

IN THE SUPREME COURT OF OHIO

State of Ohio, :
 :
 Appellee, :
 :
 v. :
 :
 Chaz Bunch, :
 :
 Appellant. :

Case No. 08-0276

On Appeal from the Mahoning County
Court of Appeals, Seventh Appellate
District,
Case No. 06-MA-106

**MEMORANDUM IN SUPPORT OF JURISDICTION OF AMICUS
CURIAE JUVENILE LAW CENTER
IN SUPPORT OF APPELLANT CHAZ BUNCH**

Stephen P. Hardwick (0062932)
Counsel of Record
Counsel for Appellant Chaz Bunch
Office of the Ohio Public Defender
8 East Long Street – 11th floor
Columbus, Ohio 43215
(614) 466-5394
(614) 752-5167 (fax)
stephen.hardwick@opd.ohio.gov

Marsha Levick (PA 22535)
Jessica Feierman (PA 95114)
Jennifer Pokempner (PA 86866)
Counsel for Amicus Curiae

Juvenile Law Center
1315 Walnut Street, 4th Floor
Philadelphia, PA 19107
(215) 625-0551
(215) 625-2808 (fax)
mlevick@jlc.org

Paul J. Gaines (0020323)
Mahoning County Prosecutor

Rhys Cartwright-Jones
Assistant Prosecuting Attorney
Counsel of Record

21 W. Boardman Street, 6th Floor
Youngstown, Ohio 44503
(330) 740-2330
(330) 740-2008 (fax)

Counsel for Appellee
State of Ohio

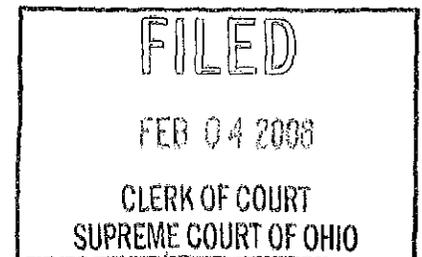


TABLE OF CONTENTS

EXPLANATION OF WHY THIS IS A CASE OF PUBLIC INTEREST OF GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION1

STATEMENT OF THE CASE AND FACTS2

ARGUMENT.....2

APPELLANT'S PROPOSITION OF LAW NO.1
Sentencing a juvenile to the equivalent of life without parole violates the Eighth Amendment's prohibition of cruel and unusual punishment.....2

CONCLUSION14

APPENDIX A.....A-1

APPENDIX B.....B-1

APPENDIX C.....C-1

APPENDIX D-CERTIFICATE OF SERVICE.....D-1

**EXPLANATION AS TO WHY THIS CASE IS OF PUBLIC OR GREAT
GENERAL INTEREST AND INVOLVES A CONSTITUTIONAL
QUESTION**

I. Introduction

Relying on widely accepted psychological and social science research about the developmental characteristics of adolescents, the United States Supreme Court in *Roper v. Simmons* (2005), 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d.1 held the juvenile death penalty unconstitutional under the Eighth Amendment's ban on cruel and unusual punishments. The Court held a sentence of death for offenders who commit their crimes under the age of eighteen was categorically disproportionate to the relative culpability of these youthful offenders. In its reasoning, the Court plainly applied a proportionality analysis that not only considered the proportionality of the sentence to the offense, but also the proportionality of the sentence to the blameworthiness of the offender.

Appellant Bunch, who was sixteen years old at the time of his offense, seeks review in this Court of a sentence of eighty-nine years – a sentence that is the equivalent of life without parole (hereinafter “LWOP”), as Appellant will not be eligible for parole until his 105th birthday under the terms of his sentence. Amicus Juvenile Law Center agrees with Appellant that this case presents an issue of great public importance. In the wake of *Roper*, this Court must provide guidance to the lower courts of this state regarding the

applicability of *Roper*'s proportionality analysis to adolescent offenders like Appellant who have been sentenced to die in prison.

Appellant's Proposition of Law No. I:

Sentencing a juvenile to the equivalent of life without parole violates the Eighth Amendment's prohibition of cruel and unusual punishment.

