

Nos. 08-7412 & 08-7621

IN THE
Supreme Court of the United States

TERRANCE JAMAR GRAHAM,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

JOE HARRIS SULLIVAN,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

**ON WRITS OF CERTIORARI TO THE
DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT**

**BRIEF OF *AMICI CURIAE* OF THE AMERICAN ASSOCIATION OF JEWISH
LAWYERS AND JURISTS, AMERICAN CATHOLIC CORRECTIONAL
CHAPLAINS ASSOCIATION, AMERICAN CORRECTIONAL CHAPLAINS
(Continued on inside cover)**

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IN SUPPORT OF PETITIONERS

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INTEREST OF AMICI CURIAE

A coalition of Christian, Jewish, Muslim, and Buddhist religious organizations and individuals join here as amici curiae on behalf of Petitioners Joe Harris Sullivan and Terrance Jamar Graham.¹ Amici's faith traditions, while varied and diverse, all agree that it is morally unjustifiable to sentence juveniles convicted of non-homicide offenses to life imprisonment without the possibility of parole. The imposition of such a harsh punishment on youth contravenes contemporary standards of decency and, as such, violates the Eighth Amendment's guarantee against cruel and unusual punishment.

Individual statements of interest are provided in the Appendix to the Brief.

SUMMARY OF ARGUMENT

Amici, despite the highly nuanced and well-publicized differences in theology and moral outlook within and among Christianity, Judaism, Islam, and Buddhism, unite to object to the imposition of life imprisonment without the possibility of parole on juveniles convicted of non-homicide offenses. First, amici's faith traditions, secular law generally, and contemporary American society all accord juveniles

¹ Counsel of record for all parties received notice of amici curiae's intention to file this brief. Letters of consent by the parties to the filing of this briefing have been lodged with the Clerk of this Court. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amici curiae, its members, or its counsel made a monetary contribution to its preparation or submission.

special treatment because of their unique status. Juveniles are still developing and maturing; they do not grasp the full consequences of their actions, and therefore are less morally culpable for their conduct and less susceptible to deterrents. Sentencing a juvenile to die in prison callously disregards this special status and diminished capacity. Second, amici's fundamental religious texts teach that all individuals are deserving of mercy, forgiveness, and compassion. This is particularly true of members of vulnerable populations, such as children. Imposing such a punitive sentence on youth—especially those who, like Mr. Sullivan, committed non-homicide offenses when they were only thirteen years old—is to act without regard to any such considerations. Finally, life imprisonment without the possibility of parole is a sentence that conflicts with the concept of restorative justice, which is embraced by all of amici's faith traditions, because it denies juvenile offenders the possibility of meaningfully rehabilitating and redemption.

Juvenile offenders should not be rendered immune from punishment. However, amici cannot endorse subjecting youth who commit non-homicide offenses to the permanent condemnation of a sentence of life imprisonment without the possibility of parole. Such an overly harsh punishment cannot be reconciled with the fundamental values espoused by amici's religious traditions and is contrary to contemporary standards of decency. Accordingly, it violates the Eighth Amendment's prohibition against cruel and unusual punishment.

ARGUMENT

I. The Perspectives of Religious Organizations Are Important to This Court's Interpretation of the Eighth Amendment

The Eighth Amendment's prohibition against cruel and unusual punishment is not a static doctrine "fastened to the obsolete," *Thompson v. Oklahoma*, 487 U.S. 815, 821 (U.S. 1988) (quoting *Weems v. United States*, 217 U.S. 349, 378 (1910)), but should be interpreted according to "the evolving standards of decency that mark the progress of a maturing society." *Roper v. Simmons*, 543 U.S. 551, 561 (U.S. 2005) (quoting *Trop v. Dulles*, 356 U.S. 86, 101 (1958) (plurality)).

The importance of a society's religious organizations' views on issues of morality, crime, and punishment to that society's standards of decency is well recognized. Indeed, "[f]or the vast majority of humankind, crime, punishment, and reform are still inextricably bound up with religious views about sin, judgment, and forgiveness." David R. Loy, *Healing Justice: A Buddhist Perspective*, in *The Spiritual Roots of Restorative Justice*, 81 (Michael L. Hadley ed., 2001). There are few, if any, institutions that can claim a greater tradition of working with and studying the conscience of the human person and related questions of guilt, blame, and suffering than those of the religious community.

