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**IN THE SUPREME COURT OF MISSOURI**
**No. SC92979**

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STATE OF MISSOURI,
*Respondent*,

v.

LEDALE NATHAN,
*Appellant*.

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On Appeal from the Circuit Court of St. Louis County, Missouri

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# BRIEF OF AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF KANSAS & WESTERN MISSOURI AND OF AMERICAN CIVIL LIBERTIES UNION OF EASTERN MISSOURI IN SUPPORT OF APPELLANT AS *AMICI CURIAE*

FILED WITH CONSENT OF ALL PARTIES

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## STATEMENT OF JURISDICTION

*Amici* are filing this brief with consent of all parties to this action. *Amici* adopt the jurisdictional statement as set forth in Appellant's brief filed with the Court in this case.

## STATEMENT OF INTEREST OF AMICUS CURIAE

The American Civil Liberties Union (ACLU) is a nationwide, non-partisan organization of more than 500,000 members dedicated to defending the principles embodied in the Bill of Rights. The ACLU Foundation of Kansas and Western Missouri is an affiliate of the ACLU based in Kansas City, Missouri, with approximately 1500 members in Western Missouri. The ACLU of Eastern Missouri is an affiliate of the ACLU based in St. Louis with over 4000 members in Eastern Missouri. In furtherance of its mission, the ACLU engages in litigation, by direct representation and as *amicus curiae*, to encourage the protection of rights guaranteed by the federal and state constitutions. In cases across the country, including before the Supreme Court of the United States, the ACLU has asserted that allowing children to be treated and punished as adults is contrary to the global consensus that children cannot be held to the same standards of responsibility as adults and the recognition that children are entitled to special protection and treatment. On behalf of their members, the ACLU Foundation of Kansas and Western Missouri and the ACLU of Eastern Missouri file this brief to highlight the

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significant constitutional issues implicated by the sentence of life without possibility of parole imposed by the circuit court in this case.

## STATEMENT OF FACTS

On Sunday, October 4, 2009, defendant Ledale Nathan and Mario Coleman, an adult who was then twenty-two years old, participated in a robbery and home invasion in which one victim was killed and two victims suffered gunshot wounds. Tr. 357-379. The State's theory at trial was that Mario Coleman shot the murder victim with a silver .25 automatic. Tr. 327, 942, 944-45.

Ledale Nathan was born on January 7, 1993. L.F. 85. Thus, he was 16 years of age at the time these crimes occurred.

Before the criminal prosecution began, the juvenile court conducted a mandatory certification hearing, determined that Ledale Nathan was not a proper subject to be dealt with under the juvenile code, dismissed the juvenile-court petition, and relinquished juvenile-court jurisdiction over Ledale Nathan. L.F. 88-90. In making that decision, the juvenile court considered some of the factors set forth in Mo. Rev. Stat. § 211.071.6, but the juvenile court did not make any specific finding regarding Ledale Nathan's age or its impact on the court's decision. L.F. 89. Moreover, in its order, the juvenile court specifically found that "[t]he offenses alleged are *not* part of a repetitive pattern of offenses to indicate that the juvenile may be beyond rehabilitation under the juvenile code[.]"

*Id*. (emphasis added). Instead, the juvenile court found that the Family Court had no suitable programs or treatment options available to rehabilitate Ledale Nathan. *Id*.

On April 11, 2011, the jury found defendant guilty on all counts. Tr. 977-78. On May 27, 2011, after defendant waived jury sentencing, the trial court imposed consecutive sentences of life without parole for first-degree murder, life imprisonment for each count of first-degree assault and first-degree robbery, fifteen (15) years for each count of kidnapping, and fifteen (15) years for first-degree burglary. Tr. 996-1004; L.F. 262-70. The circuit court ordered the life sentences imposed on the armed-criminal-action counts to run concurrently with their associated charges. *Id*.

At the sentencing hearing, both the prosecutor and defense counsel mentioned that defendant had experienced a traumatic childhood. The prosecutor commented: "I do acknowledge in reading the alternative sentencing that he had a tough upbringing with regards to drug use[.]" Tr. 991. Defense counsel noted that the "sentencing report . . . showed . . . that he's been tested to have an IQ of 78. . . . [and that his family] physically abused him, sexually abused him and abandoned him." Tr. 995.



