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STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v ANDREW MICHAEL CZARNECKI, Defendant-Appellant. _____/	MSC No. 166654 COA No. 348732 Wayne County Circuit Court No. 16-010813-FC

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THE APPEAL INVOLVES A RULING THAT A PROVISION OF A STATUTE IS INVALID

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RECEIVED by MSC 12/30/2024 3:43:57 PM

RECEIVED by MSC 12/30/2024 3:43:57 PM

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES 4

STATEMENT OF INTEREST 8

QUESTION PRESENTED 9

INTRODUCTION 9

STATEMENT OF FACTS 10

STANDARD OF REVIEW 10

ARGUMENT 11

I. Extending *Parks* to 19- and 20-year-olds aligns with societal norms that reinforce what science already tells us—19- and 20-year-olds are generally about as immature as 18-year-olds 11

II. This Court should reject PAAM's request to overrule this Court's longstanding interpretation that its "cruel or unusual" clause affords broader protection than the Eighth Amendment 15

III. Contrary to PAAM's position, it is well settled that this Court's job is to enforce Article 1, § 16 against punishments that it finds "cruel or unusual"—the Legislature does not enjoy unfettered deference 19

A. Whether a sentence is cruel or unusual is not a legislative policy question, even when courts use scientific evidence for constitutional line-drawing 20

B. The Legislature's prerogative to enact statutes that draw the line at 18 rather than 21 is not pertinent to determining whether there is a meaningful distinction between 18 and 19 or 20 under Article 1, § 16 23

CONCLUSION AND REQUESTED RELIEF 26

CERTIFICATE OF COMPLIANCE 27

RECEIVED by MSC 12/30/2024 3:43:57 PM

TABLE OF AUTHORITIES

Page(s)

Federal Cases

Broad v Bd of Educ,
347 US 483; 74 S Ct 686; 98 L Ed 873 (1954) 23

Clark v Jeter,
486 US 456; 108 S Ct 1910; 100 L Ed 2d 465
(1988) 23

Graham v Florida,
560 US 48; 130 S Ct 2011; 176 L Ed 2d 825 (2010) 11, 21

Gregory v Ashcroft,
501 US 452; 111 S Ct 2395; 115 L Ed 2d 410
(1991) 23

Marbury v Madison,
5 US 137; 2 L Ed 60; 1 Cranch 137 (1803) 19

Miller v Alabama,
567 US 460; 132 S Ct 2455; 183 L Ed 2d 407
(2012) 11, 21, 24

Roper v Simmons,
543 US 551; 125 S Ct 1183; 161 L Ed 2d 1 (2005) 12, 21

United States v Virginia,
518 US 515; 116 S Ct 2264; 135 L Ed 2d 735
(1996) 23

Weems v United States,
217 US 349; 30 S Ct 544; 54 L Ed 793 (1910) 20

Wilkerson v Utah,
99 US 130; 25 L Ed 345; 9 Otto 130 (1878) 20

State Cases

Andary v USAA Cas Ins Co,
512 Mich 207; 1 NW3d 186 (2023) 23

Bauserman v Unemployment Ins Agency,
509 Mich 673; 983 NW2d 855 (2022) 19

Commonwealth v Mattis,
493 Mass 216; 224 NE3d 410 (2024)..... 21, 22

Cruz v Chevrolet Grey Iron,
398 Mich 117; 247 NW2d 764 (1976) 23

In re Kemmler,
7 NYS 145 (Cnty Ct 1889) 20, 21

Matter of Monschke,
197 Wash 2d 305; 482 P3d 276 (2021) 21

People v Bullock,
440 Mich 15; 485 NW2d 866 (1992) 9, 14, 15, 19

People v Czarnecki,
_ Mich App _; -- NW2d -- (2023) 9

People v Feezel,
486 Mich 184; 783 NW2d 67 (2010) 22

People v Goldston,
470 Mich 523; 682 NW2d 479 (2004) 17

People v Hegwood,
465 Mich 432; 636 NW2d 127 (2001) 19

People v Lorentzen,
387 Mich 167; 194 NW2d 827 (1972) 9, 19

People v Parks,
510 Mich 225; 987 NW2d 161 (2022) 9, 10, 11, 12, 14, 22, 24

RECEIVED by MSC 12/30/2024 3:43:57 PM

Richardson v Hare,
381 Mich 304; 160 NW2d 883 (1968) 19

Robinson v City of Detroit,
462 Mich 439; 613 NW2d 307 (2000) 16

Federal Statutes

21 USC 387f 13

State Statutes

MCL 28.425b 12

MCL 330.1716 23

MCL 333.1053 23

MCL 333.27954 12

MCL 333.27955 12

MCL 436.1109 12

MCL 436.1703 12

MCL 551.103 23

MCL 722.52 23

MCL 762.11 ..... 13, 14

Constitutional Provisions

Const 1835, art 1, § 18 18

Const 1835, Article 11, § 1 17

Const. 1963, art 1 § 16 ..... 10, 19

RECEIVED by MSC 12/30/2024 3:43:57 PM

Other Authorities

Blume, Freedman, Vann & Hritz, *Death by Numbers: Why Evolving Standards Compel Extending Roper's Categorical Ban Against Executing Juveniles from Eighteen to Twenty-One*, 98 Tex L Rev 921 (2020) 13