This Court has frequently taken notice of the opinions of religious organizations when confronting

issues involving contemporary standards of decency and morality. For example, in *Atkins v. Virginia*, this Court cited the brief of amici curiae filed by the United States Conference of Catholic Bishops and other religious organizations as “evidence” of a broad “social and professional consensus” against the execution of persons with mental retardation. 536 U.S. 304, 316 n.21 (2002); see also *Stanford v. Kentucky*, 492 U.S. 361, 388 n.4 (1989) (Brennan, J. joined by Marshall, Blackmun, and Stevens, JJ., dissenting) (relying on the opinion of a coalition of religious groups when considering the constitutionality of the juvenile death penalty).

Amici, as members of the religious community, are uniquely positioned to provide invaluable guidance regarding the issue presented in these cases: whether sentencing juveniles to life imprisonment without the possibility of parole for non-homicide offenses is contrary to contemporary standards of decency and therefore violates the Eighth Amendment’s prohibition of cruel and unusual punishment. Their religious traditions—Christianity, Judaism, Islam, and Buddhism—have played influential roles in societal discourses about morality and criminal punishment throughout history, and continue to do so today. An overwhelming majority of Americans continue to rely on the teachings and instructions of these faith traditions on matters of morality and justice.²

² According to the 2008 American Religious Identification Survey, nearly 80% of American adults identified themselves as an adherent of at least one of the religious traditions represented by amici. Barry A. Kosmin & Ariela Keysar, *American Religious Identification Survey (2008)*, http://www.americanreligionsurvey-aris.org/reports/ARIS_Report_2008.pdf.

For the reasons set forth below, amici unanimously assert that imposing life imprisonment without the possibility of parole on juveniles convicted of non-homicide offenses is contrary to the values and beliefs of the faith traditions they represent. Such a punishment violates contemporary standards of decency and, accordingly, must be held unconstitutional.

II. Sentencing Juvenile Offenders to Life Imprisonment Without the Possibility of Parole for Non-Homicide Crimes Disregards the Special Status That Juveniles Are Accorded Due to Their Diminished Capacity

Juveniles are not simply small adults. They are still in the process of mental and physical development. They lack the wealth of life experience, appreciation of the consequences of their actions, and the maturity that adults possess. Consequently, juveniles are recognized as less able to control their impulses and to conform their conduct to the requirements of civilized society and as more likely to make poor decisions.

Throughout human history, social institutions and societies themselves have drawn distinctions between the behavior that is expected of children and of adults and have imposed different consequences when those expectations are not met. In particular, all of the religions represented by amici have recognized juveniles' special developmental status, assigned them less moral culpability, and accorded them more lenient treatment in criminal matters. Secular law at the state, federal, and international levels mirrors these distinctions. To condemn juveniles who commit non-

homicide offenses to spend their entire lives incarcerated is to disregard the accumulated experience of all of these societal institutions. Doing so is an act so far outside of the moral standards of modern American society as to constitute cruel and unusual punishment.

A. Christianity, Judaism, Islam, and Buddhism Accord Juveniles Special Treatment on Account of Their Lesser Mental Sophistication, Both Generally and with Respect to Criminal Matters in Particular

The fact that children are less mature and responsible than their adult counterparts is well-recognized within all of amici's religious traditions.³ Children's view of the world, their understanding of moral behavior, and the degree to which they are able to comprehend the consequences of their actions, are far more limited than those of adults. As noted in the New Testament: "When I was a child, I spoke as a child, I understood as a child, I thought as a child: but when I became a man, I put away childish things." 1 Corinthians 13:11. Likewise, the Prophet Muhammad is recorded to have said that "the pen (of legal capacity and legal obligation) has been lifted from three (classes): the insane, until he regains intellectual capacity, the minor

³ Admittedly, variation exists among and within amici's various religions as to the exact age when one ceases being a juvenile and becomes an adult. *See, e.g.*, 4 Al-Fiqh al-Islami wa Adillatuh (Islamic Jurisprudence and its Proofs) (11 volumes) 2971 (Damascus: Dar al-Fikr al-Mu'asser, 1997) (looking to local culture to determine the line between being a juvenile and adulthood). This does not detract from the larger point, however, that all of amici's faith traditions draw this distinction.

until he reaches the age of majority, and the sleeping person until he awakens.” 4 ‘Abd al Ghafar Sulayman al-Bandari (ed.) Sunan al-Nasa’i al-Kubra li Ahmad ibn Shu’ayb al-Nasa’i 324 ##7346 (Beirut: Dar al-Kutub al-‘Ilmiya, 9th century reprint 1991).