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## SUMMARY OF ARGUMENT

By mandating "imprisonment for life without eligibility for probation or parole," Section 565.020 of the Missouri Revised Statutes is unconstitutional as applied to criminal defendants who were juveniles at the time they committed their crimes. *Miller v. Alabama*, 567 U.S. __, 132 S. Ct. 2455 (2012). *Miller* overruled *State v. Andrews*, 329 S.W.3d 369 (Mo. 2010).

*Miller* requires courts sentencing juvenile defendants for homicide crimes to engage in individualized sentencing, to consider including the defendant's age and all other mitigating evidence only in mitigation of the sentence, and to impose a proportional sentence that will ordinarily favor and presume that the juvenile defendant is a candidate for rehabilitation and positive change.

This case should be remanded for resentencing consistent with *Miller*. On remand, the sentencing authority should impose sentence for an A felony and should not be restricted to considering only two options – life or life without possibility of parole. The original sentencing court's rationale for sentencing Ledale Nathan harshly so as to permanently incapacitate him is inconsistent with the tenor and specific holding of *Miller*, which presumes that almost all juvenile defendants are capable of positive change and rehabilitation and that imposition of the harshest sentences on juvenile offenders should be rare and uncommon.

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## ARGUMENT

### I. By mandating "imprisonment for life without eligibility for probation or parole," Section 565.020 of the Missouri Revised Statutes is unconstitutional as applied to criminal defendants who were juveniles at the time they committed their crimes.

Section 565.020.2 provides that "the punishment [for first degree murder] shall be either death or imprisonment for life without eligibility for probation or parole, or release except by act of the governor; except that, if a person has not reached his sixteenth birthday at the time of the commission of the crime, the punishment shall be imprisonment for life without eligibility for probation or parole, or release except by act of the governor." Mo Rev. Stat. § 565.020.2. Missouri has no separate sentencing statute applicable to juveniles. Thus, the punishment of life without parole is mandatory, and the statute gives the sentencing authority – whether judge or jury – no discretion to impose a different punishment upon a juvenile. Specifically, this mandatory sentencing statute prevents the sentencing authority from considering a defendant's youth and all that implies in terms of brain and character development, moral reasoning ability, impulse control, and susceptibility to negative influences.

In a landmark decision in the companion cases of *Miller v. Alabama* and *Jackson v. Hobbs*, 567 U.S. __, 132 S. Ct. 2455 (2012), the United States Supreme

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Court held that imposing a sentence of mandatory life imprisonment without the possibility of parole on a juvenile constitutes cruel and unusual punishment under the Eighth Amendment. *Miller*, 132 S. Ct. at 2460. The Court's ruling voided a state's authority to impose this harshest sentence on a juvenile who commits a homicide unless the state's sentencing scheme allows meaningful consideration of the essential fact of youth and its attendant circumstances. *Id.* at 2467, 2469.

In *Miller*, the Court built upon and extended its previous decisions in *Roper v. Simmons*, 543 U.S. 551 (2005) and *Graham v. Florida*, 560 U.S. ___, 130 S. Ct. 2011 (2010), summarizing those decisions as follows:

> *Roper* and *Graham* establish that children are constitutionally different from adults for purposes of sentencing. Because juveniles have diminished culpability and greater prospects for reform, we explained, "they are less deserving of the most severe punishments." *Graham*, 560 U.S., at ___ (slip op., at 17). Those cases relied on three significant gaps between juveniles and adults. First, children have a "'lack of maturity and an underdeveloped sense of responsibility,'" leading to recklessness, impulsivity, and heedless risk-taking. *Roper*, 543 U.S. at 569. Second, children "are more vulnerable . . . to negative influences and outside pressures," including from their family and peers; they have limited "contro[l] over their own environment" and lack the ability to extricate themselves from horrific, crime-producing settings. *Ibid.* And third, a child's character is not as "well formed" as an adult's; his traits are "less fixed" and his actions less likely to be "evidence of irretrievabl[e] deprav[ity]." *Id.*, at 570.

*Miller*, 132 S. Ct. at 2464. Ultimately, the Court held that "the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders. . . . By making youth (and all that accompanies it)

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irrelevant to imposition of that harshest prison sentence, such a scheme poses too great a risk of disproportionate punishment." 132 S. Ct. at 2469.

Although the Court in *Miller* did not apply *Graham*'s categorical ban on life without parole sentences to juvenile homicide offenders, it did caution that "given all we have said in *Roper*, *Graham*, and this decision about children's diminished culpability and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon." *Id*.