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Keating, *Summary of Adolescent Developmental and Neurodevelopmental Science in re Juvenile Life Without Parole* (March 2024) 14

Report of the Proceedings and Debates in the Convention to Revise the Constitution of the State of Michigan, at 68 (Lansing: R.W. Ingals, State Printer, 1850) 18

Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* § 12 (2002) 16

RECEIVED by MSC 12/30/2024 3:43:57 PM

RECEIVED by MSC 12/30/2024 3:43:57 PM

STATEMENT OF INTEREST[1]

The Criminal Defense Attorneys of Michigan ("CDAM"), founded in 1976, serves as the leading statewide association of criminal defense lawyers in Michigan, advocating for the interests of the defense bar across a broad spectrum of issues. With a membership exceeding 400 attorneys, CDAM is committed to upholding and advancing the principles of justice and fairness in the legal system.

As outlined in its bylaws, CDAM's mission includes fostering expertise in criminal law, constitutional law, and procedure, as well as enhancing advocacy at trial, administrative, and appellate levels. CDAM strives to provide exceptional training for criminal defense practitioners, educate the judiciary, legal community, and public about the importance of quality defense representation, and protect against the erosion of rights and liberties guaranteed by the United States and Michigan Constitutions.

In line with these goals, CDAM has a strong interest in ensuring the proper application of *People v Parks*, which held that automatically sentencing 18-year-olds to life without parole is cruel and prohibited under Article 1, § 16 of Michigan's Constitution. CDAM supports extending *Parks* to 19- and-20-year-olds, ensuring that late adolescents receive individualized sentencing to which they should be entitled, given this Court's reasoning in *Parks*.

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[1] No counsel for a party authored this brief in whole or in part and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief.

RECEIVED by MSC 12/30/2024 3:43:57 PM

QUESTION PRESENTED

Whether this Court should extend *People v Parks*, 510 Mich 225; 987 NW2d 161 (2022) to constitutionally require individualized sentencing of 19- and 20-year-olds considering their underdeveloped late-adolescent brains.

Defendant-Appellant answers:	Yes
Plaintiff-Appellee answers:	No
Amicus Curiae answers:	Yes

INTRODUCTION

This Court should extend the holding in *Parks* to 19- and-20-year-olds because they exhibit the same mitigating characteristics of youth as 18-year-olds, such that mandatory life-without-parole ("LWOP") sentences for these late adolescents is equally cruel. The science and logic supporting this position is evident in *Parks* and has been thoroughly addressed by the parties and other amici in their briefs. This brief goes beyond that to show that today's societal norms also recognize the mitigating characteristics of youth in 19- and 20-year-olds as they do for 18-year-olds, further confirming that under the current standards of decency in our society, mandatory LWOP sentences for that age group is an unconstitutionally cruel punishment.

Contrary to assertions from the opposition, extending *Parks* to 20-year-olds does not create a slippery slope. See e.g., *People v Czarnecki*, _ Mich App _; -- NW2d -- (2023) (Docket No. 348732) (Boonstra J., concurring). Rather, the factors from *People v Lorentzen*, 387 Mich 167; 194 NW2d 827 (1972) and *People v Bullock*, 440 Mich 15; 485 NW2d 866 (1992), impose a guardrail—the evolving standards of decency—which in this case dictate that the mitigating characteristics of youth be accounted for. Science and our collective observations reflected in public and private policy further provide objective evidence for

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determining when those characteristics should be accounted for. This evidence supports drawing the line beyond the age of 20.

While the Prosecuting Attorneys Association of Michigan ("**PAAM**") argues that mandatory LWOP sentences for 19- and 20-year-olds is constitutional because it is not unusual, this Court has already rejected and foreclosed this approach; the "cruel or unusual" clause in Article 16, § 1 of Michigan's Constitution does not mean "cruel *and* unusual." *People v Parks*, 510 Mich 225, 242; 987 NW2d 161 (2022). The fundamentals of grammar and the legislative history of that text also make clear that *or* does not mean *and*. It suffices that mandatory LWOP is a cruel punishment for 19- and 20-year-olds because of their immaturity, though it is also an unusual punishment for the reasons given in Defendants Czarnecki's and Taylor's briefs.

