No. 131560

IN THE SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellant, v. DEMITRI GREEN-HOSEY, Petitioner-Appellee.	)))))))))))	Appeal from the Appellate Court of Illinois, Second Judicial District, No. 2-24-0284 There on Appeal from the Circuit Court of the Sixteenth Judicial Circuit, Kane County, Illinois, No. 14 CF 76 Hon. Elizabeth K. Flood, Presiding

BRIEF *AMICUS CURIAE* IN SUPPORT OF PETITIONER-APPELLEE

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POINTS AND AUTHORITIES

STATEMENT OF *AMICUS CURIAE*

The State Law Research Initiative ("SLRI"), a fiscally sponsored project of the Proteus Fund, Inc., is a legal advocacy organization dedicated to reviving and strengthening state constitutional rights in our criminal justice systems, with a focus on excessive prison terms and inhumane conditions of confinement. SLRI has unique expertise in the development and application of state constitutional law, particularly in the context of criminal legal systems. SLRI's work includes, among other things, fostering and developing legal scholarship on the history and meaning of state constitutional rights, as well as working with legal scholars and criminologists to file amicus briefs in state courts of appeal.

INTRODUCTION

Petitioner-Appellee Demitri Green-Hosey should prevail because he has shown that, at the time of his offense, he had the developmental attributes of youth. As the appellate court correctly held, he therefore is constitutionally entitled to a resentencing hearing where the mitigating effects of those traits are adequately considered. *See People v. Green-Hosey*, 2025 IL App (2d) 240284, ¶¶ 1, 39, 52 (citing *inter alia Miller v. Alabama*, 567 U.S. 460 (2012)).

To the extent the Court disagrees, however, or views Petitioner's case as presenting a close question, *amicus curiae* submits that this is an easy case once the Court accounts for the entirety of Article I, Section 11 of the 1970 Illinois Constitution. Put simply, the unique constitutional requirement enshrined in this State's constitution dictating that "[a]ll penalties *shall* be determined ... *with the*

objective of restoring the offender to useful citizenship," plainly prohibits sentences of life without the possibility of parole (and their functional equivalent) for all offenders at least up to age 21.

In Illinois, the constitutional right against excessive punishment in Article I, Section 11, is commonly known as the "proportionate penalties clause." *People v. Miller*, 202 Ill. 2d 328, 337-38 (2002) (*Leon Miller*). But this nomenclature captures only half the text. In its entirety, the text states: "All penalties *shall be determined* both according to the seriousness of the offense and *with the objective of restoring the offender to useful citizenship*." Ill. Const. art. I, § 11 (emphasis added). Reducing this explicit rehabilitation requirement to a call for "proportionate" penalties is at best incomplete, capturing only the first clause while ignoring the second. A more accurate name given the second half of the sentence would be the "Reformation Clause."

This distinction is critical. By plain meaning alone, the Reformation Clause provides more expansive rights against excessive punishment than either the federal Eighth Amendment or any other state's constitutional antipunishment clause in the Nation. Its mandatory language demands that every criminal penalty, whether a particular sentence imposed by a court or a sentencing statute passed by the legislature, promotes "the objective of restoring the offender to useful citizenship." This plain meaning is enhanced by the provision's history. Born of a struggle for civil rights and racial justice, the Reformation Clause, added to the Illinois Constitution at the 1970 constitutional convention, was a thoroughly

discussed addition intended to bind the legislature and subject its sentencing schemes to judicial review. This history shows that the Reformation Clause is both a public safety tool and, more fundamentally, a recognition that people who commit crimes, even very serious crimes, retain their human dignity and connection to civil society—and that society as a whole will benefit if they can one day rejoin it.

Yet the Reformation Clause under existing jurisprudence is all but ignored. While this Court has rightly recognized the General Assembly's "power to impose sentences is not without limitation" and "must satisfy constitutional constrictions," *Leon Miller*, 202 Ill. 2d at 336, it has not translated the constitutional constrictions of the Reformation Clause into an administrable standard. That should change, and it should change in a way that is faithful to the text and history of this provision. The State's approach misses that mark. To the extent the State pays heed to the Reformation Clause at all, it suggests the clause can only be applied to *individual* sentences, rather than on a categorical basis, and only bans sentences that arise in cases with facts so extreme the legislature could not have contemplated them when passing sentencing laws. State Br. at 32. But that cannot be the law, for it would render the Reformation Clause all but a dead letter. As the Michigan Supreme Court explained when it struck down mandatory life without parole for drug possession under that state's far less textually explicit constitutional provision, "[t]he very purpose of a constitution is to subject the passing judgments of temporary legislative or political majorities to the deeper, more profound judgment of the people reflected in the constitution, the

enforcement of which is entrusted to our judgment." *People v. Bullock*, 485 N.W.2d 866, 877 (Mich. 1992). In Section 11, that judgment is codified in a Reformation Clause that demands a focus on rehabilitation.

Properly understood, the Reformation Clause requires Illinois courts to scrutinize the fit between criminal punishments—including sentencing *schemes*—and the goal of rehabilitation, invalidating penalties that do not serve that constitutionally-required purpose. Applied here, this means that, at a minimum, the state cannot impose life without parole ("LWOP")—a punishment that "forswears altogether the rehabilitative ideal," *Miller v. Alabama*, 567 U.S. 460, 473 (2012)—on young people under age 21. No court and no legislature can determine at the time of offense or sentencing that a young person is beyond the capacity to change. All available evidence is to the contrary. In effect, then, upholding LWOP for this category of offenders requires pretending that the Reformation Clause does not exist.