These distinctions have been enshrined within amici’s religious doctrines, as evidenced in the Talmud, which explains that because minors have limited mental capacity they are to be excluded from certain ritual activity: for example, they are prohibited from writing particular legal documents unless an adult co-writes such documents, and they are exempted from certain religious obligations. *Babylonian Talmud* (“BT”) *Hagiga* 2b; *BT Gittin* 23a. Similarly, Islamic law states that minors are inherently deficient in judgment until they reach the age of majority. 8 Al-Mawsu’ah al-Fiqhiyyah 195-196 (Kuwait: Ministry of Awqaf [Religious Endowments], 1995).

Religious teachings concerning crime and punishment uniformly accord juveniles special treatment in light of their partially developed mental and moral state. It is a point of consensus in the Islamic legal tradition, for example, that minors as a class are not considered to hold full legal capacity and are therefore exempt from legal obligations and severe penalties. Al-Mawsu’ah al-Fiqhiyyah, *supra*, at 196. Consequently, the Islamic legal tradition prohibits the imposition of lifetime imprisonment without the possibility of parole on minors, as it is considered to be an extreme punishment greater than any crime that could be committed by an individual lacking full legal capacity. Similarly, minors, as a class, are also exempt

from the most dire forms of punishment under Jewish law. *BT Sanhedrin* 52b, 54a, 54b.

B. The Distinctions Drawn by Christianity, Judaism, Islam, and Buddhism with Respect to Juveniles Are Supported by Science and Mirrored in State and Federal Law, As Well As the Laws of Other Nations

Amici's faith traditions are not alone in according juveniles special treatment; society at large recognizes the meaningful differences between adults and juveniles. Scientific studies, for example, have confirmed what we all know from experience: the brain continues to develop through late adolescence, as do core mental functions like planning, judgment and emotional control. See Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, *American Psychologist* 58(12) 1009-18 (Dec. 2003).⁴ These findings have led

⁴ See also MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice, Issue Brief 3: *Less Guilty by Reason of Adolescence* (2006), available at http://www.adjj.org/content/page.php?cat_id=2&content_id=28; Human Rights Watch, *The Rest of Their Lives: Life without Parole for Child Offenders in the United States* (Oct. 2005) (citing Jay N. Giedd, et al., *Brain Development During Childhood and Adolescence: A Longitudinal MRI Study*, 2 *Nature Neuroscience* 861(1999) and Kenneth K. Kwong, et al., *Dynamic Magnetic Resonance Imaging of Human Brain Activity During Primary Sensory Stimulation*, 89 *Proceedings of the National Academy of Science* 5675 (1992)), available at <http://www.hrw.org/sites/default/files/reports/TheRestofTheirLives.pdf>.

researchers to conclude that juveniles should not be held to the same standards of criminal responsibility as adults, because adolescents' decision-making capacity is diminished, they are less able to resist coercive influence, they do not fully appreciate the negative consequences of their actions, they are less susceptible to deterrents, and their character is still developing. *See id.*

American law also draws many distinctions between adults and juveniles on account of children's reduced mental development. All fifty states have established minimum age requirements to vote,⁵ marry,⁶ join the military,⁷ obtain a driver's license,⁸ and consume alcohol.⁹ The federal government makes similar distinctions, and even the United States Constitution itself imposes minimum age limitations for elected officials.¹⁰ Underlying all of these laws is our collective belief that the physical and mental immaturity of youth requires special treatment because individuals are only able to

⁵ *See, e.g.*, Cal. Elec. Code § 2000 (2008); Fla. Stat. Ann. § 97.041 (2009); 25 Pa. Stat. Ann. § 2811 (2008).

⁶ *See, e.g.*, Ind. Code § 31-11-1-4 (2009); Wash. Rev. Code § 26.04.010 (2009); Ohio Rev. Code Ann. § 3101.01 (2009).

⁷ *See, e.g.*, Ga. Code Ann. § 38-2-3 (2009); N.Y. Mil. Law § 2 (Consol. 2009); 20 ILL. Comp. Stat. Ann. 1805/1 (2009).

⁸ *See, e.g.*, Conn. Gen. Stat. § 14-36 (2009); Del. Code Ann. tit. 21, § 2710 (2009); Minn. Stat. § 171.04 (2009).