Of course, in *State v. Andrews*, 329 S.W.3d 369 (Mo. 2010), the Missouri Supreme Court rejected a constitutional challenge to § 565.020.2's mandatory imposition of life imprisonment without parole on a juvenile convicted of a first degree murder. In so holding, the Court opined that "*Roper* expressly and *Graham* implicitly recognize that life without parole is not cruel and unusual punishment for a minor who is convicted of a homicide." 329 S.W.3d at 376-77. In *Miller*, the United States Supreme Court mandated that juvenile homicide defendants receive individualized sentencing in which the sentencing authority considers the fact of their "youth (and all that accompanies it)." *Id*. at 2469. In doing so, the Court specifically and in detail rejected the supposed distinction relied upon in *Andrews* between juveniles who commit homicides and other juvenile offenders. *Miller*, 132 S. Ct. at 2465. The Court went on to assert that the penological justifications for applying life without parole sentences – retribution, deterrence, incapacitation,

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and rehabilitation – are substantially reduced with respect to *all* juveniles. *Id.* Thus, *Miller* cuts off one of the two legs on which *Andrews* stands.

The other leg supporting *Andrews* was the proposition that Missouri's statutory scheme of certifying juveniles to stand trial as adults corrects for any constitutional problems in the mandatory life without parole sentencing statute. In *Andrews*, the Missouri Supreme Court found the Eighth Amendment challenge to § 565.020.2 flawed because "Missouri's statutory scheme expressly considers the youthfulness of the child before he or she is exposed to the possibility of a mandatory life without parole sentence for first degree murder." 329 S.W.3d at 377.

In *Miller*, Alabama and Arkansas similarly claimed that the Eighth Amendment was satisfied because their juvenile transfer laws required the courts to consider a juvenile's age in certifying a juvenile to stand trial as an adult. 132 S. Ct. at 2470. But the Court specifically rejected those arguments, holding that "the discretion available to a judge at the transfer stage cannot substitute for discretion at post-trial sentencing in adult court – and so cannot satisfy the Eighth Amendment." *Id*. at 2475.

For these reasons, *Miller* directly overrules *Andrews* and requires this Court to declare that Mo. Rev. Stat. § 565.020.2 violates the Eighth Amendment and is unconstitutional with respect to all juvenile offenders.

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## II. To comply with *Miller*, the sentencing process must allow defendants to present all relevant mitigating evidence related to their youthful status and must carry a presumption against life without possibility of parole.

The sentencing process implemented by Missouri's courts must be faithful to *Miller* and should, as far as possible, be consistent with existing Missouri law and procedures regarding sentencing hearings. A *Miller*-compliant sentencing hearing will involve the presentation of evidence related to "youth and its attendant characteristics," and it will obligate the sentencing authority to give individualized effect to this mitigating evidence. The trial court must then fashion a proportional sentence that reflects the Supreme Court's admonition that "appropriate occasions for sentencing juveniles to [the] harshest possible sentence will be uncommon" and "rare." *Miller*, 132 S. Ct. at 2469.

In *Miller*, as in *Graham*, the Court likened the punishment of life without parole for a juvenile to the death penalty for an adult. *Id*. at 2466-67. Based in part on this comparison, *Miller* drew on a line of cases which "prohibited mandatory imposition of capital punishment, requiring that sentencing authorities consider the characteristics of a defendant and the details of his offense before sentencing him to death." *Id*. at 2463-64. The Court's analogy to the death penalty emphasizes the severity of the punishment and signals the solemnity and care with which the sentencing court must treat these hearings. The Court's

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reliance on its death penalty jurisprudence also highlights that the severity of condemning children to die in prison is fundamentally inconsistent with the diminished culpability of most children. Life imprisonment without parole "forswears altogether the rehabilitative ideal" and is antithetical to the nature of youth's transient characteristics and ability to mature. *Id*. at 2465 (citing *Graham*, 130 S Ct at 2030).

The *Miller* Court did not dictate a specific process for the sentencing hearings. The Court's opinion did, however, provide the basis for five fundamental elements of a *Miller*-compliant hearing.