ARGUMENT

I. The Reformation Clause Provides Uniquely Broad Protections Against Excessive Punishment.

The Reformation Clause, added to the state charter during the 1970 constitutional convention, is uniquely expansive and, on its face, provides stronger protections against excessive or inherently cruel punishments than not only the Eighth Amendment, but also any other antipunishment clause in the country. That is affirmed by the original meaning of the Reformation Clause, as illustrated by the convention history, delegate statements, and historical context in which it was

adopted. In the words of Delegate Foster at the Constitutional Convention, the Reformation Clause sought to ensure that "the major thrust" of sentencing is "towards rehabilitation rather than [merely] punishment." 3 Record of Proceedings, Sixth Illinois Constitutional Convention 1391, 1392 (1970) (statements of Delegate Foster) (hereinafter Proceedings).

A. The Text of The Reformation Clause Is Uniquely Expansive Among State And Federal Antipunishment Provisions.

"The best guide to interpreting the Illinois Constitution is the document's own plain language." *People v. Clemons*, 2012 IL 107821, ¶ 29 (internal quotation marks omitted). The text of the Reformation Clause reveals immediately that viewing it only as a "proportionate penalties clause" is insufficient. "Proportionate" penalties suggest a narrow comparison between the crime and the punishment, an "eye-for-an-eye" inquiry that requires only the gravity of one to be commensurate with the other. But what the Reformation Clause actually says is that "All penalties *shall* be determined *both* according to the seriousness of the offense *and with the objective of restoring the offender to useful citizenship*." Ill. Const. art. I, § 11 (emphasis added).

This stands in stark contrast to analogs in the federal and other state constitutions. The federal Eighth Amendment bars "cruel and unusual punishments." Eleven state constitutions mirror that language verbatim. Several others add an explicit proportionality requirement—showing that constitutional drafters know how to add a proportionate penalties clause when they want to. The constitutions of Maine and Indiana, for example, both provide that all penalties

"shall be proportioned to the nature of the offense," Ind. Const. art. 1, § 16; Me. Const. art. I, § 9, while the New Hampshire Constitution similarly provides that "penalties ought to be proportioned to the nature of the offense." N.H. Const. pt. I, art. 18. Sixteen states have a disjunctive "cruel *or* unusual" prohibition, while half a dozen more bar "cruel" punishments. *See generally* William Berry, *Cruel State Punishments*, 98 N.C.L. Rev. 1201, 1215-40 (2020).

All these options existed at the 1970 constitutional convention, as did the version in Illinois's 1870 Constitution, which provided only that "[a]ll penalties shall be proportioned to the nature of the offense[.]" Ill. Const. 1870, art. II, § 11. Yet the delegates opted to *also* include the Reformation Clause, and with it the constitutional guarantee that criminal punishments would be designed for the purpose of restoring offenders to useful citizenship. The plain meaning of this text is dispositive.

B. The History Of The Reformation Clause Reinforces The Text's Broad Mandate.

Constitutional history is another crucial component of interpreting the Illinois Bill of Rights. *See, e.g.*, *People ex rel. Daley v. Joyce*, 126 Ill. 2d 209, 215 (1988) ("In giving the language of our constitution independent meaning, we must consider what the drafters of our present constitution intended"); *People v. Tisler*, 103 Ill. 2d 226, 241-42 (1984) (examining 1970 convention proceedings and "the intent of the constitutional convention" to interpret state constitutional rights limiting police searches and seizures). Constitutional history is vital here, since historical analysis of the Reformation Clause in previous cases has been

incomplete. In *People v. Sharp*, 216 Ill. 2d 481 (2005), for example, this Court noted the updated 1970 text but then considered the convention history only as to the first clause—which did not materially change from the 1870 Constitution—and found that "the debates of the Sixth Illinois Constitutional Convention do not evince any intent on the part of the framers to change the meaning of the first clause." *Id.* at 491. No debate analysis regarding the *second* clause, which added a new and profound mandate to pursue rehabilitation, was provided.

However, as illuminated in a new law review article, scholars Maria Hawilo and Laura Nirider describe how the Reformation Clause reflects a deliberate choice to place rehabilitation over retribution and to mitigate an overly-punitive criminal justice system infected with racial bias.[1] The new language was, they write, a "[B]ill of [R]ights amendment that strikes right at the center of social justice, racial justice, and criminal justice[.]" Maria Hawilo & Laura Nirider, *Past, Prologue, & Constitutional Limits on Criminal Penalties*, 114 J. Crim. L. & Criminology 51, 62 (2024). Specifically, it was born of a pivotal historical moment.