⁹ *See, e.g.*, Vt. Stat. Ann. tit. 7, § 658 (2009); N.C. Gen. Stat. § 18B-302 (2009); R.I. Gen. Laws § 3-8-4 (2009).

¹⁰ U.S. Const. art. I, §§ 2, 3; U.S. Const. art. II, § 1.

understand and anticipate the consequences of their actions upon the transition from childhood to adulthood. Indeed, this Court, in reversing a sentence of capital punishment for a defendant who was sixteen at the time he was convicted, has acknowledged the important differences between juveniles and adults:

[Y]outh is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage. Our history is replete with laws and judicial recognition that minors, especially in their earlier years, generally are less mature and responsible than adults. Particularly, “during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment” expected of adults.

Eddings v. Oklahoma, 455 U.S. 104, 115-16 (1982) (quoting *Bellotti v. Baird*, 443 U.S. 622, 635 (1979)) (footnotes omitted); see also *Roper v. Simmons*, 543 U.S. 551, 569 (U.S. 2005) (relying on the “general differences between juveniles under 18 and adults” to hold that imposing the death penalty on any juvenile offender violated the Eighth Amendment).

The laws of other nations also recognize the special status of juveniles, as does international law. Essentially all nations have laws that, like the American laws

discussed above, restrict certain rights to adults because of their increased maturity and mental development.¹¹

This international consensus regarding juveniles' developing status has also translated into universal special treatment for juveniles under criminal laws. To take one example, the United Nations General Assembly has adopted a sequence of resolutions stating that the primary aim of juvenile justice is not retribution but promoting the well-being of the juvenile, that long-term incarceration of juveniles does them great harm, and that confinement shall be imposed on juveniles for the shortest possible period, and only as a last resort. *See* G.A. Res. 40/33, U.N. GAOR, 40th Sess., U.N. Doc. A/RES/40/33 (1985) (1985 Beijing Rules); G.A. Res. 45/113, U.N. GAOR, 45th, Sess., 68th plen. mtg., U.N. A/RES/45/113 (1990) (1990 U.N. Rules for the Protection of Juveniles Deprived of Their Liberty); G.A. Res. 45/112, U.N. GAOR, 45th Sess., Supp. No. 49A, at 201, U.N. Doc. A/45/RES/112 (1990) (1990 Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)). In addition, the Convention on the Rights of the Child, ratified by every nation except for the United States and Somalia, requires signatory states to give juveniles special treatment in criminal justice matters. *See, e.g.*, Convention on the Rights of the Child,

¹¹ *See, e.g.*, Armed Forces Act, 2006, c. 52, § 328 (providing minimum age requirements for persons enlisting in the military in the United Kingdom), *available at* http://www.opsi.gov.uk/acts/acts.2006/pdf/ukpga_20060052_en.pdf; Austl. Cap. Terr. Consolidated Acts, Liquor Act 1975, Part 10, Division 10.2, § 151-58 (establishing minimum age requirements for drinking alcoholic beverages in Australia), *available at* http://www.austlii.edu.au/au/legis/act/consol_act/la1975107/.

G.A. Res. 44/25, U.N. GAOR, 44th Sess., art. 37(c), U.N. Doc. A/RES/44/25 (1989; entry into force Sept. 2, 1990). (“Every child deprived of liberty shall be treated . . . in a manner which takes into account the needs of persons of his or her age.”).

Further, there is near consensus among nations that it is never appropriate to sentence juvenile offenders to life imprisonment without the possibility of parole. The Convention on the Rights of the Child prohibits sentencing children to life imprisonment without the possibility of release for any crime, including homicide offenses. *Id.* art. 37(a). The United Nations General Assembly recently passed a resolution calling for the immediate elimination of sentences of life imprisonment without the possibility of release for all juveniles. G.A. Res. 61/146, ¶ 31, U.N. GAOR, 61st Sess., U.N. Doc. A/RES/61/146 (2007).

According to a recent report, the United States is one of only two countries in which individuals who committed their underlying offenses while minors are currently serving such sentences. Center for Law and Global Justice, University of San Francisco School of Law, Report on Human Rights Violations, *Sentencing Our Children to Die in Prison*, Global Law and Practice 4 (2007). Subjecting juvenile offenders—particularly those who have not committed homicide offenses—to sentences that guarantee they will spend their entire lives incarcerated is far outside of international practice in every other nation in the world. *See also Roper v. Simmons*, 543 U.S. 551 (2005) (“It does not lessen our fidelity to the Constitution or our pride in its origins to acknowledge that the express affirmation of certain

fundamental rights by other nations and peoples simply underscores the centrality of those same rights within our own heritage of freedom.”).