STATEMENT OF THE CASE AND FACTS

Amicus adopts the Appellant's statement of the case and facts.¹

II. Argument

A. THIS COURT MUST CLARIFY THE APPLICABILITY OF *ROPER V. SIMMONS*' PROPORTIONALTY ANALYSIS TO A SENTENCE OF EIGHTY-NINE YEARS WITHOUT PAROLE IMPOSED ON A JUVENILE

Through "the thicket of Eighth Amendment jurisprudence," it is clear that "a gross disproportionality principle is applicable to sentences for a term of years." *Lockyer v. Andrade* (2003), 538 U.S. 63, 72, 123 S.Ct. 1166, 155 L.Ed 2d. In *Roper v. Simmons*, the Supreme Court concluded that the harsh sentence of death, which is marked both by its finality as well as the implication that the offender cannot be rehabilitated, cannot constitutionally be imposed on children. *Simmons*,

¹ These facts include the following: Appellant's 89-year sentence is the equivalent of life without parole. He will have to live to be 106 years old to complete his prison term. A 16 year old African American boy can expect to only live an additional 54 years. Nationwide Publishing Company, 2006, Form 4026D, <http://www.claimspages.com/documents/docs/4026D.pdf> (last visited December 11, 2006); Arias, "United States Life Tables, 2003," National Vital Statistics Reports, Vol. 54, No. 14, April 19, 2006, Centers for Disease Control and Prevention, http://www.cdc.gov/nchs/data/nvsr/nvsr54/nvsr54_14.pdf (last visited December 11, 2006).

543 U.S. at 568-78. In reaching this conclusion, the Court applied a proportionality analysis that looked specifically at whether a sentence of death was disproportionate, under the Eighth Amendment, to the culpability of offenders under the age of eighteen as a class.

Admittedly, this strand of the Court's proportionality analysis has been invoked only intermittently. See, e.g. *Solem v. Helm* (1983), 463 U.S. 277, 103 S.Ct. 3001, 77 L.Ed.2d 637; *Atkins v. Virginia* (2002), 536 U.S. 304, 122 S.Ct. 2242, 153 L.Ed.2d 335. Most often, the Court has applied the proportionality analysis to determine whether the challenged sentence was disproportionate to the offense itself. Given *Simmon*'s findings, however, that the diminished culpability and greater capacity for rehabilitation among juvenile is so well-known and widespread as to require a categorical, bright line rule with respect to the sentencing of juvenile offenders, this Court must now consider whether the developmental characteristics of youth must be taken into account in Eighth Amendment challenges to extremely harsh sentences for youth *as a matter of law*.

Justice Kennedy's concurring opinion in *Harmelin v. Michigan* (1991), 501 U.S. 957, 111 S.Ct. 2680, 115 L.Ed.2d 836, has generally been viewed as the most instructive guide to understanding the Court's proportionality analysis under the Eighth Amendment.² The Ohio Supreme Court adopted Kennedy's approach

² In *Harmelin*, Justice Kennedy laid out four principles: 1. great respect must be given to the penological principles established by the legislature. *Harmelin*, 501 U.S. at 998-999. 2. "The Eight Amendment does not mandate the adoption of any one penological theory." *Id.* at 999. 3. A difference in penological theories and length of sentences is a normal product of our federalist structure. *Id.* 4. The analysis should be guided by objective factors to the greatest degree possible. *Id.*

in *State of Ohio v. Weibrecht* (1999), 86 Ohio St.3d 368, 371-72, 282 N.E.2d 46, and held further that a disproportionate sentence is one that “shock[s] the sense of justice of the community.” *Id.* at 370-71. This sentiment is reflected in *Simmons*, where the Court stated about the death penalty: “Retribution is not proportional if the law’s most severe penalty is imposed on one whose culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity.” *Simmons*, 543 U.S. at 571.

