No. 07-8436

In the

Supreme Court of the United States

CHRISTOPHER PITTMAN, *Petitioner*,

v.

STATE OF SOUTH CAROLINA, *Respondent*.

On Petition for Writ of Certiorari to the Supreme Court of South Carolina

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Respondent's effort to distract the Court from the important constitutional issues in this case does not obscure these four basic points supporting a grant of certiorari: (1) a broad societal consensus condemns the imposition of long sentences on children as young as petitioner (whatever the views may be with respect to older juveniles), (2) an even broader consensus rejects the imposition of long mandatory minimum sentences on children as young as petitioner without giving the sentencing judge the discretion to consider a defendant's age as a mitigating factor, (3) at the very least, such a harsh sentence should be imposed only when the legislature has clearly authorized it, and (4) the present case offers this Court an ideal vehicle to resolve an important constitutional issue.

I. A societal consensus recognizes that a sentence of 30 years without possibility of parole is grossly disproportionate for a pre-adolescent child.

An established national consensus condemns the imposition of punishments as harsh as 30 years without possibility of parole on children as young as 12. Respondent's arguments to the contrary are unavailing. Indeed, by identifying only four cases involving pre-teen children—one of which it mischaracterizes and three of which involve much shorter sentences than petitioner's—respondent confirms the extraordinary rarity of the sentence imposed here. The fact remains that petitioner's sentence is dramatically more punitive than those imposed on pre-adolescent offenders not only in every other state, *see* Pet. 16-18, but also in every other country, *see* Pet. 18-20; Int'l Br. 20-26.

A. Respondent's reliance on cases involving older juveniles, many of whom received shorter sentences, confirms the rarity of petitioner's sentence.

Respondent relies on a 4-page list of essentially irrelevant cases from the last 20 years to support its assertion that no consensus exists in practice against such harsh punishment for such young children. Opp. 26-29. This follows a similar 9-page list of equally irrelevant cases to sup-

port its argument that the Eighth Amendment tolerates such harsh punishment for such young children. Opp. 15-24. Of the 57 cases on respondent's two lists, however, over 40 involve juveniles aged 14 or older. Over 50 involve juveniles aged 13 or older. These cases all miss the point. Petitioner does not claim that a national consensus precludes the imposition of lengthy sentences on *all* juveniles. Petitioner has instead identified a compelling and consistent unwillingness across the nation to impose extremely long prison terms without possibility of parole on pre-adolescent children. This Court should grant certiorari to clarify that petitioner's sentence, imposed in defiance of the national consensus, violates the Eighth Amendment.

Even if the cases cited by respondent had not involved older juveniles, they would not negate petitioner's claim because many of those older juveniles received shorter sentences than petitioner's. In *People v. Clore*, No. 228439, 2001 WL 789536 (Mich. Ct. App. Jan. 16, 2001) (per curiam), for example, the 14-year-old defendant received an indeterminate sentence of 1 to 20 years. In *State v. Walker*, 252 Kan. 117, 843 P.2d 203 (1992), the 14-year-old defendant was eligible for parole in 15 years, meaning he could be released after serving only half the time that petitioner must serve. More significantly, on reconsideration the *Walker* trial court found even that sentence to be too harsh for a 14-year-old, and reduced the sentence to five years' probation and residence in a juvenile correction facility until age 21.[1] Similarly, in *Blackshear v. State*, 771 So. 2d 1199 (Fla. Dist. Ct. App. 2000), the 13-year-old defendant's original sentence was probated and not reinstated until defendant was found with a handgun at age 19. *See id.* at 1200.

[1] The defendant subsequently violated the terms of his probation when he was almost 18 years old. His probation was thus revoked and the original sentence reinstated. *See State v. Walker*, 260 Kan. 803, 926 P.2d 218 (1996) (detailing the subsequent history and affirming the revocation of probation).

B. The legislative authorization of long sentences for pre-adolescent children, coupled with the extraordinary rarity of such sentences in practice, confirms society's rejection of sentences such as petitioner's.