Finally, this Court should also reject PAAM's position that the Michigan Constitution provides the legislative branch free rein to determine punishment. Rather, the Michigan Constitution requires this Court to interpret and apply the Constitution to legislative acts, including punishment decisions. Const. 1963, art. 1 § 16.

STATEMENT OF FACTS

For brevity's sake, this brief relies on the statement of facts appellants Czarnecki and Taylor present in their supplemental briefs.

STANDARD OF REVIEW

This case presents a question of constitutional law, which this Court reviews *de novo*. *Parks*, 510 Mich at 245.

ARGUMENT

I. Extending *Parks* to 19- and 20-year-olds aligns with societal norms that reinforce what science already tells us—19- and 20-year-olds are generally about as immature as 18-year-olds.

For juveniles, death sentences and mandatory life without parole ("**LWOP**") sentences are both cruel and unusual because they do not account for young people's lower culpability and greater capacity for change. *Graham v Florida*, 560 US 48, 68; 130 S Ct 2011; 176 L Ed 2d 825 (2010); *Miller v Alabama*, 567 US 460, 465; 132 S Ct 2455; 183 L Ed 2d 407 (2012). In *Parks* the Court determined this was also true of 18-year-olds, making mandatory LWOP sentences constitutionally disproportionate for that age group because it fails to account for "the mitigating characteristics of youth, specifically late-adolescent brain development" revealed in recent scientific studies. *Parks*, 510 Mich at 232. Those same scientific studies show no constitutionally meaningful distinction between 18-year-olds and 19- or 20-year-olds in terms of their youthful characteristics—and neither do our society's collective observations. A survey of public and private policies shows we largely view 19- or 20-year-olds to be just as immature as 18-year-olds.

As in *Parks*, the Court should largely determine the question of where to draw the line between adolescents and adults based on science, which shows the brain is not fully developed at 19 or 20. But *Parks* observed that our collective observations—as reflected in public policy—confirm that 18-year-olds indeed are not considered sufficiently mature to be treated as fully developed adults. *Id.* The same is true of 19- and 20-year-olds. Society often places the same paternalistic restrictions on 19- and 20-year-olds as it does 18-year-olds due to their lack of maturity.

For that reason (among others), extending *Parks* to 19- and-20-year-olds is not—as the prosecutors argue—an exercise of arbitrary

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judicial line drawing. If anything, drawing the line between 18 and 19 or between 19 and 20 would be arbitrary, given society's relatively uniform restrictions on these ages as a group. Nor does extending *Parks* create a slippery slope because the proportionality requirement of Article 1, § 16 imposes guardrails, by requiring the Court's decisions to be grounded in societal norms.

In *Roper v Simmons*, the Supreme Court held that defendants 17-year-old and younger could not be sentenced to death. 543 US 551; 125 S Ct 1183; 161 L Ed 2d 1 (2005). In deciding to draw the line at 18, rather than an older age, the Court reasoned that "[t]he age of 18 is the point where society draws the line for many purposes between childhood and adulthood." *Id.* at 574. By the same token, the age of 21—not 19 as it currently stands under *Parks*—is "the point where society draws the line for many purposes between" fully developed and less developed late adolescents.

Society has long recognized that individuals aged 18 through 20 are less mature and behaviorally distinct from fully developed adults. Indeed, a clear line of demarcation exists between 21- and 20-year-olds exists in private and public policy that does not exist between 18- and 20-year-olds. Extending *Parks* to 20-year-old defendants would be consistent with the widely accepted, longstanding norms recognizing that 21-year-olds possess greater maturity and a heightened ability to navigate complex decisions compared to late adolescents.

As this Court pointed out in *Parks*, Michigan public policy and state laws across the country recognize the difference in maturity between 21-year-olds and younger adults. 510 Mich at 251-252. Indeed, 19- and-20-year-olds "still may not purchase, consume, or possess alcohol, MCL 436.1109(6) and MCL 436.1703(1); purchase or possess cannabis for adult use under state law, MCL 333.27954(1) and MCL 333.27955; . . . or obtain a concealed-carry permit for a pistol, MCL 28.425b(7)(a)." *Id.*

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Federal laws also recognize that 21-year-olds are more mature than younger adults. For instance, tobacco use is restricted to those 21 years of age and older. 21 USC 387f.