First, *Miller* unequivocally requires courts to impose an individualized sentence that reflects the mitigating effect of youth and that is proportional to the youthful offender and the offense. *Miller*, 132 S. Ct. at 2463 (core of Eighth Amendment is "basic 'precept of justice that punishment for crime should be graduated and proportioned'" to both the offender and the offense) (citation omitted); *id*. at 2466, n. 6 (describing "individualized sentencing" as the rule that comes out of *Miller*). Accordingly, any process this Court prescribes must include an individualized sentencing hearing.

Second, the sentencing hearing must focus on, and the sentencing court must give mitigating effect to, "an offender's age and the wealth of characteristics and circumstances attendant to it." *Id*. at 2467. Specifically, in setting an

individualized sentence that reflects the individual culpability of the defendant, the circuit court must consider the following factors in mitigation:

1. Biological age;
2. The influence of the youthful characteristics of "immaturity, impetuosity, and failure to appreciate risks and consequences";
3. The "family and home environment that surrounds [the offender]—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional";
4. The "circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him";
5. Whether the offender "might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys"; and



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6. The possibility of rehabilitation.

*Id.* at 2468.

Third, in order to conduct a *Miller*-compliant sentencing hearing, defense counsel must investigate and present youth-related mitigation evidence relevant to the defendant. *Compare Wiggins v. Smith*, 539 U.S. 510 (2003) (finding that the failure to investigate beyond the presentence report for mitigation in a death penalty case fell below reasonable professional norms). Additionally, to allow defense counsel to effectively represent their clients at sentencing, courts should grant funding for expert witnesses such as child psychiatrists—in many cases, an appropriate and necessary request for these juveniles charged with first-degree murder. *See Ake v. Oklahoma*, 470 U.S. 68 (1985). Courts must also be sensitive to the time that counsel will need to properly prepare for a *Miller*-compliant hearing—either for the defense to prepare mitigation evidence or the prosecution to contest the mitigation evidence submitted by the defense.

Fourth, a sentencing process that implements *Miller* must, consistent with the Supreme Court's emphasis on the mitigating quality of youth, ensure that courts consider this evidence only ***in mitigation***. Any *Miller*-compliant process should account for the Court's previous observation that even well-intentioned sentencing authorities will singularly focus on the fact that a terrible crime occurred or may be unwilling to give mitigating effect to the defendant's youth and

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other circumstances. *See Roper*, 543 U.S. at 573 (describing an "unacceptable likelihood . . . that the brutality or cold-blooded nature of any particular crime would overpower mitigating arguments based on youth as a matter of course, even where the juvenile offender's objective immaturity, vulnerability, and lack of true depravity should require a sentence less severe than death"). S*ee also Graham*, 130 S. Ct. at 2032 (quoting *Roper*). This tendency requires appellate courts to establish a sentencing process that will guard against the risk that lower courts may improperly view mitigating evidence as seeking to deny responsibility, downplay the defendant's role in the offense, or undercut the gravity of the offense—the types of arguments that might otherwise result in an *increased* penalty. The *Miller* Court instead required the sentencer to "take into account how children are different, and how those differences counsel ***against*** irrevocably sentencing them to a lifetime in prison." *Miller*, 132 S. Ct. at 2469. Therefore, while it is important that trial courts have sufficient discretion to tailor the penalty to the juvenile, the sentencing process must demand that the youth-related evidence described above be used *only* to determine the extent to which the sentence should be lessened. [1]

[1] On the narrow question of whether a juvenile should receive life imprisonment without the possibility of parole, the Court's opinion in *Miller* also necessitates that this particular sentencing decision focus *exclusively* on the

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Finally, if a life-without-parole sentence is not foreclosed altogether, the sentencing process must entail a strong presumption against it. *Miller* demands a weighty presumption that the sentence of life without parole will not be given except in truly extraordinary circumstances because life without parole "reflects an irrevocable judgment about [an offender's] value and place in society, at odds with a child's capacity for change." *Miller*, 132 S. Ct. at 2465 (quotations omitted). It

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inherently mitigating effect of the defendant's child status. *See, e.g.*, *Miller*, 132 S. Ct. at 2466 ("[I]mposition of a state's most severe penalties on juvenile offenders cannot proceed as though they were not children."); *id.* at 2469 (mitigating qualities of youth "counsels against irrevocably sentencing them to a lifetime in prison"). Because the only issue when determining whether a juvenile may receive life without parole concerns the strength of mitigation in the record, circuit courts must limit their consideration of the prosecution's evidence to whether it undermines the defendant's mitigation evidence. *See Dawson v. Delaware*, 503 U.S. 159, 167 (1992) (excluding prosecution's evidence in sentencing phase of capital trial as not relevant to rebut defendant's mitigating evidence). A court's reliance on the prosecution's evidence for any purpose other than rebutting the defense's mitigation evidence would constitute reversible error. *Id.* This restriction from *Miller* is of course inapplicable where the juvenile is not exposed to life imprisonment without parole.

must therefore be the prosecution's burden, in contesting the strength of mitigation evidence in the record, to demonstrate that a truly extraordinary sentence is warranted.