A majority of Justices in *Harmelin* asserted that a proportionality analysis is central to the Court’s Eighth Amendment jurisprudence. *Harmelin v. Michigan* (1991), 501 U.S. 957, 997-1009 111 S.Ct. 2680, 115 L.Ed.2d 836. (Kennedy, J., concurring); *Id.* at 1009-1027, (White, J., dissenting); *Id.* at 1027 (Marshall, J., dissenting).³ *Harmelin* did not overrule prior cases, such as *Rummel v. Estelle* (1980), 445 U.S. 263, 100 S.Ct. 1133, 63 L.Ed. 2d 282 or *Solem v. Helm* (1983), 463 U.S. 277, 103 S.Ct. 3001, 77 L.Ed.2d 637 – both cases in which proportionality analysis played a prominent role in the Court’s reasoning and holding. *Harmelin* refined the factors relevant to a proportionality analysis. *Harmelin*, 501 U.S. at 998. *Harmelin*, failed to directly address, however, the role of culpability in the proportionality analysis. Other Supreme Court cases, which

Kennedy’s final principle is that “[t]he Eighth Amendment does not require strict proportionality between crime and sentence. Rather, it forbids only extreme sentences that are ‘grossly disproportionate to the crime.’” *Id.* at 1001 (quoting *Solem*, 463 U.S. at 288, 303, 103 S.Ct., at 3008, 3016) (internal citations omitted).

³ While Justice Scalia announced the judgment of the Court, only Justice Rehnquist joined him in the opinion that there is no proportionality analysis requirement in the Eighth Amendment. *Harmelin*, 501 U.S. at 957-996.

remain good law, have presented this consideration, but do not provide the requisite guidance in light of *Simmons*. *Solem v Helm* makes clear that the culpability of the offender is an important consideration in the proportionality analysis. *Solem*, 463 U.S. at 293, see, also *Thompson v. Oklahoma* (1988), 487 U.S. 815, 853, 108 S.Ct. 2687, 101 L.Ed. 2d 702 (O'Connor, J., concurring) ("Proportionality requires a nexus between the punishment imposed and the defendant's blameworthiness." Citing *Edmund v. Florida* (1982), 458 U.S. 782, 825, 102 S.Ct. 3368, 73 L.Ed. 2d 1140)(O'Connor, J., dissenting)))

Indeed, even prior to *Simmons*, the Supreme Court re-affirmed its broader view of the proportionality analysis in *Atkins v. Virginia* (2002), 536 U.S. 304, 318, 122 S.Ct. 2242, 153 L.Ed.2d 335, where the court found the death penalty as applied to the mentally retarded violated the Eighth Amendment. In *Atkins*, the Court held the characteristics of mentally retarded offenders made them inherently less blameworthy than non- mentally retarded adult offenders. *Id.* at 319. With respect to the mentally retarded, the Court noted:

[T]hey have diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others. There is no evidence that they are more likely to engage in criminal conduct than others, but there is abundant evidence that they often act on impulse rather than pursuant to a premeditated plan, and that in group settings they are followers rather than leaders. Their deficiencies do not warrant an exemption from criminal sanctions, but they do diminish their personal culpability.

Id. at 318.

In light of their diminished culpability the Court struck the death penalty in *Atkins* as grossly disproportionate to them under the Eighth Amendment. Similarly, in *Simmons*, the Court drew a bright line for reduced juvenile culpability at age eighteen based on widely accepted research that juveniles have an undeveloped sense of responsibility and lack of maturity that make them less culpable than adults, and therefore not properly classified as “among the worst offenders.” *Simmons*, 543 U.S.at 569-570.

Other State courts have considered the culpability of the offender in applying the proportionality analysis to sentences challenged under the Eighth Amendment. In *Hawkins v. Hargett* (C.A. 10, 1999), 200 F. 3d 1279, the defendant, age thirteen at the time of his offense, challenged his sentence of one hundred years as violative of the Eighth Amendment’s ban on disproportionate sentences. Hawkins was sentenced to prison for 100 years for charges which included robbery, forcible rape, sodomy, and burglary. Under the terms of the sentence, Hawkins would be eligible for parole in thirty five years. While the Oklahoma Supreme Court ultimately rejected defendant’s challenge because of his eligibility for parole after thirty-five years, the court stated that:

the chronological age of a defendant is a factor that can be considered in determining whether a punishment is grossly disproportionate to the crime inasmuch as it relates to his culpability. *Solem* instructed courts to compare the gravity of an offense with the severity of the sentence by looking at “the harm caused or threatened to the victim or society, and the culpability of the offender.” Culpability can be weighed by examining factors such as the defendant's motive and level of scienter, among other things.