Respondent misapprehends the significance of legislative authorization of long sentences for pre-adolescent offenders in many states. The very fact that long sentences are available as a legislative matter but so rarely imposed in practice—despite the comparatively large number of pre-adolescents who commit murders[2]—supports petitioner's claim of a widespread consensus against the imposition of such harsh punishments on such young children. While the severe punishment imposed on petitioner appears to be legislatively authorized for 12-year-olds in 25 states, respondent can identify only *four* pre-teen offenders "over the past twenty years" (Opp. 26) in the entire country whose sentences are comparable (it claims) with petitioner's. See Opp. 26 n.2. But three of those four 12-year-olds received substantially shorter prison terms. Alex King was sentenced to 8 years (*see* Opp. 29) and Jake Eakin to 14 years (*see* http://www.NYT.com/2006/07/11/US/11brfs-001.html). Lionel Tate's original life sentence was reversed on appeal, and on remand he was sentenced to one year of house arrest followed by ten years' probation.[3] Only Evan Savioe's 26-year sentence is even close to petitioner's—and the significance of his case must be considered in conjunction with the Washington legislature's amendment of the law two years later specifically to exclude juveniles from the applicability of mandatory minimum sentences for any offense. See *infra* at 7 & n.9.

The striking absence of actual willingness to subject young children to long prison terms, even when legislatures authorize such punishments, provides dramatic evidence of the national

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[2] Respondent's unsupported suggestion (Opp. 30) that pre-teens rarely commit serious offenses is simply wrong. FBI statistics show that over 15 murders per year are committed by 9- to 12-year-old children. *See* FBI, Uniform Crime Reports, Crime in the United States, *available at* http://www.fbi.gov/ucr/ucr.htm; *see also* Pet. 17-18. During the 20-year period in which respondent identified only four pre-teen cases (only one of which involved a sentence that was even close to petitioner's), therefore, approximately 300 murders were committed by 9- to 12-year-old children. The statistics for other offenses against the person are even more stunning. *See infra* note 7.

[3] Unfortunately, Lionel Tate re-offended and was sentenced to 30 years for violating his probation at age 18. *See* Terry Aguayo, *Youth Who Killed at 12 gets 30 years for Violating Probation*, New York Times, May 19, 2006 (available at: http://query.nytimes.com/gst/fullpage.html?res=9C07E3D7123EF93AA25756C0A9609C8B63).

consensus against the practice. The evidence with respect to pre-adolescent children is even more compelling to the extent that respondent is correct that there is (for older juveniles) a "modern trend towards increased punishment for violent juvenile offenders." Opp. 8-12.[4] *See Simmons*, 543 U.S. at 566 (finding the juvenile death penalty trend particularly forceful "in light of the particular trend in recent years toward cracking down on juvenile crime in other respects").

C. Respondent's effort to apply the common-law "age 7-14" category is inconsistent with contemporary sentencing law and practice and is unpersuasive.

Respondent's assertion that the appropriate category for the Eighth Amendment inquiry should be "those 7 to 14 years of age who would be in that common law category setting forth a rebuttable presumption of incapacity," Opp. 25, is both wrong as a matter of law and unpersuasive on its own terms. The assertion is wrong because only a handful of the states continue to use the age-based presumption-of-incapacity approach. Wayne R. LaFave, SUBSTANTIVE CRIMINAL LAW § 9.6 (2007).

Even if the common-law categories were relevant in the modern criminal context, however, respondent's proffered framework would still be unpersuasive. According to respondent, sentences imposed on children as young as seven would be subject to the same constitutional scrutiny as those imposed on their 14-year-old counterparts. But the law certainly treats younger and older children differently,[5] including in sentencing. Indeed, the difference that one year of age makes in the numbers of juveniles tried as adults for offenses against the person is striking.