"Across the nation, the 1960s saw escalating tensions between law enforcement and Black people who were commonly subjected to terrible urban living conditions, including regular police brutality," they write. "And Illinois's largest city, Chicago, was no exception." *Id.* at 58-59. In fact, by the late 1960s, "Chicago became the epicenter of the clash between people—often poor residents

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[1] *Amicus Curiae* provided grant funding to conduct the Hawilo & Nirider research.

of color—and armed authorities[.]" *Id.* at 61. In 1968, Rev. Dr. Martin Luther King, Jr.'s assassination sparked mass protests and riots in more than 100 cities, including in Chicago. *Id.* at 60-61. "[T]housands of those troops returned to the city just months later, when Chicago hosted the Democratic National Convention and police and protesters clashed over the Vietnam War." *Id.* at 61. And in 1969, tensions flared again after police raids and killings of members of the Black Panther Party on the city's West Side, including the FBI's assassination of the Party's deputy chairman, Fred Hampton. *Id.*

Amid this unrest, President Lyndon Johnson convened the National Advisory Commission on Civil Disorders, a group chaired by Illinois Governor Otto Kerner, Jr. "On February 29, 1968, the Kerner Commission, as it had become known, … plainly identified racism as a central driver of unrest in poor Black urban neighborhoods." *Id.* at 59. "[W]hite society is deeply implicated in the ghetto," the Commission wrote. "White institutions created it, white institutions maintain it, and white society condones it." U.S. Dep't of Justice, *Report of the National Advisory Commission on Civil Disorders*, at 1 (1968). The Commission also indicted the criminal legal system. It noted the role of police brutality in fomenting distrust and unrest, finding that many police "reflect and express" "white power, white racism, and white repression." *Id.* at 5. And more broadly, it came down against "assembly line justice in teeming lower courts; against wide disparities in sentences; against antiquated correctional facilities; [and] against the basic

inequities imposed by the system on the poor to whom, for example, the option of bail means only jail." *Id.* at 157.

These events provide necessary historical context for the 1970 constitutional convention that followed. And that is true in part because they were so formative for the convention delegate who introduced the Reformation Clause and shepherded it through floor debates: Leonard Foster. As a lawyer, Foster served as "one of a handful of Black assistant state's attorneys in a Cook County office otherwise filled with white prosecutors." Hawilo & Nirider, *supra,* at 66. His "particular passion was the advancement of community-based, neighborhood-led movements to end racial discrimination, particularly in the areas of housing and employment." *Id.* at 66-67. Foster served on the convention's Bill of Rights Committee alongside civil rights lawyer Elmer Gertz, the Committee's Chair. Gertz would later describe the Committee's mindset on the task ahead: the "state bill of rights might perform important functions. We might go beyond what was required by the Fourteenth Amendment. We could not give our citizens less, but we could give them more. Would we?" Elmer Gertz, *For The First Hours of Tomorrow: The New Illinois Bill of Rights* 12 (Univ. of Illinois Press 1972); *see also* Hawilo & Nirider, *supra*, at 71. When it came to rights against criminal punishments, they did.

As described above, the 1870 Illinois Constitution was silent as to the purpose of punishment and whether that purpose would impose a constitutional restraint on the severity of criminal penalties. During debate, Gertz raised the

possibility of enhancing sentencing-related rights, particularly as a matter of racial justice:

> All of us, no matter how we feel about the penal system, recognize that there is a lot of caprice and whim in sentencing. It sometimes seems that it depends upon race, color, creed, kind of lawyer, all kinds of fortuitous circumstances having nothing to do with the offense; and as I see it, it is possibly of constitutional importance in Illinois and nationally . . . that the question of standards for sentence be considered in any bill of rights.

Proceedings 1394 (statement of Delegate Gertz). Later, during floor proceedings on June 2, 1970, Foster proposed his amendment to Section 11. It left intact the first clause requiring penalties "proportioned … to the nature of the offense," but added that penalties "shall" *also* be "proportioned … to the objective of restoring the offender to useful citizenship." Hawilo & Nirider, *supra*, at 80. Foster explained that he intended the new language to go beyond the extant proportionate penalties clause and ensure that, as a matter of constitutional right, sentences reflected a person's capacity to reform and return to useful citizenship:

> Traditionally the constitution has stated that a penalty should be proportionate to the nature of the offense. I feel that with all we've learned about penology that somewhere along the line we ought to indicate that in addition to looking to the act that the person committed, we also should look at the person who committed the act and determine to what extent he can be restored to useful citizenship.

Proceedings 1380-81 (statement of Delegate Foster). Gertz quickly agreed, adding:

> I certainly look with great sympathy and approval with the proposed amendment . . . I think the spirit of the proposed amendment is in accordance with modern penology. I think if we're going to lower the

> crime rate and make this a more livable world, we have to think in such terms as those set forth by Mr. Foster.

Id. at 1381 (statements of Delegate Gertz). After clarifying that his proposal would tailor criminal punishments, at least to the extent possible, to the goal of rehabilitation and facilitating social reintegration, Foster explained that those requirements would apply *both* to sentencing courts and to the state legislature—and that whether or not sentencing statutes comply with this right would be subject to judicial review. Delegate Malcolm Kamin asked:

> I am curious. *Is it contemplated that the requirement is directed to the legislature as well as to the court and is the legislation which provides a penalty subject to challenge under this provision*? That's my first question. My second question is, if a judge is within the range of penalties prescribed by the legislature and if the legislation passes the test, hasn't the judge passed the test with regard to the proportion?

Foster replied:

> As to the first question, as I remember it, *yes, this would be binding on the legislature*. As to the second question, I would presume that in order for this provision to be effectuated there would have to be rules adopted by the courts, but where the legislature provides a range say, five to twenty for a given offense even if the judge is within that range under this provision, I would expect him to somehow justify picking either the five or the twenty.

Id. at 1393 (statements of Delegate Kamin and Delegate Foster) (emphasis added). Ultimately, the delegates replaced "proportioned" with "determined … according to," but otherwise Foster's Reformation Clause became law—the amendment

passed and, on December 15, 1970, the people of Illinois adopted the proposed constitution.