C. Sentencing Juveniles to Life Imprisonment Without the Possibility of Parole for Non-Homicide Offenses Constitutes Cruel and Unusual Punishment Because It Disregards the Longstanding Societal Consensus That Juveniles Merit Special Treatment

To impose the punitive sentence of life imprisonment without the possibility of parole—the most severe punishment in the American criminal justice system, other than capital punishment, *see Solem v. Helm*, 463 U.S. 277, 303 (1983)—on individuals under the age of eighteen is to ignore the special status that juveniles hold in our society due to their immaturity and inexperience. Mr. Graham was only sixteen years old at the time he committed the underlying offense that led to his sentence of life imprisonment without the possibility of parole; Mr. Sullivan was only thirteen years old when he committed his offense. Condemning Mr. Graham, Mr. Sullivan, and similar offenders to die in prison without the possibility of ever becoming eligible for release stands in clear violation of amici’s religious traditions.

Such a punishment is especially inappropriate for juvenile offenders like Mr. Sullivan and Mr. Graham because their crimes, while grave, were non-homicides. Mr. Sullivan is one of only two thirteen-year-olds in the United States to have received such a sentence for an offense in which no one was killed. Brief of Petitioner-

Appellant at i, *Sullivan v. Florida*, No. 08-7621 (U.S. filed July 16, 2009). In light of this Court's holding in *Roper*, 543 U.S. at 579, that it is unconstitutional to impose the death penalty on individuals under the age of eighteen when their offenses are committed, life without the possibility of parole is the *most* severe sentence available to juvenile offenders in this country. Yet it is axiomatic within this country's legal system that only the most deserving class of offenders receive the most punitive sentences. *Cf. Kennedy v. Louisiana*, 128 S. Ct. 2641, (2008) (holding that it is unconstitutional to impose the death penalty on adults who have not committed capital murder). Sentencing juveniles who commit non-homicide offenses to life imprisonment without the possibility of parole violates that bedrock principle.

The overly punitive sentence of life imprisonment without the possibility of parole for juveniles convicted of non-homicide offenses fails to account for the inherent differences between youth and adults. Such blindness cannot be reconciled with amici's faith traditions or the morals and ethics of contemporary American society.

III. Imposing Life Imprisonment Without the Possibility of Parole on Juvenile Offenders Contravenes Fundamental Religious Values

In addition to being morally unjustifiable because it does not recognize the special status of children, such a sentence offends the well-established religious principle that all individuals—especially those who are weak and vulnerable, such as children—are entitled to mercy, forgiveness, and compassion. Moreover, the

sentence of life imprisonment without the possibility of parole also denies juvenile offenders the opportunity for meaningful rehabilitation and conflicts with the concept of restorative justice, which all of amici's faith traditions embrace. Any punishment that so thoroughly conflicts with the values and principles that have been adopted by all the religions represented by amici and embraced by a majority of Americans must violate contemporary "standards of decency."

A. Imposing Such a Punitive Sentence on Juvenile Offenders Contravenes Religious Teachings That Tell Us That All Individuals, and Particularly Juveniles, Are Deserving of Mercy, Forgiveness, and Compassion

Amici, despite the diversity within their beliefs and religious traditions, champion mercy, forgiveness, and compassion as fundamental values that must be extended to everyone.

First, each religion acknowledges the centrality of mercy. In Christianity, for instance, Jesus' self-sacrificial death on the cross for the sins of humanity is viewed as the ultimate act of mercy, *Titus* 3:5 ("[Jesus] saved us, not because of righteous things we had done, but because of his mercy."), and Christians are called to replicate his example in their daily interactions. *See, e.g., Matthew* 5:7 ("Blessed are the merciful, for they shall obtain mercy."). Likewise, mercy is a foundational principle in Islam, *Qur'an* 7:156 ("My mercy encompasses all things"); *Qur'an* 6:54 ("Your Lord hath inscribed for Himself (the rule of) mercy He is Oft-Forgiving, Most Merciful."), and Muslims are obligated

to show mercy. Judaism depicts God as “merciful and gracious, long-suffering, and abundant in goodness and truth.” *Exodus* 34:6. The *Talmud* discusses the idea of *imitatio dei*, that man is supposed to emulate God and be compassionate and merciful, *BT Shabbat* 133b, *JT Pe’ah* 1:1, and it commands judges to be merciful and compassionate when deciding cases. See *Sanhedrin* 29a.