Id. at 1283 (internal citations omitted). “This is so because the first prong of the *Solem* test allows for courts to consider multiple factors relevant to culpability, an option that *Harmelin* does not foreclose.” Id. at 1284. The court added that the availability of parole was “a relevant factor” in the proportionality determination. Id. at 1285. After considering the defendant’s age as it relates to culpability, his offense and his eligibility for parole after thirty-five years, the court found the sentence proportionate. Several other courts prior to *Simmons* similarly concluded that age, as it relates to culpability, is relevant to a proper proportionality analysis under the Eighth Amendment.⁴

Courts in Ohio have not directly addressed the issue of how culpability should be factored into a proportionality analysis under the Eighth Amendment with respect to the sentence at issue here – a sentence that assures Appellant will

⁴ See, *Allen v. Ornoski* (C.A. 9, 2006), 435 F. 3d 946, 952 (describing that *Simmons* requires a proportionality analysis of the relative culpability that is related to youth.); *State v. Moore* (Idaho Ct. App. 1995), 906 P.2d 150 (in determining whether defendant's sentence leads to an inference of gross disproportionality, consideration must be given to youth and immaturity of offender.); (*Naovarath v. State* (1989), 105 Nev. 525, 529, 779 P.2d 944 (“In deciding whether the sentence exceeds constitutional bounds it is necessary to look at both age of the convict and at his probable mental state at the time of the offense.”); *People v. Dillon* (1983), 34 Cal. 3d 441, 487-88, 668 P.2d 697 (finding a life sentence imposed on a 17-year-old to be unconstitutional as “cruel and unusual,” noting that the defendant was an “unusually immature youth.”); *Workman v. Kentucky* (Ky.Ct.App.1968), 429 S.W.2d 374, 378 (holding that life imprisonment without benefit of parole for two fourteen-year-old youths shocks the general conscience of society and is intolerable to fundamental fairness. Because “life imprisonment without benefit of parole for the offense of rape undoubtedly was to deal with dangerous and incorrigible individuals who would be a constant threat to society. We believe that incorrigibility is inconsistent with youth; that it is impossible to make a judgment that a fourteen-year-old youth, no matter how bad, will remain incorrigible for the rest of his life.”)

die in prison. In the instant case, it does not appear that either the Appellant's age or diminished blameworthiness was considered in determining whether the sentence was proportionate to the crimes committed. Rather, the lower court focused on factors related to the offense. *State v. Bunch*, 7th Dist. No. 06 MA 106, 2007-Ohio-7211, at ¶ 13-¶ 32. Yet in cases challenging the constitutionality under the Eighth Amendment of Ohio's Serious Youthful Offender Disposition, R.C. 2152.13, considerations analogous to the offenders' relative culpability and blameworthiness – factors central to the *Simmons* holding – appear to have played a role in the courts' upholding of that statute.

In *In re J.B.*, 12th Dist. No. CA2004-09-226, 2005-Ohio-7029, reconsideration denied (2006), 110 Ohio St.3d 1444, 852 N.E.2d 191, certiorari denied (2007), 127 S.Ct. 1259, 167 L.Ed.2d 146 and *In re Sturm*, 4th Dist. No. 05CA35, 2006-Ohio-2834, the Court of Appeals considered whether Ohio's Serious Youthful Offender Disposition, R.C. 2152.13, which permits certain youthful offenders to be sentenced "as if the child were an adult," violated the Eighth Amendment in light of *Simmons*. Significantly, the punishment of LWOP may not be imposed on youthful offenders eligible to be sentenced under this statute. R.C. 2152.13 (D)(1)(a). In both cases, the court found that the sentences received by the juvenile were proportionate and that the statute "was crafted to take into account juvenile-adult distinctions" in part because "the most severe adult punishments are prohibited," including LWOP. This reasoning indicates the court's view that *Simmons* is relevant outside of capital cases. *In re J.B.* 12th

