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Juvenile Life Sentences: Constitutionality of Life Without Parole for Teenage Murderers

Charles D. Stimson and Elizabeth Garvey

On Tuesday, March 20, the Supreme Court hears oral argument in two cases involving the constitutionality of sentences of life without parole (LWOP) for teenage murderers. The real issue before the Court is this: Will the Court again "find" or "invent" a heretofore undiscovered constitutional prohibition and thus strike an entire category of sentences for the most violent teenagers, or will it defer to the carefully considered judgment of the vast majority of the states (39) and federal government that have decided to authorize the sentence in appropriate cases?

The Two Cases. In the first case (*Miller v. Alabama*), Evan Miller was 14 years old when he robbed and repeatedly beat an intoxicated neighbor with a baseball bat then set the man's trailer on fire and left him to die. The juvenile court, under state law, transferred Miller to adult court based on the nature of the crime, his previous delinquency history, and the fact that he was deemed competent to stand trial. Miller was found guilty of capital murder. Since he was 14 at the time of the crime, Miller was not eligible for capital punishment but rather Alabama's mandatory minimum sentence of LWOP.

In the second case (*Jackson v. Hobbs*), Kuntrell Jackson was also 14 when he and two other teenagers attempted to rob a video store. Jackson knew one of his accomplices had a sawed-off shotgun and threatened the female store clerk before one of the other teenagers shot her in the face and killed her. Jackson was tried in adult court, where he was found guilty of capital murder and aggravated robbery and sentenced to LWOP under Arkansas state law.

An "Evolving Standard of Decency." In petitioning the Supreme Court, both Miller and Jackson argue that their LWOP sentences amount to cruel and unusual punishment in violation of the Eighth Amendment. These cases present the High Court with yet another opportunity to chip away at the states' framework for dealing with violent teenagers such as Miller and Jackson.[1]

In *Roper v. Simmons* (2005), the Court found the death penalty for teenage murderers unconstitutional because those sentences supposedly violated the "cruel and unusual punishment" standard of the Eighth Amendment. Five years later, in *Graham v. Florida* (2010), the Court banned the use of LWOP sentences for teenagers who committed violent crimes other than murder, citing the same reason.

Over time, the Court has grafted onto "cruel and unusual punishment" a requirement that punishments reflect the "evolving standards of decency that mark the progress of a maturing society." And the Court has granted to itself the sole duty of deciding those "evolving standards of decency" rather than deferring to society itself, as reflected through elected, accountable representatives of (in this case) 39 states and the U.S. Congress. Advocates for the murderers are hoping that the Court applies the "evolving standards of decency" and finds LWOP sentences for teenage murderers unconstitutional. The states of Alabama and Arkansas, the National District Attorneys Association (NDAA), and victim's rights organizations are hoping that the Court draws a line for common sense and defers to the considered

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The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002–4999
(202) 546-4400 | heritage.org

wisdom and constitutional authority of the states to fashion appropriate sentences for the worst of the worst.

A National Consensus. The vast majority of juveniles who commit crimes are tried in the juvenile justice system. Every state has a separate juvenile justice system to deal with juvenile crimes. Those systems exist because American society believes that most teen criminals can be rehabilitated—or at least should be given the opportunity to try to reform their ways. That is smart public policy. Thus, there is a national consensus that most juveniles belong in the juvenile justice system.

But there is another national consensus: that a small percentage of the worst teen offenders—a small percentage of teen murderers—should be waived and/or tried in adult court. And a small percentage of those who are convicted of the worst crimes should be eligible for LWOP.

In general, the Supreme Court looks for trends or a national consensus to determine the progress of American society as it matures. There are strong figures to support the use and constitutionality of LWOP sentences. Currently, 39 jurisdictions allow teenagers 14 years and older to receive LWOP sentences for aggravated murder, and 26 states and the federal government make LWOP the mandatory minimum sentence when a 14-year-old defendant is tried in adult court and convicted of aggravated murder. But LWOP is reserved for the most serious offenders.

As Jackson admits in his brief to the Supreme Court, approximately 79 individuals who committed offenses at age 13 or 14 have been sentenced to LWOP since the imposition of the first LWOP sentence in 1971.

The fact that some 79 teenagers have been deemed deserving of LWOP in over 40 years is significant; it indicates that the criminal justice system has worked effectively, ensuring that only those teenagers who commit the most heinous aggravated murders receive LWOP sentences. A number of checks within the system have made this possible, from the discretion of juvenile courts to transfer teenagers to adult court or keep them in the juvenile system to prosecutors' selection of which charges appropriately correspond with the gravity of the crime. Advocates for Miller and Jackson have no meaningful rebuttal to these facts.

Additionally, they argue that there is a "consensus" within the scientific community that teenagers (or "children" as they call them) are "unfinished products" with limited foresight and are generally less culpable for their actions. In other words, they are not mature enough to make rational and intelligent decisions and thus should not be subjected to the sentence of LWOP when tried as adults.

But as the NDAA argues in its *amicus* brief, constitutional prohibitions should not be based on social science. Whether or not LWOP sentences are appropriate should be left to the state legislatures to determine, since they are accountable to their electorates.

Murder Is Murder. In *Graham v. Florida*, the Court noted that there is a difference between homicides and non-homicides and thus struck down the sentence of LWOP for teenagers who committed violent non-homicides. Writing for the majority, Justice Anthony Kennedy said:

> The Court has recognized that defendants who do not kill, intend to kill, or foresee that life will be taken are categorically less deserving of the most serious forms of punishment than are murderers. ... There is a line between homicide and other serious violent offenses against the individual. ... Serious non-homicide crimes ... in terms of moral depravity and of the injury to the person and to the public ... cannot be compared to murder in their severity and irrevocability. ... Although an offense like robbery or rape is a serious crime deserving serious punishment, those crimes differ from homicide crimes in a moral sense.[2]

Thus, the Court has previously drawn a line between crimes that result in death and all others. The Court should preserve this distinction and rule in favor of Alabama, Arkansas, and the 37 other states that currently allow the use of LWOP sentences for teenagers convicted of aggravated murder. As the numbers demonstrate, there is a national consensus that LWOP sentences are appropriate for certain homicides.

Ultimately, though, such policy considerations are better left to state legislators, who are accountable representatives to their constituents, rather than the justices, who should be determining the requirements of

1. For profiles on a number of teenage killers, see Charles D. Stimson and Andrew Grossman, "Adult Time for Adult Crime: Life Without Parole for Juvenile Killers and Violent Teens," Heritage Foundation *Special Report* No. 65, August 17, 2009, at *http://www.heritage.org/research/reports/2009/08/adult-time-for-adult-crimes-life-without-parole-for-juvenile-killers-and-violent-teens.*
2. Graham v. Florida, 560 U.S. ___ (2010) (internal citation omitted).

law and not bending the Constitution to comport with their policy preferences.

*—**Charles D. Stimson** is a Senior Legal Fellow and **Elizabeth Garvey** is a Legal Policy Analyst in the Center for Legal & Judicial Studies at The Heritage Foundation.*