Second, amici’s religions also stress the importance of forgiveness, urging their adherents to forgive those who have wronged them. Jesus’ admonition to his disciples to “turn the other cheek” is well known; the *Bible* also commands that we should “[b]ear with each other and forgive whatever grievances [we] may have against one another.”¹² The *Qur’an* describes the righteous as those who “spend freely [in charity] whether in prosperity or adversity, restrain anger, and forgive others,” 3:134. It also commands people to forgive each other: “Hold to forgiveness, enjoin what is right, and turn away from the ignorant.” 7:199. While the *Qur’an* states that “the recompense for an injury is an injury equal thereto,” it immediately continues to say “but if a person forgives and makes reconciliation, his reward is due from God, for God loveth not those who do wrong . . . indeed if any show patience and forgive that would truly be an exercise of courageous will and resolution in the conduct of affairs.” 42:40-43.

¹² The following, oft-repeated conversation between Jesus and his disciple Peter reveals the centrality of forgiveness in Christian theology: “Then Peter came up and said to him, ‘Lord, how often shall my brother sin against me, and I forgive him? As many as seven times?’ Jesus said to him, ‘I do not say to you seven times, but seventy times seven.’” *Matthew* 18: 21-2.

Third, underlying the focus on mercy and forgiveness is the belief, found in all faith traditions represented by amici, that human action should be guided by compassion. For example, prominent Jewish philosopher and rabbi Maimonides once explained that “[t]he purpose of the laws of the Torah is to promote compassion, loving-kindness and peace in the world.” Maimonides, *Yad Hachazakah, Hilchot Shabbat 2:3*; see also *Ethics of the Fathers* 1:2 (“On three things the world is sustained: on the Torah, on the (Temple) service, and on deeds of loving kindness.”). Likewise, compassion is stressed within Islam as well. Muslims are encouraged to “urge each other to patience, deeds of kindness and compassion; indeed those are the companions of the right.” *Qur’an* 90: 17-18. Similarly, the importance of compassion in Buddhism is exemplified by the teaching to “not show disregard for thy unhappy kindred, compassion for all creatures is the true religion.” Aèvaghòua, *The Buddha-Carita, or The Life of Buddha*, Book IX: 17 (Edward B. Cowell, ed. & trans., New Delhi 1977).

In short, religious texts make clear that each of these three values—mercy, forgiveness, and compassion—must guide interpersonal and societal relations, and are to serve as the bedrock principles for a just and fair society. These values are so essential that those who fail to apply them risk delegitimizing the sincerity of their claim of devotion. One Talmudic source explains:

[I]f a person exhibits impudence, cruelty, or misanthropy, and does not perform acts of loving-kindness, one should strongly suspect

that he is of non-Jewish descent; for Israel, the holy nation, has the three distinctive traits of “modesty, mercy, and loving-kindness.”

Yevamot 79a. Similar concepts are found in all of amici’s faith traditions.¹³

Inflicting the sentence of life imprisonment without the possibility of parole, the most severe punishment available to juvenile offenders, on a young person who has committed a non-homicide offense is an act without mercy, forgiveness, or compassion. This is especially true given that juveniles who commit serious crimes often come from disadvantaged backgrounds: many are poor, and frequently they have been the victims of abuse and neglect.¹⁴ These are exactly the type of children amici’s faith traditions stress are most deserving of kindness and compassion. *Cf., e.g., Psalms* 82:3 (“Defend the cause of the weak and fatherless; maintain the rights of the poor and oppressed.”); *Qur’an* 2:83 (“[T]reat with

¹³ For example, Jesus criticized the Pharisees for emphasizing legalism over more fundamental concerns for mercy and compassion. *Matthew* 23:23 (“Woe to you, scribes and Pharisees, hypocrites! For you tithe mint, dill, and cumin, and have neglected the weightier matters of the law: justice and mercy and faith. It is these you ought to have practiced without neglecting the others.”).