In their historical analysis, Hawilo and Nirider explain that Foster wanted to avoid the "mindset of chastened misery or dependent submission on the part of the convicted person." Instead, "all evidence suggests that [Foster] intended to create a penal system that would allow a person to leave prison and once again look their fellow citizens in the eye." Hawilo & Nirider, *supra*, at 88. In this sense, Foster explained, the Reformation Clause "would even go to what we did in our prisons, in terms of having people learn how to do something more useful than make license plates." Proceedings 1391 (statement of Delegate Foster). With the Reformation Clause in place, sentencing "policy was to be directed towards something more fundamental, and something broader than simply withholding freedom for a set term of years"; under Foster's vision, "the state must ensure that those years are spent preparing convicted people to reacquire all the rights and responsibilities that citizenship entails." Hawilo & Nirider, *supra*, at 88.

C. Given The Text And Original Meaning Of The Reformation Clause, Illinois Courts Must Ensure That All Criminal Penalties Meaningfully Serve The Goal Of Rehabilitation.

The text and history thus are clear: Under the Reformation Clause, all criminal penalties *must* promote the goal of "restoring the offender to useful citizenship"—that is, rehabilitation. What's more, this requirement applies both to individual sentences and sentencing statutes, subjecting legislative sentencing schemes to judicial review and rendering unconstitutional any punishment that is

inconsistent with this purpose. And that requires, at a minimum, that courts scrutinize the fit between criminal punishments, including sentencing *schemes*, and the goal of rehabilitation.

Indeed, this Court already has held that the "mandate set forth in article I, section 11, provides a check on the judiciary, *i.e.*, the individual sentencing judge, *as well as the legislature, which sets the statutory penalties*." *People v. Spencer*, 2025 IL 130015, ¶ 42 (emphasis added). So, while the legislature may set sentencing policy, "the power to impose sentences," like any other legislative power, "is not without limitation; the penalty must satisfy the constitutional constrictions." *Leon Miller*, 202 Ill. 2d at 336. And as this Court has held, the "constitutional constrictions" under the Reformation Clause are necessarily more expansive than those provided under the Eighth Amendment. *See Clemons*, 2012 IL 107821, ¶ 40 ("[T]he limitation on penalties set forth in the second clause of article I, section 11, which focuses on the objective of rehabilitation, went beyond the framers' understanding of the [E]ighth [A]mendment and is not synonymous with that provision").

Despite that, this Court has not adopted a standard for assessing violations of the Reformation Clause. The Court's jurisprudence instead has focused on the "proportionate penalties" half of Section 11, which the Court has held bars only punishments that are "cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community." *People v. Clark*, 2023 IL 127273, ¶ 51 (quoting *Leon Miller*, 202 Ill. 2d at 338). To be sure, this Court has

correctly recognized that this framework encompasses *Miller*-type protections for emerging adults, at least on an as-applied basis. *See, e.g., People v. Harris*, 2018 IL 121932, ¶ 48. And, as the appellate court held, Petitioner prevails under this standard because he shares the developmental attributes of youth which were not adequately considered before his mandatory *de facto* LWOP sentence was imposed. *People v. Green-Hosey*, 2025 IL App (2d) 240284, ¶¶ 1, 39, 52.

Because of the Reformation Clause, however, Section 11 cannot be limited to individual, as-applied claims. Neither the Eighth Amendment nor other state antipunishment clauses work that way. Consider *Miller v. Alabama*. In *People v. Harris*, this Court correctly referred to *Miller* as a "facial" challenge to a mandatory sentencing statute. 2018 IL 121932, ¶¶ 52-53. While *Miller* did not bar mandatory life without parole "under any possible set of facts," it turned on the characteristics and attributes shared by an entire *category* of people (i.e., youth age 18 and under), and its holding applied to that *category*, not just to the individual claimant.[2]

The Reformation Clause should also encompass such categorical and other facial challenges. Certainly there is nothing about the Reformation Clause that textually precludes either categorical or facial challenges to sentencing schemes. Rather, the text surely indicates that Illinois courts retain not just the authority

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[2] The same is true of cases, for example, that bar the death penalty for youth or people with intellectual disabilities, *Roper v. Simmons*, 543 U.S. 551 (2005); *Atkins v. Virginia*, 536 U.S. 304 (2002), and that bar life without parole for youth convicted of nonhomicide offenses. *Graham v. Florida*, 560 U.S. 48 (2010).

but the constitutional *obligation* to assess whether *both* sentencing laws and individual sentences meaningfully serve the constitutionally-required purpose of rehabilitation. *See Clemons*, 2012 IL 107821, ¶ 29 ("The constitutional mandate set forth in article I, section 11, provides a check on … the legislature, which sets the statutory penalties in the first instance.").