These laws are categorical; they do not "permit a twenty-one-year-old to engage in the prohibited behavior if they can make an individualized showing of maturity." Blume, Freedman, Vann & Hritz, *Death by Numbers: Why Evolving Standards Compel Extending Roper's Categorical Ban Against Executing Juveniles from Eighteen to Twenty-One*, 98 Tex L Rev 921, 936 (2020).

Practices in certain industries, such as car rental and car insurance, recognize that adults under 21 make riskier decisions. Car rental companies, for example, frequently restrict rentals to those 21 years of age or older in other states. When state law requires car rental companies to rent to drivers aged 18 through 21, the car rental companies often charge a higher fee, such as Enterprise's "Young Renter Fee" of $36.50 per day[2] and Alamo Rent-a-Car's "Youthful Surcharge" of $25.00.[3] Similarly, the average car insurance premium at Progressive is $27.36 higher for 19- and-20-year-olds than 21-year-olds.[4]

Michigan public policy, in particular, has long recognized that 19- and 20-year-old adults differ in maturity from fully developed adults. In 1966, Michigan passed the Holmes Youthful Trainee Act (HYTA), MCL 762.11 *et seq*. Until 2015, the HYTA allowed defendants aged 18 to 20 to be assigned a "youthful trainee status" and be placed on

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[2] https://www.enterprise.com/en/help/faqs/car-rental-under-25.html (accessed December 23, 2025.)

[3] https://www.alamo.com/en/customer-support/car-rental-faqs/age-to-rent-a-car.html#:~:text=A%20'Youthful%20Surcharge'%20may%20be,based%20on%20the%20rental%20location (accessed December 23, 2024.)

[4] https://www.progressive.com/answers/how-age-impacts-insurance/ (accessed December 23, 2025.)

probation if they plead guilty to a criminal offense. MCL 762.11(1) (2014). The age was extended to 24 in 2015, see 2015 PA 31, and then to 26 in 2021, see 2020 PA 396. See also *Parks*, 510 Mich at 253.

Extending *Parks* to those age 20 and younger would move the line to a point where society truly begins to distinguish between mature and immature adults.

Contrary to what the PAAM argues, extending *Parks* does not create a slippery slope. The constitutional policy set forth in Article 1, § 16 is inherently evolutionary, being tied to evolving standards of decency in our society. But those same standards provide guardrails for the court to hold onto so there is no undue slippage. Two of the *Lorentzen* factors specifically call on courts to scrutinize existing legislation, both in Michigan and across the country. *Bullock*, 440 Mich at 33-34. Because the proportionality of a sentence is measured in light of existing sentencing legislation, it is tethered to the speed at which societal norms change.

The second *Lorentzen* factor looks at the sentence in question compared to other sentences imposed in Michigan. Similarly, the third *Lorentzen* factor calls on courts to compare the sentence in question to sentences imposed for the same crime in other jurisdictions. Because these two factors look at sentencing across the country, extending *Parks* does not create a slippery slope.

In addition, the science itself gives the Court a standard to hold onto in applying the well-reasoned and long-held standard that mandatory LWOP is excessively harsh to those having the youthful characteristics of a juvenile. The leading research in adolescent brain development shows that, while late adolescents continue to exhibit self-control issues until roughly age 25, the behavior and neurological composition of 19- and-20-year-olds more closely resembles 18-year-olds than older adults. See generally, Keating, *Summary of Adolescent Developmental and Neurodevelopmental Science in re Juvenile Life*

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Without Parole (March 2024) (see addendum). Assertions that the *Parks* line drawing will continue *ad infinitum* are not founded in science.

Maybe one day mandatory LWOP will be considered cruel or unusual for adults as well; maybe the death penalty will be too. Then this distinction between juveniles and adults will not matter. But for now, the real question is whether there is a constitutionally sound justification for drawing a distinction between the juvenile mind of an 18-year-old and that of a 19- or 20-year-old. Neither science nor societal norms offer one. The *Parks* prohibition on mandatory LWOP sentences therefore can and should equally apply to defendants of all three age groups.

II. This Court should reject PAAM's request to overrule this Court's longstanding interpretation that its "cruel or unusual" clause affords broader protection than the Eighth Amendment.