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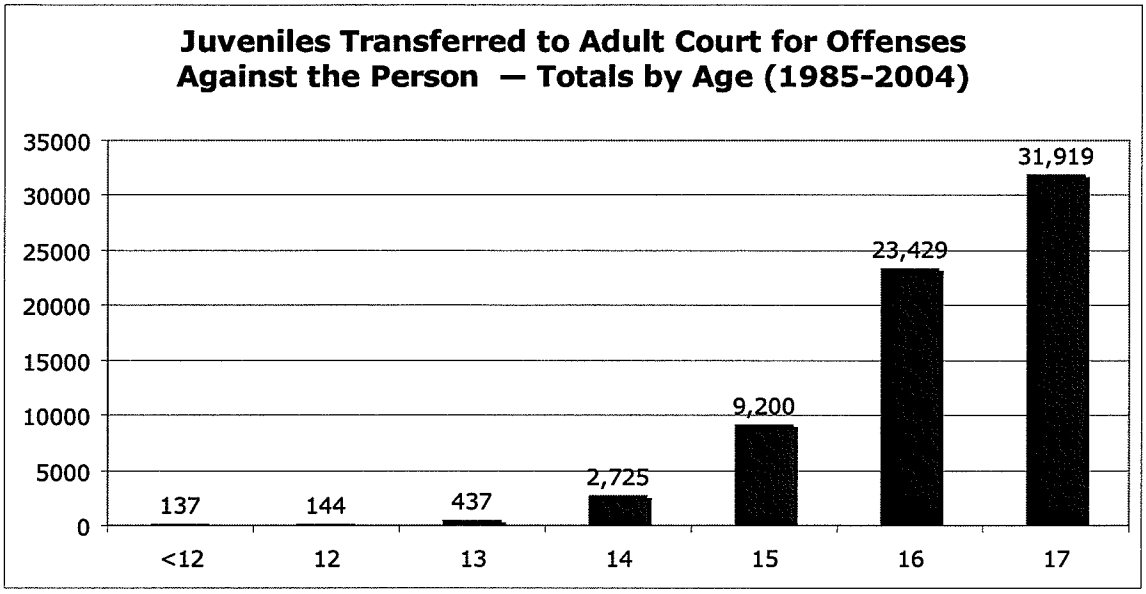
[4] No doubt there was such a trend with respect to older juveniles at the end of the last century, but there is evidence that the trend may be reversing. *See, e.g., infra* at 7 & n.9. Indeed, the principal source on which respondent relies for its assertion also notes that the pattern is changing. *See* U.S. Dep't of Justice, Office of Juvenile Justice and Delinquency Programs, *Juvenile Offenders and Victims: 2006 National Report* 113. And the ABA report on which respondent also relies notes the trend with respect to older juveniles but advises policymakers to reverse it. American Bar Association, *Youth in the Criminal Justice System: Guidelines for Policymakers and Practitioners* (2004).

[5] In their amicus brief, the Juvenile Law Center and 14 other organizations document some of the ways in which the law treats 12-year-old children and older juveniles differently, including permission to drive, school attendance requirements, and the ability to work. JLC Br. 8-12. *Cf. Simmons*, 543 U.S. at 569, 581-87 (noting some of the ways in which the law treats juveniles and adults differently).

This graph[6] vividly illustrates that during the 20-year period for which statistics are most readily available, only 144 violent 12-year-olds (out of the more than 400,000 charged[7]) were transferred to adult court, while much larger numbers of older juveniles were transferred—with the numbers increasing exponentially with each year of age:



It would be absurd to pretend that the law cannot recognize the differences between a 7-year-old and a 13- or 14-year-old in this context, even when violent offenses are involved.

Respondent does not even attempt to counter the compelling and undisputed scientific evidence, presented by petitioner and amici, establishing the reduced culpability and diminished susceptibility to deterrence of pre-adolescent children. *See, e.g.*, Pet. 20-30; Scientific Experts' Br. 10-15; JLC Br. 12-13. As this Court made clear in *Roper v. Simmons*, 543 U.S. 551, 568–74 (2005), juvenile offenders are less culpable, less susceptible to deterrence, and more likely to be rehabilitated than their adult counterparts. That is true for older juveniles, and it is even more true for pre-adolescent children. As the juvenile judges said in their amicus brief, "if there is a

[6] The graph reflects data from A. Stahl, T. Finnegan & W. Kang, *Easy Access to Juvenile Court Statistics: 1985-2004* (2007) (available at http://ojjdp.ncjrs.gov/ojstatbb/ezajcs/). For further details, *see* Pet. App. 203a.

[7] During the 20-year period, over 400,000 12-year-old children were charged with offenses against the person and almost as many children under 12 were charged. *See* Stahl et al., *supra* note 6. Appendix 22, table 3, gives the annual figures for the last 15 years of the period. *See* Pet. App. 204a.

gap between the culpability of adults and juveniles generally, there is a chasm between the culpability of adults and twelve-year-old children." Judges' Br. 5–6; *see also* Scientific Experts' Br. 11 ("The principles articulated in *Roper* involving a 17-year-old offender apply with even greater force to a 12-year-old like petitioner.").