To this same end, the appellate process for reviewing sentences under *Miller* must also contain safeguards to ensure that Missouri imposes life imprisonment without the possibility of parole only on the "rare juvenile offender" for whom this sentence would be appropriate. *Miller*, at 2465; *cf. Gregg v. Georgia*, 428 U.S. at 198 (upholding Georgia capital scheme because it contained appellate procedures that guarded against arbitrary and capricious death sentences, including automatic proportionality review).

To summarize, the process used for sentencing juveniles must (1) be an individualized hearing, (2) consider all mitigating evidence related to youth, (3) equip defense counsel with the resources necessary to uncover and present mitigating evidence, (4) ensure that youth-related evidence mitigate the punishment and not be used against a juvenile, and (5) establish a presumption against life without parole. These measures together will ensure that the sentencing process adheres to the *Miller* Court's instruction that sentencing children to life imprisonment without parole should be truly "uncommon." *Miller*, 132 S. Ct. at 2469.



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**III. On remand, the sentencing court should have a broad range of sentencing options and should not be limited to deciding between life without parole and life with the possibility of parole.**

In its brief filed with the Court of Appeals, the State argued that "[s]hould this case be remanded for resentencing on the first-degree murder count, this Court's remand should be limited to a hearing for the trial court to determine only whether Defendant's life sentence for first-degree murder should be with or without parole." Respondent's Brief, filed Nov. 21, 2012, at 31. But a resentencing hearing of such limited scope would be inconsistent with the tenor of *Miller*, in which the Court clearly held that juveniles must be afforded an individualized sentencing hearing at which the sentencing authority can hear and consider all mitigating evidence related to youth in a way that ensures that such youth-related evidence will be used only for purposes of mitigation and not as grounds for harsher sentencing. *Miller*, 132 S.Ct. at 2474-75 (approving of discretionary sentencing where juvenile convicted of homicide could receive "rather than a life-without-parole sentence, a lifetime prison term *with* the possibility of parole or a lengthy term of years").

Further, though the State labels its proposed remedy of having the sentencing court decide between life with and without parole as "limited," the State essentially invites this Court to usurp the authority of the legislature to affix

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punishment to offenses. Since Missouri's first-degree murder sentencing statute provided only two sentencing options – death or mandatory life without possibility of parole, both of which are unconstitutional for juvenile offenders – no sentencing statute directly applies to defendant Nathan. And because the Missouri legislature has not provided for an alternative sentence under these circumstances, there is therefore no legal sentence to apply to Mr. Nathan's first-degree murder convictions under Missouri's first-degree murder statute. *See State v. Duren*, 547 S.W.2d 476 (Mo. 1977).

This outcome raises two related problems on remand that the State fails to address. The first is that a crime with no penalty provision is unenforceable under Missouri law. *See State v. Harper*, 510 S.W.2d 749, 750 (Mo. App. 1974) ("A statute cannot be classed as a criminal statute unless a penalty is provided for its violation. A criminal statute without a penalty is fundamentally nugatory.") (quotations and citations omitted). The second is that Missouri courts may only impose sentences authorized by the legislature. *State v. Motley*, 546 S.W.2d 435, 437 (Mo. App. 1976) ("'[A] court's powers in the administration of the criminal law is limited, upon the conviction of the accused, to the imposition of the sentence authorized to be imposed.'") (quoting *Ex parte Thornberry*, 300 Mo. 661, 254 S.W. 1087, 1091 (Mo. banc 1923)). Thus, contrary to the State's position, this

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Court has no authority under Missouri law to amend the first degree murder statute with language allowing for a sentence of life with parole.