B. THIS COURT MUST DETERMINE HOW THE EVOLVING STANDARDS OF DECENCY AFFECT THE IMPOSITION OF LWOP ON JUVENILES

Whether a sentence is disproportionate and violates the Eight Amendment must be evaluated in light of the “evolving standards of decency that mark the progress of a maturing society.” *Simmons*, 543 U.S. at 551 (quoting *Trop v. Dulles* (1958), 356 U.S. 86, 100-101, 78 S.Ct. 590, 2 L.Ed.2d 630) (plurality opinion)). The Supreme Court has long made clear that the “evolving standards of decency” analysis applies to non-death penalty cases. Indeed, the phrase originated in a non-capital expatriation case. *Trop v. Dulles*, 356 U.S. at 1010. It has been widely used in a broad array of Eighth Amendment contexts. See, also *Weems v. U.S.* (1910), 217 U.S. 349, 366-67, 30 S.Ct. 544, 54 L.Ed 793 (successfully challenging a sentence, which included forced labor, wearing ankle and wrist shackles, and incurring permanent limitations on civil liberties, for non-capital offense under the Eight Amendment). (“No circumstance of degradation is omitted. It may be that even the cruelty of pain is not omitted...Such penalties for such offenses amaze those who have formed their conception of the relation of a state to even its offending citizens from the practice of the American commonwealths, and believe that it is a precept of justice that punishment for crime should be graduated and proportioned to offense.”)

In establishing the standard for the provision of medical care in prison, the Court explained:

Our more recent cases, however, have held that the Amendment proscribes more than physically barbarous punishments. The Amendment embodies “broad and idealistic concepts of dignity, civilized standards, humanity, and decency . . . against which we must evaluate penal measures. Thus, we have held repugnant to the Eighth Amendment punishments which are incompatible with “the evolving standards of decency that mark the progress of a maturing society”....

Estelle v. Gamble (1976), 429 U.S. 97, 102, 97 S.Ct. 285, 50 L.Ed.2d 252

(internal citations omitted). Similarly, in addressing prisoners’ physical safety, the Court has noted that [p]rison conditions may be “restrictive and even harsh,” but gratuitously allowing the beating or rape of one prisoner by another serves no “legitimate penological objectiv[e],” any more than it squares with “ ‘evolving standards of decency,’ ” *Farmer v. Brennan* (1994), 511 U.S. 825, 833, 114 S.Ct. 1970, 120 L.Ed. 2d 811 (internal citations omitted).

In discerning these ‘evolving standards,’ the Court pointed out that it must review “objective indicia of consensus, as expressed in particular by the enactments of legislatures that have addressed the question,” as well as state practice. See *Simmons*, 543 U.S. at 564 Ultimately, however, the Court must “determine, in the exercise of [its] own independent judgment,” whether such a penalty is disproportionate. *Id.* In *Simmons*, this involved the Court’s consideration of trends in national and international law regarding LWOP and the treatment of children under the law, findings of medical, psychological and sociological studies, as well as common experience, which all showed that children who are under age 18 are less culpable and more amenable to rehabilitation than adults who commit similar crimes. *Id.* at 568-76.

1. This court must decide if it is going to follow national and international trends that LWOP constitutes cruel and unusual punishment for juveniles.

In both civil and criminal law, youth are treated differently from adults. Statutes and case law recognize that children do not have adult decision-making capacity. For example, youth are denied the right to vote, to contract, to purchase or consume alcoholic beverages, or even to consent to medical care. These differences must be considered when assessing punishments for juveniles. As the Kentucky Court of Appeals explained, "It seems inconsistent that one be denied the fruits of the tree of the law, yet subjected to all of its thorns." *Workman v. Kentucky* (Ky.Ct.App. 1968). 429 S.W.2d 374, 377. The Supreme Court has repeatedly acted to ensure that governmental power is constrained from harming juveniles, and that governmental power be wielded to protect juveniles in light of their immature judgment. The Supreme Court has moved to protect juveniles from the consequences of their actions and decisions where those consequences are far less severe than the death penalty or a LWOP sentence. See, e.g., *Kaupp v. Texas* (2003), 538 U.S. 626, 123 S.Ct. 1843, 155 L.Ed. 2d 814 (considering age and experience in voluntariness of confession by 17-year-old); *Fare v. Michael C.*(1979), 442 U.S. 707, 725, 99 S.Ct. 2560, 61 L.Ed. 2d 197 (determining whether juvenile has waived Miranda rights "mandates. . .evaluation of the juvenile's age, experience, education, background, and intelligence, and into whether he has the capacity to understand the warnings given him, the nature of the Fifth Amendment rights, and the consequences of waiving those rights. . .