Finally, if the common-law categories were relevant (as respondent contends), the effect would be to *strengthen* petitioner's argument. Contrary to respondent's argument, the relevant common-law category includes children from their 7th to 14th birthdays. *See* LaFave, *supra*, § 9.6. Thus 14-year-old children (who represent most of the cases on which respondent relies), having already passed their 14th birthdays, are not part of the relevant category, and most of respondent's few cases involving 13-year-olds are weak.[8] The principal effect of using the common-law categories, therefore, would be to force respondent to defend harsh punishments for very young children. Under respondent's theory of the case, the sentence imposed on petitioner cannot be constitutional unless it would also be constitutional to sentence a 7-year-old child to a mandatory minimum term of 30 years without possibility of parole simply because that child committed a serious offense with the knowledge that it was wrong.

D. Respondent's argument that no modern legislative trend rejects the imposition of harsh sentences on 12-year-old children carries little weight when such sentences are in any event not imposed in practice.

Respondent asserts that state legislation has not demonstrated a "consistent direction of change" to eliminate harsh sentences for 12-year-old children. Opp. 12. This argument is unpersuasive because legislative change would be largely irrelevant when the states have long refused to sentence 12-year-old children so harshly. As in *Simmons*, 543 U.S. at 566–67, it would be the

[8] *See, e.g., supra* at 2 (discussing *Blackshear v. State*, 771 So. 2d 1199 (Fla. Dist. Ct. App. 2000)). In some of respondent's cases, it even appears that the sentences were overturned in subsequent proceedings. *See Edmonds v. State*, 955 So. 2d 787 (Miss. 2007); *Manuel v. State*, 629 So. 2d 1052 (Fla. Dist. Ct. App. 1993).

"ultimate in irony" not to recognize the national consensus against harsh sentences for pre-adolescent children precisely because that consensus made legislative change unnecessary.

The actions of the Washington legislature are particularly telling in this regard. The only case respondent could identify in which a child as young as 12 years old received a sentence that was even close to petitioner's was Evan Savioe's case in Washington. See *supra* at 3. Just two years after that crime, however, the legislature recognized the cruelty of subjecting children to severe mandatory punishments and amended its law to exclude juveniles from the applicability of mandatory minimum sentences. *See* Wash. Rev. Code Ann. § 9.94A.540(3) (West 2006).[9]

E. Respondent's attempt to justify petitioner's sentence on an incapacitation theory is unavailing.

Respondent does not seriously challenge the overwhelming evidence that severe sentences (such as the one imposed on petitioner) have no additional deterrent effect on young children (beyond the deterrent effect that a much shorter sentence would have had). *See* Pet. 24-25; JLC Br. 17-19; Scientific Experts' Br. 25-27; Judges' Br. 15-16. Nor does it challenge the overwhelming evidence that such severe sentences greatly exceed the level necessary to punish young children in view of their diminished culpability. *See* Pet. 21-24; JLC Br. 15-17. Respondent instead adopts an incapacitation theory, suggesting that severe sentences can be justified by the need to protect society from the continuing danger that these children pose. *See* Opp. 11. That argument is unfounded.

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[9] The Washington Legislature's findings accompanying the amendment highlight the underlying policy:

> The legislature finds that emerging research on brain development indicates that adolescent brains, and thus adolescent intellectual and emotional capabilities, differ significantly from those of mature adults. It is appropriate to take these differences into consideration when sentencing juveniles tried as adults. The legislature further finds that applying mandatory minimum sentences for juveniles tried as adults prevents trial court judges from taking these differences into consideration in appropriate circumstances.

2005 Wash. Legis. Serv. ch. 437(1) (H.B. 1187).

Most significantly, empirical evidence overwhelmingly demonstrates that transferring young children to the adult criminal justice system is counter-productive. Not only does this strategy fail to protect society from future violence, it actually leads to a significant increase in violence. A task force appointed by the Director of the Centers for Disease Control and Prevention recently published its findings based on an analysis of all the available scientific literature on the effects of transferring juveniles to the adult system (where longer incapacitation is possible). The evidence that a transfer decision is likely to result in *increased* violence and recidivism was so clear that the task force issued an unusually strong recommendation against the practice. *See* Centers for Disease Control, *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System*, November 30, 2007 (available at: http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5609a1.htm).