This is neither a novel nor an unworkable concept. Assessing whether state action is sufficiently tailored to a proper purpose—in this case, the constitutionally-mandated purpose of restoring people to useful citizenship—is a basic function of judicial review. It is, for example, how both state and federal courts typically assess claims that state action has violated Equal Protection. When the government makes "suspect" classifications, such as those based on race, it must satisfy "strict scrutiny" and show that its action is "narrowly tailored" to "achieve a compelling governmental interest." *See*, *e.g.*, *Adarand Constructors v. Pena*, 515 U.S. 200, 235 (1995). The same exacting standard applies when the government burdens a fundamental right. *See Reno v. Flores*, 507 U.S. 292, 301-02 (1993).[3] And it is true of "evolving standards" review, in which courts assess the efficacy of challenged punishments and ask whether they serve a legitimate

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[3] A growing body of scholarship argues that strict scrutiny review should apply to excessive incarceration, both because incarceration deprives people of their fundamental right to liberty, *see* Salil Dunani, *Unconstitutional Incarceration: Applying Strict Scrutiny to Criminal Sentences*, 129 Yale L.J. 1946 (2020), and because certain "discrete and insular" groups (including emerging adults) face a higher risk of receiving excessive punishment, *see* Ian P. Farrell, *Strict Scrutiny Under the Eighth Amendment*, 40 Fla. St. U. L. Rev. 853 (2013).

penological goal "more effectively than a less severe punishment," *Furman v. Georgia*, 408 U.S. 238, 280 (1972) (Brennan, J., concurring) or make a "measurable contribution to acceptable goals of punishment," *Coker v. Georgia*, 433 U.S. 584, 592 (1977).[4]

There simply is no reason why Illinois courts are institutionally incapable of similarly assessing whether there is a means-ends fit between a sentencing scheme and the goal of rehabilitation. Nor is there any risk that judicial scrutiny would impermissibly usurp legislative authority; if anything, it would properly constrain legislative power within constitutional limits. *See People v. Dorsey*, 2021 IL 123010, ¶ 117 ("This constitutional mandate provides a check on the individual sentencing judge and the legislature. ... [T]he legislature may not enact a mandatory minimum sentence that is unconstitutionally disproportionate for an individual defendant."). As the Michigan Supreme Court explained when it held that mandatory LWOP for 18 year olds is "cruel or unusual" punishment: "We are duty bound to interpret the Constitution, no matter the outcome," and "determining whether the Legislature's chosen sentence runs afoul of our Constitution's protections is well within the purview of this Court[.]" *People v. Parks*, 987 N.W.2d 161, 177 (Mich. 2002). "We cannot shirk our duty," the court

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[4] *See also* Smith, Robinson, & Hughes, *State Constitutionalism & the Crisis of Excessive Punishment*, 108 Iowa L. Rev. 537, 578-79 (2023) ("The independent judgment component of [evolving standards review] requires courts to evaluate whether the challenged punishment practice meaningfully serves a legitimate purpose of punishment …, or if a less severe punishment would suffice.").

wrote, "and defer to the Legislature's choice of punishment when its choice is offensive to our Constitution." *Id.*

II. The Reformation Clause Prohibits LWOP—Including *De Facto* LWOP—For Emerging Adults Under Age 21.

A. Life Without Parole For Emerging Adults Is Wholly Inconsistent With The Goal Of Rehabilitation.

LWOP "forswears altogether the rehabilitative ideal," *Miller*, 567 U.S. at 473 (quoting *Graham*, 560 U.S. at 74), and is wholly inconsistent with a "penal system that would allow a person to leave prison" better prepared to "look their fellow citizens in the eye," Hawilo & Nirider, *supra*, at 88; *see also Graham*, 560 U.S. at 70 (explaining that life without parole "means denial of hope; it means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit of [the convict], he will remain in prison for the rest of his days." (quotation omitted)).

There are models for this analysis. In 2022, the Supreme Court of Canada, applying a prohibition on "cruel and unusual" punishment, ruled that all life without parole sentences—including *de facto* LWOP—are unconstitutional for all offenders, largely because Canadian antipunishment rights require "leav[ing] the door open for rehabilitation," as rehabilitation is "intimately linked to human dignity in that it conveys the conviction that every individual is capable of repenting and re-entering society." *R. v. Bissonnette*, 2022 SCC 23 (Can.).[5] Such

[5] Supreme Court of Canada, Judgments, https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/19405/index.do.

reasoning applies even more clearly in Illinois, where the Reformation Clause explicitly requires sentences that promote rehabilitation and endeavor to facilitate re-entering society. *See also Commonwealth v. Mattis*, 224 N.E.3d 410, 428 (Mass. 2024) (citing *Bissonnette* to further support its state constitutional holding that life without parole for people under age 21 is unconstitutional).

At a minimum, though, the Reformation Clause prohibits imposing LWOP on young people with still-developing brains, which includes the category of emerging adults at least up to age 21. Even assuming a deferential standard of review, there is no rational basis between sentencing young people to die in prison and "the objective of restoring [them] to useful citizenship." The scientific consensus is clear: No court and no legislature can determine at the time of offense or sentencing that a young person is beyond the capacity to change. *See Diatchenko v. D.A.*, 1 N.E.3d 270, 284 (Mass. 2013) ("Simply put, because the brain of a juvenile is not fully developed, either structurally or functionally, … a judge cannot find with confidence that a particular offender, at that point in time, is irretrievably depraved."). All available evidence is to the contrary. In effect, upholding LWOP for this category of offenders requires pretending that Section 11 does not exist.

It is well-established that permanent imprisonment ending only in death is inconsistent with rehabilitation. *See People v. Taylor*, 2025 WL 1085247, at *13 (Mich. Apr. 10, 2025) ("It cannot be disputed that the goal of rehabilitation is not accomplished by mandatorily sentencing an individual to life behind prison walls

without any hope of release.") (internal quotation marks and citation omitted). The only possible argument for upholding LWOP thus is that some offenders are beyond rehabilitation, in which case the Reformation Clause has no application. But even if some offenders are beyond rehabilitation, the fact that such rare circumstances do occur does not justify any *mandatory* LWOP sentencing statute, nor does it justify LWOP sentences for an emerging adult.