[courts must] take into account those special concerns that are present when young persons. . . are involved”).

The Supreme Court has also allowed states to exercise power over juveniles that would be unconstitutional if exercised over adults, based on the developmental differences between minors and adults. State law reflects this as well. The Supreme Court even has allowed states to use their *parens patriae* power to *preventively* detain children in order to serve the best interests of the child, to keep them “from the downward spiral of criminal activity. . .” *Schall v. Martin* (1984), 467 U.S. 253, 265-66, 104 S.Ct. 2403, 81 L.Ed. 2d 207 (upholding New York’s power to detain certain at-risk juveniles for up to 17 days). As applied to the Appellant, the adult sentencing provisions should be similarly scrutinized before automatically applying them to juveniles transferred to the adult system. Imposing a LWOP sentence upon a juvenile is cruel and unusual and violates due process.

The trends in state law reveal that the actual application of the punishment of LWOP to juveniles is becoming rare. The reasoning and findings presented in *Simmons* reinforce this trend. Although 45 states permit LWOP sentences for juveniles, a closer look at how these states impose LWOP sentences reveals that in all but a few states LWOP is imposed on juveniles only *infrequently*.⁵ Many

⁵ According to a report prepared by Amnesty International and Human Rights Watch, at the end of 2003, New Jersey, Utah and Vermont had no one serving a juvenile LWOP sentence. Of the remaining jurisdictions that allow LWOP for juveniles, 13 had less than ten youth serving LWOP sentences. Amnesty International and Human Rights Watch, *The Rest of Their Lives: Life Without Parole for Child Offenders in the United States* (October 2005) 34-35.

states have established minimum ages for juveniles eligible for LWOP.⁶ These statutes, however, were enacted prior to *Simmons*, which affirmed that age 18 marks the crucial distinction for the purpose of punishment. 17 states do permit LWOP sentences to be imposed on a child of any age.⁷

Foreign and international law is not only relevant to Eighth Amendment analysis, it is also binding on U.S. courts.⁸ Once a norm of customary international law rises to the status of a *jus cogens* norm, it becomes mandatory authority applicable to *all* nation-states without exception. In 2002, the Inter-American Commission on Human Rights (“Commission”)⁹ held that the prohibition on the death penalty for youth under 18 is a *jus cogens* norm because it was “inconsistent with prevailing standards of decency” as the “U.S. stands alone amongst traditional developed world nations and those of the inter-

⁶ See Appendix A for a list of states where LWOP sentences are discretionary for juveniles; Appendix B lists the states where LWOP sentences are mandatory for juveniles upon conviction as adults for enumerated crimes.

⁷ See Appendix C for a complete list of states that impose LWOP sentences on children of any age.

⁸ The U.S. Supreme Court has recognized the value of considering international consensus in a variety of cases going back over one hundred years. “International law is part of our law, and must be ascertained and administered . . . as often as questions of right depending upon it are duly presented.” *The Paquete Habana* (1900), 175 U.S. 677, 700, 20 S.Ct.290, 44 L.Ed 320. In *Trop*, the Court looked to the international consensus against to evaluate the merits of the case, and held that it was cruel and unusual to punish a citizen for desertion by denaturalization, in part because only two of eighty-four nations allowed such practices. *Trop*, 356 U.S. at 102-03. See, also *Atkins v. Virginia* (2002), 536 U.S. 304, 316 n21,122 S.Ct. 2242, 153 l.Ed.2d 335 (the Court noted that wide international disapproval of imposing the death penalty on the mentally retarded).

⁹ The Inter-American Commission on Human Rights (IACHR) is one of two bodies in the inter-American system for the promotion and protection of human rights. See <http://www.cidh.org/what.htm>.