As several of the amici have explained, the most effective way to protect society is to treat juvenile offenders in the juvenile system. The Council of Juvenile Correctional Administrators, for example, described several successful programs designed to treat youth convicted of murder and other serious violent offenses. CJCA Br. 13-15. The juvenile judges discuss several specific examples of violent young offenders—including one who killed a random stranger with a rifle from a range of over 200 feet—whose histories demonstrate that even those who commit the most gruesome, senseless offenses can succeed in the juvenile system's rehabilitation programs and become upstanding citizens. Judges' Br. 17-20.

To the extent that incapacitation is necessary to secure public safety,[10] the goal can be accomplished more effectively by alternatives that do not offend the Eighth Amendment. Under

[10] Some incapacitation of violent youth—while they remain a threat to society—would be justified in appropriate cases. But in view of the well-recognized capacity for change in young children, extreme sentences such as petitioner's will incapacitate offenders far longer than is necessary for public safety. *See, e.g.*, JLC Br. 19-21. In any event, for this rationale to be valid, sentencing judges must have discretion to decide which youth are likely to remain a threat to society and for how long, or (under a blended sentencing system) discretion to decide which youth remain a threat to society when they attain their majority and a decision is made either to release them or to send them to the adult system. Otherwise long sentences are simply a pointless infliction of punishment.

a "blended sentencing" scheme,[11] for example, the sentencing judge first has the discretion to identify offenders for whom longer terms might be necessary, based on the information available after trial and conviction. That judge then has a second opportunity to exercise discretion—the chance to take a "second look"—after the offender has participated in the juvenile system's rehabilitation program, usually at the age of majority. Offenders who succeed in the program (which is common both because of a child's capacity for change and the incentive created by the promise of a "second look") can be released to become productive members of society. *See, e.g.*, Judges' Br. 17-20 (describing violent young offenders who succeeded in rehabilitation programs). Offenders who do not succeed, and thus require further incapacitation, can be transferred to the adult system to serve the adult portion of their sentence.

To be sure, the Eighth Amendment does not require blended sentences, or any other specific approach to sentencing. The point here is simply that it is possible to protect public safety while respecting the Eighth Amendment. States have a wide range of constitutional options. Even a robust parole system could be sufficient in some circumstances to satisfy the demands of the Eighth Amendment. If an independent decision-maker has the power to evaluate progress after the offender has participated in rehabilitation programs and the power to release those who have succeeded in their programs (and for whom further incarceration would serve no valid penological purpose), then the constitutional problems of mandatory minimum sentences without possibility of parole for young children (as in South Carolina) could be avoided.

Respondent's incapacitation argument is particularly unpersuasive in the context of a preadolescent child. In view of the overwhelming scientific evidence about brain development and a child's capacity for change, it is impossible to predict at such a young age whether long-term

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[11] Respondent's discussion of "'blended' sentences" (Opp. 32) suggests that it misapprehends the meaning of the term. The juvenile judges explain blended sentences and discuss various models that have been successfully adopted in different states. *See* Judges' Br. 21-24.

incapacitation will be necessary. These problems are compounded when there is no opportunity to reconsider the decision through a mechanism such as blended sentencing or parole.

II. The extreme sentence in this case violates the Eighth Amendment because the sentencer was precluded from considering petitioner's age as a mitigating factor.

Notwithstanding respondent's bald assertion, Opp. 31, petitioner has clearly preserved his argument that the imposition of a *mandatory minimum* penalty of 30 years without possibility of parole—with no discretion on the part of the sentencing judge to impose a lesser sentence based on his youth—violates the Eighth Amendment. At the early stages of the case, petitioner argued that the Eighth Amendment precluded his transfer to adult court on the ground that South Carolina law would subject him to a mandatory minimum sentence of at least 30 years without possibility of parole. *See* Pet. 7; Pet. App. 103a-22a. After his conviction, petitioner renewed this challenge, arguing again that the trial court's lack of discretion at the sentencing stage was unconstitutional. *See* Pet. 8; Pet. App. 125a. After sentencing, he again asserted (in his motion to reduce sentence) that the state's scheme violated the Eighth Amendment by requiring "a minimum prison sentence for thirty years." *See* Pet. 8; Pet. App. 129a-52a. On appeal, petitioner reasserted his Eighth Amendment claim regarding the lack of sentencer discretion, claiming that the "inflexible sentencing requirement" violated the Eighth Amendment. *See* Pet. 8-9; Pet. App. 169a-87a. In short, petitioner has preserved his claim that the Eighth Amendment requires some mechanism at sentencing for considering a 12-year-old's reduced culpability before permitting the imposition of a sentence as severe as the one imposed in this case.[12]