"Advancements in scientific research have confirmed what many know well through experience: the brains of emerging adults are not fully mature." *Mattis*, 224 N.E.3d at 420-21. As a result, emerging adults have inherently reduced culpability and a greater capacity to grow and change that is inconsistent with irredeemability. *See Parks*, 987 N.W.2d at 174 ("[Y]oung adults have yet to reach full social and emotional maturity, given that the prefrontal cortex—the last region of the brain to develop, and the region responsible for risk-weighing and understanding consequences—is not fully developed until age 25" (citing *inter alia* Mariam Arain et al., *Maturation of the Adolescent Brain*, 9 Neuropsychiatric Disease & Treatment, 449, 449-50, 453-54 (2013))).

This scientific reality is reflected in recidivism rates; people released from life terms have shown extraordinary success and have among the lowest re-offense rates of any offender category. *See* Ashley Nellis, *No End In Sight*, *America's*

Enduring Reliance On Life Imprisonment (2021).[6] Deemed irredeemable and beyond rehabilitation, people sentenced to life in prison have consistently proven those findings—whether made by legislatures or sentencing courts—to be wrong. For example, one recent study looked at youth previously serving LWOP who were resentenced and released after *Miller*. It found that only 5.2% of former inmates previously sentenced to LWOP received new criminal charges within seven years post-release, and a majority of those were for nonviolent offenses. Colleen Sbeglia et al., *Life After Life, Recidivism Among Individuals Formerly Sentenced to Mandatory Juvenile Life Without Parole*, 35 J. Res. Adolesc. e12989 (2024).[7] Combined, studies of released offenders previously sentenced to LWOP in Michigan, Pennsylvania, Maryland, New York, and California "find recidivism rates less than 5% among people who previously committed violence and were sentenced to life," and that "people released from prison who were originally convicted of homicide are less likely than other released prisoners to be arrested for a violent crime." Ashley Nellis, *supra*, at 11 & n.11. It is therefore indisputable that LWOP treats people as irredeemable and beyond reformation who are, in fact, fully capable of safely returning to society.

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[6] The Sentencing Project, https://www.sentencingproject.org/app/uploads/2022/08/No-End-in-Sight-Americas-Enduring-Reliance-on-Life-Imprisonment.pdf; *see also* J.J. Prescott et al., *Understanding Violent-Crime Recidivism*, 95 Notre Dame L. Rev. 1643 (2020).

[7] Available at, https://pubmed.ncbi.nlm.nih.gov/38845089/.

These extraordinarily low recidivism rates also confirm the neuroscientific evidence that young people age out of crime, especially violent crime. Studies consistently show that "the peak age for murder is 20, a rate that is more than halved by one's 30s and is less than one quarter of its peak by one's 40s." Ashley Nellis, *supra*, at 25. Yet more than 40% of people serving some form of life sentence (natural life, life with the possibility of parole, or *de facto* life sentences of 50 years or longer) in Illinois were younger than 25 at the time of offense, and now 39% of Illinois's lifers are age 55 or older. Ashley Nellis & Celeste Barry, *A Matter of Life: The Scope & Impact of Life & Long Term Imprisonment In The United States*, The Sentencing Project (2025).[8] Illinois's aging prison population thus bears no relationship to the goal of rehabilitation.

The State, however, argues that this Court must (a) assume that the legislature has already considered all the mitigating attributes of youth in light of the goal of rehabilitation; and then (b) defer to the legislature's judgment based on that consideration. State Br. at 31-32. That leaves only the "extraordinary" individual cases involving facts that the legislature could not have possibly contemplated for this Court to enforce the right against excessive punishment. *Id.* In other words, the State argues that the Reformation Clause must *defer* to, rather than *restrain*, the legislature's power to punish. But that is not how constitutional rights work. *See Bullock*, 485 N.W.2d at 877 ("The very purpose of a constitution

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[8] Available at, https://www.sentencingproject.org/reports/a-matter-of-life-the-scope-and-impact-of-life-and-long-term-imprisonment-in-the-united-states/.

is to subject the passing judgments of temporary legislative or political majorities to the deeper, more profound judgment of the people reflected in the constitution, the enforcement of which is entrusted to our judgment."); *accord Dorsey*, 2021 IL 123010, ¶ 117. And the Constitutional right at issue here requires that rehabilitation be the aim of any sentencing regime. That goal cannot be accomplished in a regime that imposes LWOP on emerging adults.

B. Even Without The Clear Text Of The Reformation Clause, State High Courts Have Expanded State Constitutional Rights Against Excessive Punishment To Provide Categorical Protections And Promote Rehabilitation.

The text and history of the Reformation Clause make this an easy case—imposing LWOP on emerging adults cannot be reconciled with the constitutional duty to promote rehabilitation. That conclusion is further supported by the fact that courts from states without such a clear constitutional mandate nonetheless have increasingly invoked their own state constitution's antipunishment clauses—typically, a clause that prohibits "cruel" and/or "unusual" punishment—to expand rights against excessive punishment, including categorical rights that protect emerging adults under age 21 from permanent incarceration.