PAAM urges this Court to upend *Parks* by overruling its longstanding decision in *People v Bullock*, 440 Mich 15; 485 NW2d 866 (1992), which held that Article 1, § 16 requires proportionality in sentencing and therefore offers greater protection than the Eighth Amendment of the United States Constitution. This Court in *Bullock* reasoned that the disjunctive form of Michigan's "cruel or unusual" clause showed it was intended to be broader and more protective than the Eighth Amendment's "cruel and unusual" clause, since "[t]he set of punishments which are *either* "cruel" *or* "unusual" would seem necessarily broader than the set of punishments which are *both* "cruel" *and* "unusual." *Bullock*, 440 Mich at 31 n 11. *Bullock* found no less than three compelling reasons for reading "or" as disjunctive: (1) precedent; (2) history; and (3) grammatical differences. This Court has reaffirmed this holding multiple times, the last time being in *Parks*. To depart from *Bullock, Parks,* and every decision in between, this Court must first decide that the previous cases were wrongly decided, then

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apply other factors under its *stare decisis* doctrine to confirm a departure is appropriate. *Robinson v City of Detroit*, 462 Mich 439, 464; 613 NW2d 307 (2000). PAAM fails on the first step and does not even address the remaining factors.

When interpreting legal text, start with the plain meaning of the words in context. As Justice Scalia and grammarian Bryan A. Garner explain, "[t]he conjunctions *and* and *or* are two of the elemental words in the English language. Under the conjunctive/disjunctive canon, *and* combines items while *or* creates alternatives. Competent users of the language rarely hesitate over their meaning." Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* § 12, at 116 (2002).

Grammar lessons from the 19th century also demonstrate the difference between *and* and *or*. As an 1850 grammar textbook explains: " 'Belladonna *or* arsenic will kill a man.' Here the *or* shows that *one* will do it; it is not necessary to join them. Hence these words may be called *Disjunctive Conjuctives*." Goldthwait, *A Treatise Upon Some Topics on English Grammar, with Selections for Analysis, Recitation & Reading: Designed for Schools*, at 57 (H.S. Taylor, 1850) (emphasis in original).[5] From the mid-1800s to today, schoolchildren and scholars still agree that *or* means *or*.

PAAM argues for a different interpretation by observing that the Continental Congress used the phrase "no cruel or unusual punishments" in the Northwest Ordinances of 1787 and reenacted the language in 1789, but that Congress six weeks later used the phrase "no cruel and unusual punishments" in the 1789 resolution proposing the Bill of Rights. It then argues through a series of non sequiturs that this obliterates any historical difference in meaning between the

[5] Available at https://play.google.com/books/reader?id=f4sXAAAAYAAJ&pg=GBS.PP8.

conjunctions, such that *or* must be synonymous with *and* in Michigan's Constitution of 1963. This is unconvincing for multiple reasons.

First, PAAM's argument depends on a bizarre presumption that a difference in word choice, without more, is not enough to conclude a different meaning was intended—even if the words have different meanings. Actually, the presumption goes the other way—a different word choice presumably indicates a different meaning is intended, absent evidence to the contrary.

Second, there is nothing strange about Congress reenacting by majority vote a more restrictive law for a territory than it proposes for a federal constitutional amendment, which will require a supermajority approval in both houses and among the states to be adopted or repealed. Perhaps they thought it would be easier to obtain consensus on a less restrictive constitutional amendment. Or perhaps Congress wanted to reserve more flexibility for itself to enact the laws it saw fit, as it did in the Northwest Territory.

Finally, the history of the United States Constitution has little bearing on the language in Michigan's Constitution of 1963, which was drafted nearly 200 years later by different framers in a different context.

Far more relevant is this state's constitutional history and "the state law preexisting adoption of the relevant constitutional provision." *People v Goldston*, 470 Mich 523, 534; 682 NW2d 479 (2004). Two abolition movement in Michigan—the movements to end slavery and to ban capital punishment—demonstrate Michigan's 19th century practice of affording broader liberty protections than the federal constitution. 30 years prior to the Thirteenth Amendment's ratification, Michigan's 1835 Constitution adopted a prohibition against slavery and involuntary servitude. Const 1835, art 11, § 1. And in 1847, Michigan became the first state to abolish capital punishment for first-degree murder. Chardavoyne, *A Hanging in Detroit: Stephen*

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Gifford Simmons and the Last Execution Under Michigan Law, (Detroit: Wayne State University Press, 2003) ch 9, p 157. By the Constitutional Convention of 1850, the "preexisting" state law already recognized liberty protections broader than those afforded by the federal government.

Close examination of Michigan's 1850 Constitutional Convention demonstrates that the drafters deliberately used "or" instead of "and." The 1835 Constitution prohibited "cruel and unjust punishments." Const 1835, art 1, § 18. When drafting and adopting the 1850 Constitution, the 1850 Constitutional Convention replaced "and unjust" with "or unusual" as later Michigan Supreme Court Justice Benjamin Witherell recommended. *Report of the Proceedings and Debates in the Convention to Revise the Constitution of the State of Michigan*, at 68 (Lansing: R.W. Ingals, State Printer, 1850).[6] Before ratification, the final provision went through several modifications, alongside motions, objections, and debate. *Id*. at 45, 896. For example, one version included "cruel and unusual," which the 1850 Convention ultimately rejected in favor of "cruel or unusual." *Id*. at 896.