However, Missouri law provides a mechanism whereby this Court may afford a remedy to Mr. Nathan that will not require the sentencing court to dismiss the indictment or to impose an unauthorized sentence. Missouri law classifies first degree murder as a class A felony. Mo. Rev. Stat. §565.020(2). For class A felonies, section 558.011(1) authorizes "a term of years not less than ten years and not to exceed thirty years, or life imprisonment." With *Miller* invalidating as to juveniles the only sentence available under the first degree murder statute (§565.020(2)), the sentencing range applicable to class A felonies offers the sole remaining avenue for Court to impose a sentence expressly endorsed by the Legislature for this category of offenses.

This remedy also accords with *Miller*'s requirement that juveniles receive individualized sentencing. Specifically, it would allow the sentencing court to fashion a proportional sentence that accounts for Mr. Nathan's youth at the time of the offense. Flexibility of this sort is particularly critical in a case such as Mr. Nathan's. Here, the transfer court found that, despite the horrible offenses, Mr. Nathan might be a candidate for rehabilitation but that the Family Court simply had no programs available that could have effectively served that end in his case. In addition, the limited evidence adduced at sentencing revealed significant age-

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relevant mitigating evidence, including that Mr. Nathan had a low IQ and an abusive home life. A *Miller*-compliant sentencing procedure would permit defense counsel to investigate, discover, and present additional relevant mitigating evidence.

Finally, the sentencing court's comments at the original sentencing hearing highlight the need for a new, *Miller*-compliant sentencing proceeding in this case. In imposing sentence on defendant Nathan, the circuit judge emphasized the goal of permanent incapacitation. Specifically, at the sentencing hearing, the judge stated:

> Many years ago, I sentenced an individual to death on two counts and the prosecution asked that I run those consecutively, even though that seemed rather silly, but the purpose then and now was to send a message to future Judges and Governors as to what this Court believes is the appropriate future for you, Mr. Nathan. This Court believes that that future should be that you be permanently incapacitated from repeating this kind of behavior.

Tr. 995-96. In its initial appellate brief, the State argued that these comments supported its call for a limited re-sentencing proceeding. But the circuit court's original emphasis on incapacitation was at odds with all of the Supreme Court's recent juvenile offender sentencing cases. In *Graham*, the Court ruled that "[i]ncapacitation cannot override all other considerations, lest the Eighth

Amendment's rule against disproportionate sentences be a nullity." *Graham*, 130 S. Ct. at 2029. "To justify life without parole on the assumption that the juvenile offender forever will be a danger to society requires the sentencer to make a judgment that the juvenile is incorrigible. The characteristics of juveniles make that judgment questionable." *Id*. As the Court cautioned in *Roper*, moreover, "it is difficult even for experts to distinguish [between] transient immaturity, and the rare juvenile offender whose crimes reflect irreparable corruption." 543 U.S. at 573. In addition, the Court buttressed its decision in *Miller* by noting that "a child's character is not as 'well formed' as an adult's; his traits are 'less fixed' and his actions less likely to be 'evidence of irretrievabl[e] deprav[ity].'" 132 S. Ct. at 2469. Here, the judge's comments at the sentencing hearing suggested that incapacitation was his primary – perhaps his only – sentencing consideration. In light of *Miller*, *Roper*, and *Graham*, it is clear that – at least in cases involving juvenile offenders tried as adults – such emphasis is unconstitutional. Mr. Nathan deserves a new sentencing proceeding at which his youth and all that it entails takes precedence over a narrow focus on incapacitation.



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## CONCLUSION

Based on the foregoing, *amici* ACLU of Eastern Missouri and ACLU Foundation of Kansas & Western Missouri urge this Court to rule in Appellant's favor on the sentencing issues and to remand for a new sentencing proceeding in compliance with *Miller*.

Respectfully submitted,

/s/ Stephen Douglas Bonney
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## CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that pursuant to Rule 84.06(c), this brief: (1) contains the information required by Rule 55.03; (2) complies with the limitations in Rule 84.06; (3) contains 4643 words, as determined using the word-count feature of Microsoft Office Word 2003. The undersigned further certifies that the accompanying disk has been scanned and was found to be virus-free.

/s/ Stephen Douglas Bonney

## CERTIFICATE OF SERVICE

I, the undersigned, certify that, on December 21, 2012, I electronically filed a copy of the forgoing pursuant to the automated filing system established by Missouri Supreme Court Operating Rules 1.03 and 27, to be served upon counsel for the parties by operation thereof.

/s/ Stephen Douglas Bonney