For instance, applying a state constitutional ban on "cruel" punishment, the Pennsylvania Supreme Court in March imposed a categorical rule that bars mandatory LWOP for felony murder convictions, for people of any age. *Commonwealth v. Lee*, 2026 WL 855614, at *1 (Pa. Mar. 26, 2026). In Pennsylvania, the crime of "felony murder," classified as second degree murder, does not require proof that the defendant killed or intended to kill anyone, and can instead be based

solely on participation in certain underlying felonies. In barring mandatory LWOP for felony murder, the court first held that Pennsylvania's "cruel" punishment clause is both independent from and broader than the federal ban on "cruel and unusual" punishment And the court emphasized Pennsylvania's distinct constitutional history showing that "cruelty" in Section 13 derived its meaning from "Enlightenment theories" that prioritized the penological goals of "deterrence and reformation." *Id.* at *23. This was materially different, the court explained, from the U.S. "Supreme Court's historical analysis of the intent of the Eighth Amendment," which "emphasiz[es] retribution as a justification for punishment[.]" *Id.*

With regard to youth under age 18, the Alaska Court of Appeals in 2023 held that the state's "cruel and unusual punishments" clause, despite mirroring the Eighth Amendment's language, provides broader individual rights, declining to follow the U.S. Supreme Court's holding in *Jones v. Mississippi*, 593 U.S. 98 (2021). The court thus held that sentencing courts must "affirmatively consider" youth as a mitigating factor and justify any life without parole sentence—including a sentence so long that it is the functional equivalent of LWOP—with "an on-the-record sentencing explanation" as to why "the juvenile offender is one of the rare juvenile offenders whose crime reflects irreparable corruption." *Fletcher v. State*, 532 P.3d 286, 308 (Alaska Ct. App. 2023) ("*Fletcher I*") (internal quotation marks and citation omitted); *see also State v. Fletcher*, 555 P.3d 1046, 1048 (Alaska Ct. App. 2024) (holding that the rule announced in *Fletcher I* applies retroactively).

Similarly, the New Jersey Supreme Court held that a 30-year mandatory minimum sentence before parole eligibility violated the state constitution when applied to children. *State v. Comer*, 266 A.3d 374, 380 (N.J. 2022).

Other courts have imposed categorical bars against certain punishments for children. The Iowa Supreme Court, for example, held that all mandatory minimum sentences, regardless of length, violate the state "cruel and unusual" punishment clause when applied to children. *State v. Lyle*, 854 N.W.2d 378, 380 (Iowa 2014). And the state high courts in Iowa, Massachusetts, and Washington have barred all youth life without parole sentences (whether discretionary or mandatory), *State v. Sweet*, 879 N.W.2d 811, 839 (Iowa 2016); *Diatchenko*, 1 N.E.3d at 275; *State v. Bassett*, 428 P.3d 343, 345 (Wash. 2018), while the Michigan Supreme Court held that life *with* parole sentences are "cruel or unusual" punishment when imposed on children convicted of second degree murder. *People v. Stovall*, 987 N.W.2d 85, 87 (Mich. 2022).

Most relevant here, state high courts have increasingly recognized that the same rationale supporting greater rights for youth applies with equal force to emerging adults at least up to age 21. As the Washington Supreme Court explained, there is "no meaningful neurological bright line … between age 17 on the one hand, and ages 19 and 20 on the other," and so "existing constitutional protections" should apply to this "enlarged class of youthful offenders." *In re Monschke*, 482 P.3d 276, 280, 287 (Wash. 2021). As a result, the state supreme courts in Michigan and Washington have each barred mandatory LWOP as

unconstitutionally cruel punishment for people under age 21. *Id.*; *see Taylor*, 2025 WL 1085247, at *14 (holding that "it would be 'antithetical to our Constitution's professed goal of rehabilitative sentences' to *deny all* 19- and 20-year-old individuals who commit first-degree murder *any possible opportunity* to rehabilitate themselves and reenter society without requiring an individualized sentencing proceeding at which relevant mitigating characteristics of youth can be evaluated by the sentencing court" (citation omitted)). The Massachusetts Supreme Judicial Court, meanwhile, went further, holding that all life without parole sentences violate the state constitution when applied to anyone under age 21—the strongest holding yet protecting young people from death by incarceration. *Mattis*, 224 N.E.3d at 415.

None of these state constitutional cases involved a Bill of Rights provision expressly commanding that all criminal punishments be determined "with the objective of restoring the offender to useful citizenship." Yet each one expanded *categorical* rights against excessive punishment, in some cases prioritizing the penological goal of rehabilitation while doing so. For the Illinois Constitution to be *less* protective than these state constitutions suggests that the Reformation Clause has so far been underused and misapplied.

C. The State's Arguments Are Baseless Under The Reformation Clause.

The State does not directly address the plain text and original meaning of the Reformation Clause or how it could tolerate LWOP for emerging adults or anyone else. Instead, the State presents two arguments against using Section 11

to extend *Miller*-protections to emerging adults. These arguments fail because they ignore the mandatory Reformation Clause. They also fail because, if anything, they underscore why restricting heightened constitutional scrutiny to youth under age 18 does not make sense. First, the State argues that neuroscientific evidence does not warrant extending *Miller*-type protections to emerging adults because the Eighth Amendment line between youth and adults is more arbitrary than scientific. State Br. at 44. This echoes *People v. Harris*, which held that because "the line drawn by the Supreme Court at age 18 was not based primarily on scientific research," new "research findings do not necessarily alter the traditional line between adults and juveniles." 2018 IL 121932, ¶ 60.