The use of the disjunctive in the 1850 Constitution was no mistake. Nor were Michigan's reenactments of the provision in 1908 and 1963.

Naturally, *and* and *or* currently and historically have distinct meanings in other provisions of the Michigan Constitution. Article 6, § 26 of Michigan's 1850 Constitution, provides an example: "[t]he person, houses, papers, and possessions of every person shall be secure from unreasonable searches and seizures; and no warrant to search any place or to seize any person or things, shall issue without describing them, nor without probable cause, supported by oath or affirmation."

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

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Article 1, § 11 of Michigan's 1963 Constitution provides similar protections, with the addition of "electronic data, and electronic communications." Indeed, PAAM has not (and cannot) identify any other sections of the Michigan Constitution where *or* can or should be interpreted to mean *and*.

III. Contrary to PAAM's position, it is well settled that this Court's job is to enforce Article 1, § 16 against punishments that it finds "cruel or unusual"—the Legislature does not enjoy unfettered deference.

The State and PAAM wish for complete judicial deference to the Legislature's choice of punishment. But, this Court in *Parks*, *Lorentzen*, and *Bullock* rejected, in no uncertain terms, this approach to applying Article I, § 16.

The power to interpret the Constitution and the rights provided therein is exclusively the judiciary's function. *Richardson v Hare*, 381 Mich 304, 309; 160 NW2d 883 (1968); *Bauserman v Unemployment Ins Agency*, 509 Mich 673, 692-93; 983 NW2d 855 (2022). The judiciary determines whether government action is constitutional: a "first principle" of Michigan's "tripartite separation of powers." *Id*. at 693; see also *Marbury v Madison*, 5 US 137; 2 L Ed 60; 1 Cranch 137 (1803).

While the responsibility to codify punishments falls on the Legislature, *People v Hegwood*, 465 Mich 432, 436; 636 NW2d 127 (2001), that authority has constitutional limits. Sentencing cannot be "cruel or unusual." Const 1963, art 1, § 16. The interpretation and enforcement of this prohibition, like other limits of legislative authority, falls on the courts. *Lorentzen*, 387 Mich at 178-179; *Bullock*, 440 Mich at 41. The Legislature's prerogative to determine the rights and obligations of 18-year-olds in non-punishment contexts do not warrant deference to sentencing mandates. Otherwise, the Constitution's prohibition on cruel punishment "would have little

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value, and be converted into impotent and lifeless formulas." *Weems v United States*, 217 US 349, 373; 30 S Ct 544; 54 L Ed 793 (1910).

A. Whether a sentence is cruel or unusual is not a legislative policy question, even when courts use scientific evidence for constitutional line-drawing.

Courts have historically looked to scientific evidence to evaluate the constitutionality of a sentence. Such a practice is not judicial policy making; it is the implementation of constitutional policy dictated by the people of Michigan, and this Court has no choice but to interpret it and enforce it.

In early cases reviewing the constitutionality of the death penalty, courts looked to both pain and science. In *Wilkerson v Utah*, 99 US 130; 25 L Ed 345; 9 Otto 130 (1878), the Court affirmed a death sentence by firing squad as constitutional. Without science as a guide, the Court noted that "[d]ifficulty would attend the effort to define with exactness the extent of the constitutional provision which provides that cruel and unusual punishments shall not be inflicted." *Id*. at 136-137. To assist in this task, the Court looked to common law punishment for murder and other tortuous execution methods, such as "public dissection" and "burning alive." *Id*. at 135. The Court concluded that it was "safe to affirm that punishments of torture" were prohibited by the Eighth Amendment. *Id*. at 136.

Just over a decade later, a New York Court considered the constitutionality of death sentence through electrocution. *In re Kemmler*, 7 NYS 145 (Cnty Ct 1889), aff'd sub nom. *People ex rel. Kemmler v Durston*, 7 NYS 813 (Gen Term 1889), aff'd, 119 NY 569, 24 NE6 (1890), aff'd sub nom. *In re Kemmler*, 136 US 436, 10 S Ct 930 (1890). Quoting *Wilkerson* and noting the difficulty in defining "cruel and unusual punishment," the *Kemmler* court affirmed the punishment's constitutionality, nothing that the scientific evidence

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presented showed that electrocution was likely to be a painless method of execution. *Id*.

In recent decades, science has shed new light on the nature of punishment, thereby serving as a useful tool in overcoming the "difficulty" in defining cruel punishment.

