crime consisted of forging a check for a small

sum. *See Wanstreet v Bordenkircher*, 166 W Va 523; 276 SE2d 205, 214 (1981). The court explained: "We cannot conceive of any rational argument that would justify this sentence in light of the nonviolent nature of this crime and the similar nature of the two previous crimes . . ." *Id.*

Alaska: The Alaska Supreme Court has gone beyond the bounds of the federal Eighth Amendment by overturning a one-year sentence for petty larceny under the Alaska Constitution. *Galaktionoff v State*, 486 P2d 919, 922 (Alas, 1971). In *Galaktionoff*, the defendant was convicted of petty larceny and sentenced to one year in prison, the maximum available sentence under the statute. *Id.* at 920. The Alaska Court found that the maximum sentence was not justified because the crime was a single transaction, concerned a small value of property, and was a first offense. *Id.* at 924.

California: The California Supreme Court has gone beyond the protections of the federal Eighth Amendment in limiting felony murder sentences for juveniles. Like the Michigan Constitution, the California Constitution prohibits "cruel or unusual" punishment. Cal Const, art 1, § 17. In *People v Dillon*, the court reasoned that because of the defendant's youth and lack of prior history with the law, a sentence of life imprisonment violates article 1, section 17 of the state constitution. *People v Dillon*, 34 Cal 3d 441, 488-489; 668 P2d 697, 726-727 (1983).

Massachusetts: The Massachusetts Supreme Judicial Court held that any juvenile life-without-parole sentence, even a discretionary one, violates the state's Eighth Amendment analogue "because it is an unconstitutionally disproportionate punishment when viewed in the context of the unique characteristics of juvenile offenders." *Diatchenko*

v Dist Att'y for Suffolk Dist, 466 Mass 655; 1 NE3d 270, 276 (2013). Like the Michigan Constitution, Article 26 of the Massachusetts Declaration of Rights enjoins "cruel or unusual" punishment. Accordingly, the Supreme Judicial Court has "inherent authority 'to interpret [S]tate constitutional provisions to accord greater protection to individual rights than do similar provisions of the United States Constitution.'" *Id.* at 282 (alteration in original) (quoting *Libertarian Ass'n of Mass v. Secretary of the Commonwealth*, 462 Mass 538; 969 NE2d 1095, 1111 (2012)). As the court noted, "We often afford criminal defendants greater protections under the Massachusetts Declaration of Rights than are available under corresponding provisions of the federal Constitution." *Diatchenko*, 1 NE3d at 283 (citing *Dist Att'y for the Suffolk Dist v Watson*, 381 Mass 648; 411 NE2d 1274 (1980)).

Iowa: The Iowa Supreme Court has concluded that that all juvenile life-without-parole sentences violate the state constitution's "cruel and unusual punishment" bar. *State v Sweet*, 879 NW 2d 811, 839 (Iowa, 2016). The court reasoned that parole boards are better situated than courts to "discern whether the offender is irreparably corrupt after time has passed, after opportunities for maturation and rehabilitation have been provided, and after a record of success or failure in the rehabilitative process is available." *Id.* at 839.

The Iowa Supreme Court also finds all mandatory minimum sentences for juveniles unconstitutional under Iowa's Eighth Amendment analogue. *State v Lyle*, 854 NW2d 378, 380 (Iowa, 2014). The court noted in *Lyle*, "we cannot ignore that over the last decade, juvenile justice has seen remarkable, perhaps watershed, change." *Id.* at 390. The court held: "Mandatory minimum sentences for juveniles are simply too punitive for what we

know about juveniles." *Id.* at 400. The court explicitly used its "independent judgment under article I, section 17" of the state constitution in reaching this conclusion *Sweet*, 879 NW2d at 834.

As shown by the above-mentioned examples, state courts commonly exceed the federal minimum and provide protections against extreme sentences under state Eighth Amendment analogues. The Court should do so here by holding that Mr. Parnell's sentence violates Article 1, Section 16 of the Michigan Constitution both because maximum sentences for people with intellectual disabilities are cruel, and because the sentencing judge in this case disregarded reform as a goal of punishment.

CONCLUSION

For these reasons, this Court should hold that Mr. Parnell's life sentence violates Article 1, Section 16 of the Michigan Constitution.

Respectfully submitted this 6th day of December, 2021.

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