But this argument only compounds the mistake of setting an unscientific line in the first place. The *holding* in *Miller*—as well as in *Graham* and in *Roper*—was based on neuroscience about the developing brain. *Miller*, 567 U.S. at 471 ("Our decisions rest on … science and social science," including "developments in psychology and brain science [that] show fundamental differences between juvenile and adult minds." (internal quotation marks omitted)). That means any line drawn to define the category of people to whom these holdings apply should be based on science as well. Curtailing what are fundamentally science-based constitutional rights based on unrelated social customs makes no sense, and there is no sound reason why this Court should codify the Eighth Amendment's arbitrary and outdated line in its own state constitutional jurisprudence. This is all the more true because Illinois specifically *does not* generally draw the line

between youth and adults at age 18. Examples abound (more below), with the clearest being youth offender parole that now extends to people up to age 20. *See* 730 ILCS 5/5-4.5-115(b) (2024).

The Washington Supreme Court's analysis provides a more sensible model than what the State here suggests. When the court used its state "cruel" punishment clause to extend *Miller*'s holding to emerging adults, it reasoned that "[t]here is no meaningful cognitive difference" between 17 year olds on the one hand, and individuals ages 18 through 20 on the other, and therefore it need only "apply existing constitutional protections" to "an enlarged class of youthful offenders older than 17." *In re Monschke*, 482 P.3d at 280; *see also Parks*, 987 N.W.2d at 259 ("[T]he logic articulated in *Miller* about why children are different from adults for purposes of sentencing applies in equal force to 18-year-olds.").

Second, the State argues that Illinois's broad and longstanding tradition of recognizing that emerging adults share the attributes of youth—including for purposes of sentencing and access to parole—somehow counts *against* recognizing broader state constitutional rights against excessive punishment. State Br. at 42-45. Again, this reasoning is backward.

An initial problem is that this contradicts the State's separate argument that legislation dictates current standards of decency. The State insists that the "clearest and most reliable objective evidence of contemporary values is the legislation enacted by the legislature," State Br. at 31 (quoting *People v. Buffer*, 2019 IL 122327, ¶ 34), and therefore the "legislature's determination of a particular

punishment for a crime in and of itself is an expression of the general moral ideas of the people." *Id.* (quoting *People v. Hilliard*, 2023 IL 128186, ¶ 38). The argument is that we should largely judge Illinois's standards of decency, and therefore the concept of "cruelty," on what the legislature says about punishment. But if this is correct, then Illinois legislation protecting emerging adults from severe punishments and otherwise treating them more like juveniles than full-grown adults shows that sentencing them to die in prison is cruel.

There is even legislation *directly on point*. As of 2023, the state legislature prospectively abolished life without parole for emerging adults under age 21. Under this statute, a "person under 21 years of age at the time of the commission of first degree murder … shall be eligible for parole review by the Prisoner Review Board after serving 20 years or more of his or her sentence or sentences[.]" 730 ILCS 5/5-4.5-115(b) (2024). Those sentenced to "natural life imprisonment," meanwhile, are eligible for review after 40 years. *Id.* Crucially, this law not only expands access to parole but requires the Prisoner Review Board to "consider the diminished culpability of youthful offenders" and "the hallmark features of youth[.]" 730 ILCS 5/5-4.5-115(j) (2024). If the State is serious about deferring to legislative judgments, the 2023 legislation confirms with remarkable clarity that, under current standards of decency, it is cruel to condemn emerging adults to die in prison.

Again, another state high court decision provides a more logical model. In *Mattis*, the Massachusetts Supreme Judicial Court invoked the various ways

Massachusetts treats emerging adults differently from older adults—both within and without the criminal legal system—to find that life without parole for individuals under age 21 is "cruel or unusual." For example, the court noted that, as in Illinois, "one must be [21] years of age to purchase and sell alcoholic beverages, to purchase tobacco products, [and] to obtain a license to carry a handgun." *Mattis*, 224 N.E.3d 410 at 426. Together, the court found, "[t]hese statutes reflect the commonly held view that emerging adults generally are not equipped to assume all the responsibilities of adulthood, especially with respect to high risk activities." *Id.* For the Massachusetts high court, this was further evidence that imposing the law's harshest punishment on emerging adults is both excessive and unconstitutional.

In sum, the growing consensus that youth is a relevant factor at sentencing, and that emerging adults should be treated as juveniles in this and other contexts, means that Illinois cannot uphold LWOP sentences for someone who is 18 years old. Yet that is exactly what the State is attempting to do in this case. The State's argument makes sense only if you ignore the basic concepts of constitutional rights and give the legislature complete control over what the Bill of Rights means and how it applies in practice. This Court should not abdicate its judicial role so easily.

CONCLUSION

To be sure, under Section 11 the seriousness of the offense is relevant. But given the binding language of the Reformation Clause, a sentencing scheme cannot forswear altogether the rehabilitative ideal. Imposing LWOP or its functional equivalent on people under age 21 wholly undermines the constitutionally mandated goal of rehabilitation and, for this reason alone, Petitioner is serving an unconstitutional sentence and is entitled to resentencing. This Court should AFFIRM the appellate court in this case.

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Respectfully Submitted,

/s/ Kyle C. Barry

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CERTIFICATE OF COMPLIANCE

I, Kyle C. Barry, certify that this brief conforms to the requirements of Rule 345 and Rule 341(a) and (b). The length of this brief, excluding the words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 7,496 words.

/s/ Kyle C. Barry