The United States Supreme Court in *Roper*, 543 US at 569-574, *Graham*, 560 US at 67, and *Miller*, 567 US at 471, relied on scientific evidence in applying the Eighth Amendment to minors. In *Roper*, the Court looked to scientific evidence to confirm what "any parent knows"—that juveniles under 18 lack maturity and a sense of responsibility. 543 US at 569. This scientific evidence paved the way for the Court to hold that the death penalty, as applied to juveniles under the age of 18, is cruel and unusual and prohibited by the Eighth Amendment. The Court evaluated "developments in psychology and brain science" science in *Graham*, 560 US at 68, holding that LWOP sentences for non-homicide offenses violated the Eighth Amendment. Because science showed that "parts of the brain involved in behavior control continue to mature through late adolescence," the Court concluded that juveniles lacked the culpability attributable to adults. In *Miller* the Court once again took up the task of applying the Eighth Amendment to sentences for juveniles, holding that mandatory LWOP sentences unconstitutional as applied to minors. In *Miller*, the Court once again leaned on science to reach its holding.

Likewise, the courts in *Matter of Monschke*, 197 Wash 2d 305, 306; 482 P3d 276 (2021) and *Commonwealth v Mattis*, 493 Mass 216, 224; 224 NE3d 410 (2024) relied on science in evaluating the constitutionality of mandatory LWOP sentences. In *Monschke*, the court looked to science showing that 19- and-20-year-olds, like 17-year-olds, do not possess fully mature brains and concluded that mandatory LWOP sentences "create an unacceptable risk that youthful defendants without fully developed brains" will receive a cruel sentence. 197 Wash 2d at 325. Similarly, the court in *Mattis* looked to

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the same brain science and found that 18-, 19-, and-20-year-olds all exhibited the same impulse control, risk-taking attributes, and susceptibility to peer pressure as juveniles. 493 Mass at 225. Because "[e]xperience," "common sense," "neuroscientific data," and "social science" showed that there was no bright line between juveniles and other late adolescents under 21, mandatory LWOP sentences for defendants in that age group were "cruel or unusual." 493 Mass at 253 (Wendlandt, J. concurring).

Legal rules frequently call on courts to apply science. Trial courts, appellate courts, and this Court routinely use scientific evidence to determine evidentiary issues in criminal cases. In *People v Feezel*, for instance, this Court evaluated scientific evidence to hold that 11-carboxy-THC is not a controlled substance, in part, because it is a derivative of marijuana. 486 Mich 184, 207; 783 NW2d 67 (2010). The Court in that case relied on scientific evidence to apply its statutory interpretation of the definition of marijuana. When a rule of law calls on courts to use scientific evidence, the court must do so. This is sound judicial decision making, not policy making.

In this case, Michigan constitutional law requires courts to evaluate the scientific evidence behind brain development. See *Parks*, 510 Mich at 248. The United States Supreme Court and this Court have made clear that age matters in sentencing because, as "any parent knows," youth lack maturity and a proper sense of responsibility. The cases applying science demonstrate a key principle: it is cruel to impose the harshest sentences on those who exhibit mitigating characteristics of youth. To determine who exhibits these mitigating characteristics, it is necessary to consider the latest scientific discoveries explaining late adolescent behavior. *Id.*

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B. The Legislature's prerogative to enact statutes that draw the line at 18 rather than 21 is not pertinent to determining whether there is a meaningful distinction between 18 and 19 or 20 under Article 1, § 16.

This Court has already concluded in *Parks* that mandatory LWOP sentences are cruel as applied to 18-year-olds, despite what that legislation may say about the maturity of 18-year-olds. Statutes cited by the prosecution or PAAM distinguishing between 17- and 18-year-olds have nothing to say about whether a constitutional distinction exists between 18-year-olds and 19- or 20-year-olds.

In its *amicus* brief, PAAM points to a lengthy list of statutorily conferred rights to support their assertion that the judiciary should defer to legislative judgment. In Michigan, individuals 18 and older can (1) execute a do-not-resuscitate order, MCL 333.1053; (2) marry without parental consent, MCL 551.103; (3) execute a will, MCL 330.1716; (4) consent to surgery, MCL 330.1716; and (5) enter valid and binding contracts, MCL 722.52. When it comes to some constitutional challenges, statutory aged-based classifications receive significant judicial deference. Unlike race, *Broad v Bd of Educ*, 347 US 483; 74 S Ct 686; 98 L Ed 873 (1954); gender, *United States v Virginia*, 518 US 515; 116 S Ct 2264; 135 L Ed 2d 735 (1996); and legitimacy, *Clark v Jeter*, 486 US 456; 108 S Ct 1910; 100 L Ed 2d 465 (1988), age is not a suspect or quasi suspect classification under the United States Constitution, *Gregory v Ashcroft*, 501 US 452; 111 S Ct 2395; 115 L Ed 2d 410 (1991), or the Michigan Constitution, *Cruz v Chevrolet Grey Iron*, 398 Mich 117; 247 NW2d 764 (1976). Courts generally review age-based classifications for a rational basis when there is an equal protection or substantive due process challenge and no fundamental right is involved. *Cruz*, 398 at 129-131 (equal protection); *Andary v USAA Cas Ins Co*, 512 Mich 207, 268; 1 NW3d 186 (2023) (substantive due process).