Even if—contrary to the actual record in this case—petitioner had failed to expressly argue that the Eighth Amendment precludes the application of 30-year mandatory minimum sentences for 12-year-old children, this Court could address any argument, old or new, sup-

[12] Respondent's invocation of *Bailey v. Anderson,* 326 U.S. 203 (1945), in which this Court refused to entertain a claim never made or resolved below in constitutional terms, is plainly inapplicable.

porting his underlying constitutional claim. *Yee v. City of Escondido*, 503 U.S. 519, 534 (1992) ("Once a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below."). The underlying claim here, that the Eighth Amendment forbids the application of South Carolina's adult sentencing scheme to petitioner, was clearly before the South Carolina Supreme Court and rejected by that court as a matter of federal constitutional law.

On the merits of the claim, respondent does not dispute the extraordinary rarity of South Carolina's scheme in subjecting children as young as 12 to mandatory minimum sentences. *See* Pet. 31 (noting that only eight states other than South Carolina have a statutory scheme in which a 12-year-old could be tried as an adult and subject to a mandatory minimum sentence of at least 30 years without possibility of parole). Respondent instead asserts that petitioner's youth was adequately considered in the transfer hearing and in the trial court's decision to impose concurrent 30-year sentences rather than consecutive life sentences. Opp. 32. Despite this conclusory assertion, neither the transfer hearing nor the sentencing proceeding allowed any meaningful consideration of petitioner's youth especially as it bore on his reduced culpability for his offense.

We have already explained why the transfer hearing was an inadequate vehicle for considering petitioner's youth as it bears on reduced culpability and appropriate punishment. *See* Pet. 33-36. The juvenile judges (who have conducted innumerable transfer hearings in their own states) also explain in their amicus brief why a transfer hearing can never be an adequate substitute for giving appropriate discretion to the sentencing judge. *See* Judges' Br. 8-11; *see also* CJCA Br. 8 (discussing inadequacy of petitioner's transfer hearing). Respondent does not even attempt to rebut these explanations.

The inadequacy of the transfer hearing to consider petitioner's youth was not redressed by the sentencing court's ability to choose between two extremely harsh punishments. The trial

court's residual discretion to choose between a 30-year sentence and a life sentence—a discretion available to the trial court when sentencing *adult* offenders—is no substitute for discretion to treat petitioner *differently* in light of his reduced culpability attributable to his youth. Indeed, the trial judge lamented his inability to sentence petitioner to less than the mandatory minimum 30-year sentence. *See* App. 70a.

III. The Eighth Amendment prohibits the imposition of a mandatory 30-year sentence without possibility of parole on a 12-year-old child absent evidence of the legislature's clear intent to authorize such a sentence.

Despite respondent's unsupported contention to the contrary, Opp. 31, petitioner has adequately preserved the argument that his sentence is unconstitutional because the statutory scheme under which it was imposed does not evince the state legislature's clear intent to authorize such a punishment. *See, e.g.*, Petitioner's State Supreme Court Br. 33-34 (arguing that the state legislature had not "unambiguously" expressed the intent to extend S.C. Code Ann. § 20-7-7605(6) to 12-year-old children); *id.* at 34-35 (arguing that transfer statute should be construed in light of the ambiguity to avoid Eighth Amendment problems).

In any event, this argument is merely one way of supporting the general claim that the sentence violates the Eighth Amendment. Because the Eighth Amendment claim is admittedly preserved, this argument in support of that claim is also preserved. *See Yee*, 503 U.S. at 534. Indeed, in the very case in which this argument was first articulated (and adopted in the controlling opinion), *see Thompson v. Oklahoma*, 487 U.S. 815 (1998) (O'Connor, J., concurring in the judgment), the petitioner preserved his general Eighth Amendment claim but did not make this specific argument even to this Court.