American system, and has also become increasingly isolated within the entire global community.” *Domingues v. U.S* (2002), Case 12.285, Report No. 62/02, Inter-Am. C.H.R., Doc. 5 rev. 1 at 913. Only two countries currently apply juvenile LWOP. Center for Law and Global Justice, *Sentencing Our Children to Die in Prison* at 9, 17, 31 (2007). Moreover, in assessing international consensus on LWOP, the Commission looked to the near-universal ratification of the United Nations Convention on the Rights of the Child (CRC) without reservation to article 37(a). *Domingues* at ¶ 57. The prohibition against juvenile LWOP is part of the same sentence in the CRC that prohibits the juvenile death penalty. Thus, under Commission’s reasoning in *Domingues* the prohibition on juvenile LWOP constitutes a jus cogens norm.

III. CONCLUSION

Relying on widely accepted psychological and sociological research, the *Simmons* Court concluded that children under 18 have diminished culpability and should be treated differently than adults:

Three general differences between juveniles under 18 and adults demonstrate that juvenile offenders cannot with reliability be classified among the worst offenders. .. “[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young...

The second area of difference is that juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure....

The third broad difference is that the character of a juvenile is not as well formed as that of an adult. ...The susceptibility of juveniles to immature and irresponsible behavior means “their irresponsible conduct is not as morally reprehensible as that of an adult.”...

Simmons, 543 U.S at 569-70 (internal citations omitted) (emphasis added).

The research applies with equal force here. Like the death penalty, LWOP is based on the presumption that the individual is irredeemable, a presumption squarely at odds with *Simmons*. *Id.* at 573-74.¹⁰ In both cases, the child is being sentenced to die in prison. In both cases, the sentence reflects a complete abandonment of hope that the child can be rehabilitated and takes no account of the child's diminished culpability for his acts in light of his age and developmental status. The eighty-nine year sentence imposed on Appellant, with his first chance of parole when he is one hundred and five, is cruel and unusual.

Wherefore, for the foregoing reasons, Amicus Curiae Juvenile Law Center respectfully requests that this Court grant jurisdiction to Appellant.

Respectfully submitted,

¹⁰ There have been studies concluding that the likelihood of an offender's committing further crimes after release from prison decreases with age. Beecher-Monas & Garcia-Rill, *Danger at the Edge of Chaos: Predicting Violent Behavior in a Post-Daubert World* (2003), 24 *Cardozo L. Rev.* 1845, 1899 ("The decrease in violence and criminal activity with age is a well-established principle of criminology. Base rates of violence are far lower after the age of sixty (when most life prisoners would be eligible for parole) than in the twenties."). That juvenile offenders, especially with rehabilitation, are less likely to commit crimes in the future was recognized by the Court in *Simmons*: "Indeed, 'the relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuosity and recklessness that may dominate in younger years can subside.'" *Simmons* 543 U.S. at 570 (quoting *Johnson v. Texas* (1993), 509 U.S. 350, 368, 113 S.Ct. 2658, 125 L.Ed. 2d 290).

Marsha Levick (JP)

MARSHA L. LEVICK
JESSICA R. FEIERMAN
JENNIFER POKEMPNER
JUVENILE LAW CENTER
The Philadelphia Building
1315 Walnut Street, 4th Floor
Philadelphia, PA 19107

APPENDIX D

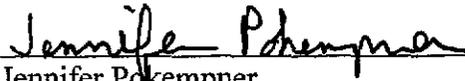
CERTIFICATE OF SERVICE

State of Ohio,	:	
	:	
Appellee,	:	
	:	On Appeal from the Mahoning County
v.	:	Court of Appeals
	:	
Chaz Bunch,	:	Case No. 06-MA-106
	:	
Appellant.	:	

**MEMORANDUM IN SUPPORT OF JURISDICTION OF AMICUS
CURIAE JUVENILE LAW CENTER
IN SUPPORT OF APPELLANT CHAZ BUNCH**

CERTIFICATE OF SERVICE

I certify a copy of the foregoing has been sent by regular U.S. mail, postage-prepaid, to Stephen P. Hardwick, Office of the Ohio Public Defender 8 East Long Street – 11th floor Columbus, Ohio 43215 and to Rhys Cartwright-Jones, Assistant Prosecuting Attorney, 21 W. Boardman Street, 6th Floor Youngstown, Ohio 44503, this 1st day of February, 2008.


 Jennifer Pokempner
 Staff Attorney

Counsel for Amicus Curiae
 Office of the Juvenile Law Center