But this case does not involve an equal protection or substantive due process challenge. And it *does* involve a fundamental right—the

right against cruel or unusual punishment by the state. When the question is whether sentencing is cruel or unusual, age has great constitutional significance. *Miller*, 567 US at 471; *Parks*, 510 Mich at 241. The Legislature's age-distinctions deserve no deference in this context; this Court instead rightly exercises its own independent judgment as to what qualifies as cruel or unusual punishment, it being squarely the province of this Court to interpret the constitution.

PAAM also argues, without evidence, that these age-based statutes and rights reflect a legislative determination of the maturity of late adolescents. But this is not the case. These age-based statutes reflect pragmatic economic and political judgments—not judgments on maturity. Without the right to enter contracts, 18-year-olds would remain tethered to their parents until the age of 21. And without the right to draft a will, 18-year-olds would die without properly designating legal recipients of property. In any event, that they enjoy some adult privileges says little about whether 19- and 20-year-olds are sufficiently mature to suffer the greatest punishment the State has to offer--mandatorily spending their entire lives behind bars.

Similarly, PAAM points to the 26th Amendment and argues that if society deems 18-year-olds as mature enough to vote, then they are mature enough to die in prison. But the 26th Amendment does not reflect a judgment on full maturity. Rather, history shows that lowering the voting age from 21 to 18 reflected efforts to align the legal obligations of 18-year-olds more closely with their right to have a say in those obligations. The first proposals to lower the voting age came in response to the government lowering the minimum draft age from 21 to 18 in November 1942. de Shweinitz & Frost, *Achieving the 26th Amendment: A History with Primary Sources*, 5 (1st ed 2024) (see addendum). Between World War II and the 26th Amendment's ratification in 1971, advocates for a lower voting age focused on the disconnect between sending young men halfway across the world to

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fight for democracy, without giving them an opportunity to vote in their home country. *Id*. at 5-15.

Another driver in lowering the voting age was general reform, which proponents believed 18-, 19-, and 20-year-olds would support. *Id*. at 56. This argument to lower the voting age focused on the youthful characteristics of 18-, 19-, and 20-year-olds, rather than their maturity. *Id.* According to congressional proponent Jennings Randolph, 18-, 19-, and 20-year-olds were most capable of voting for reform because "reform means change, and mature minds do not take up the change as readily as fresh, unprejudiced young minds." *Id*. (citing Jennings Randolph, "Pro: Should The Legal Voting Age Be Reduced to 18 Years?" *Congressional Digest* (August-September 1944) 202, 204).

The counterarguments for this voting reform similarly focused on lack of maturity to support their position. For example, those opposed to lowering the voting age argued that the "qualities . . . which make young men under 21 desirable as soldiers—impressionability, pliability, automatic response to stimuli—are the very reasons that should make them undesirable as voters." *Id*. at 6 (citing "Teen-Age Suffrage," *Washington Post*, (Apr 6, 1947), B4). Additionally, those against lowering the voting age successfully thwarted many earlier efforts to do so by stirring up concerns of radicalism that youthful voters may bring to government. *Id*. at 16.

While the Legislature has granted privileges or responsibilities to 18-year-olds under some statutes, that has little bearing on the Court's decision here—whether a constitutionally significant distinction exists between 18-year-olds and 19- or 20-year-olds for purposes of Article 1, § 16. The prosecution and PAAM have pointed to no evidence that such a distinction exists in even public and private policy, much less in science.

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CONCLUSION AND REQUESTED RELIEF

This Court should extend *Parks* to 19- and 20-year-olds because there is no meaningful distinction between 18-year-olds and 19- or 20-year-olds in terms of late-adolescent brain development. Not only does science reveal that this class of youth lacks the maturity displayed by fully developed adults, but public and private policy reveal that society already shares that understanding. Accordingly, the Criminal Defense Attorneys of Michigan respectfully requests that this Court extend *Parks* and hold that mandatory LWOP sentences for 19- and-20-year-olds are cruel and constitutionally prohibited.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Brief complies with the word and format limitations of MCR 7.212(B). The brief contains 5,045 words.

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