On the merits, this case presents the same constitutional infirmity as did *Thompson*, yet in more striking form. *See* Pet. 36-38. Respondent's only answer is an attempt to justify the South Carolina Supreme Court's tortured interpretation of the transfer statute, Pet. App. 88a-89a. We

recognize, of course, that this interpretation is definitive for present purposes, *see* Pet. 38 n.23, just as the Oklahoma Court of Criminal Appeals' interpretation of the Oklahoma statute was definitive in *Thompson*. But it is still a tortured interpretation, for the statute lacks the "earmarks of careful consideration" required of harsh punishments of "dubious constitutionality." *Thompson*, 487 U.S. at 857 (O'Connor, J., concurring in the judgment). This is so because the transfer statute, as construed by the South Carolina Supreme Court, specifies no minimum age for the transfer of a juvenile in a murder case to the adult court. As in *Thompson*, the statute provides no clear legislative endorsement of the decision to subject 12-year-old children to severe mandatory minimum penalties.

IV. This case raises an important Eighth Amendment issue that this Court should resolve, and offers the Court an excellent vehicle for resolving that issue.

The petition (at 39-40) explains that the present case raises an important Eighth Amendment issue that this Court should resolve, noting the inherent importance of providing guidance on what role considerations of diminished culpability due to youth should play in Eighth Amendment challenges to sentences of imprisonment; the need to resolve long-standing and deepening disagreements and confusion among the lower courts on the legal relevance of youth to the Eighth Amendment inquiry in the non-capital context; and the need to avert the great harm that would result if the error below were not corrected.

In addition, the filing of five amicus briefs—most of which were filed by multiple amici—underscores the significant impact that this Court's decision would have in this case:

- Juvenile judges with national reputations in the field who have substantial experience in dealing with and writing about the issues raised in this case argue that "[i]mmediate review is needed on this important constitutional question." Judges' Br. 2.

- The Juvenile Law Center and 14 other organizations specializing in juvenile issues describe the questions presented as ones "of exceptional importance" that they strongly urge this Court to resolve. JLC Br. 2.
- Seven scientific experts who specialize in child and adolescent psychology, child and adolescent brain development, and juvenile justice stress the "important opportunity" that this case provides on "the weighty issue of sentencing proportionality," Scientific Experts' Br. 5, and urge this Court to grant certiorari.[13]
- The Council of Juvenile Correctional Administrators, which represents the youth correctional CEOs in all 50 states (including South Carolina), argue that the case "presents an important opportunity for the Court" to determine whether the South Carolina system "provide[s] sufficient consideration of an offender's youth and his potential for rehabilitation," CJCA Br. 9, to reaffirm the *Simmons* decision, *id.* 8-9, and to ensure that sentencing decisions are consistent with fundamental principles, *id.* 20.
- Five organizations specializing in international law and human rights describe "[t]he importance of the issue" in this case to the broader international community, Int'l Br. 1, and urge this Court to grant certiorari.

Respondent does not disagree with any of the statements that petitioner and amici made about the importance of the case. Any such disagreement would be implausible, particularly when the South Carolina Supreme Court (whose judgment respondent defends) implicitly recognized the question presented as "an issue of significant public interest or a legal principle of major importance." *See* Pet. 39 (quoting South Carolina Appellate Court Rules, Rule 204(b)). Indeed, respondent goes further and agrees with petitioner that the lower courts have reached

[13] The scientific experts argue, "This case presents the Court the opportunity to resolve the very important issue of the applicability of the *Roper* [*v. Simmons*] principles .... Without such review, lower courts will be left without sufficient guidance to address the validity of sentencing practices that are inconsistent with ... principles of fair criminal punishment...." Scientific Experts' Br. 9-10.

differing conclusions on the central issues in this case. *See, e.g.*, Opp. 8 ("[A] number of courts have . . . held that age should not be considered in proportionality analysis. . . . Other courts have concluded the opposite.").

Respondent's argument about the proper analysis to apply, Opp. 25-26, helps to further crystallize the reason that review by this Court is so important now. Just as the lower courts are in disagreement about whether age should be considered in proportionality analysis, respondent's brief shows that it is not clear whether a court applying the Eighth Amendment should focus on the offender's age, those of similar age, or those of the same common-law age classification.

The petition (at 39) and several of the amici also explain why the present case offers the Court an excellent vehicle for resolving that question. Respondent does not voice disagreement with any of those explanations, or offer any reason to doubt that conclusion.

CONCLUSION

For the foregoing reasons and those stated in the petition, the petition for writ of certiorari should be granted.

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