¹⁴ See The Center for Law and Global Justice, University of San Francisco School of Law, Report on Human Rights Violations, *Sentencing Our Children to Die in Prison*, Global Law and Practice 20 (2007) (explaining that juvenile offenders often face “problems such as lack of familial support, insufficient access or motivation for education, poverty, and lack of access to employment opportunities”).

kindness your parents and kindred, and orphans and those in need; speak fair to the people . . . and practice regular charity.”); *James* 1:27 (“Religion that God our Father accepts as pure and faultless is this: to look after orphans and widows in their distress.”). Imposing such a harsh punishment on such a vulnerable population cannot be reconciled with the fundamental values represented by amici’s faith traditions and broadly accepted by American society.

This does not suggest that juvenile offenders should be rendered immune from punishment. Amici agree that the law must be followed and that those who fail to comply should suffer sanction. But, in amici’s religions, the sanction, must be tempered by mercy, forgiveness, and compassion in order to be just. A prominent rabbi, Emanuel Rackman, has observed that the notions of justice and charity are “grafted” together within the Jewish tradition; “[i]n the Bible one invariably finds the two words ‘charity and justice’ as a compound phrase.” Martin Sicker, *The Political Culture of Judaism* 100 (2001). Similarly, St. Augustine once wrote:

Fulfill, Christian judge, the duty of an affectionate father; let your indignation against their crimes be tempered by consideration of humanity; be not provoked by the atrocity of their sinful deeds to gratify the passion of revenge, but rather be moved by the wounds which these deeds have inflicted on their souls to exercise a desire to heal them.

*Letter 133 from Saint Augustine to Marcellinus (A.D. 412), in 1 Nicene and Post-Nicene Fathers, First Series, Vol. 1 (J.G. Cunningham trans., Philip Schaff ed., 1887), available at <http://www.newadvent.org/fathers/1102133.htm> (revised and edited for New Advent by Kevin Knight).*¹⁵

Imposing life imprisonment without the possibility of parole on juvenile offenders convicted of non-homicide offenses stands in marked contrast to the message of mercy, forgiveness, and compassion embraced by all of the religious traditions represented by amici. There is no mercy or compassion in sentencing an adolescent who, while still in the immaturity and indiscretion of youth, has made mistakes and broken the law, to a life confined within the walls of a prison. Such a punishment is cruel and unusual and undoubtedly violates contemporary “standards of decency.”

B. Sentencing Juvenile Offenders to Life Imprisonment Without the Possibility of Parole Denies Them Their Potential for Rehabilitation and Development

When sentencing Mr. Graham to life imprisonment without the possibility of parole, the Florida court

¹⁵ Muslim jurists also agree that justice and mercy go hand in hand. The famous medieval jurist Ibn al-Qayyim explains that “Shari’ah law in its foundation and construction is based upon . . . [serving] public interest . . . and it is all justice and all mercy” 7 *Al-Fiqh al-Islami wa Adillatuh* (Islamic Jurisprudence and its Proofs) (11 volumes) 5552 (Damascus: Dar al-Fikr al-Mu’asser, 1997).

concluded from his “escalating pattern of criminal conduct,” that “there is nothing we can do for you.” Brief of Petitioner-Appellant at 22, *Graham v. Florida*, No. 08-7412 (U.S. filed July 16, 2009). Such a statement epitomizes the travesty of imposing life imprisonment without the possibility of parole on juvenile offenders convicted of non-homicide offenses: it fails to recognize the tremendous potential that juveniles have to grow, develop, and be rehabilitated. The *Graham* court’s nihilistic view of juvenile offenders is antithetical to the perspectives of amici’s faith traditions and of American society at large.

Children, by definition, are in a state of partial and incomplete development. *See supra* pp. 5-10. Because they are still maturing and learning to interact with society, they are uniquely suited to rehabilitation if placed within the right environment. Many juvenile offenders have been raised in abusive or neglectful home environments and have lacked positive influences in their lives to guide them and prepare them to become productive members of society. Amici believe that it is possible to reform any juvenile offender over the course of his or her lifetime and prepare him or her to lead a responsible, low-abiding existence outside of prison.

In *Roper*, this Court adopted the same view, acknowledging juvenile offenders’ potential for growth and rehabilitation:

From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor’s character deficiencies will

be reformed. 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.

543 U.S. at 570 (quotation marks and citation omitted).

Amici embrace the notion that just punishment must allow for the offender to be rehabilitated and restored to the community when possible. For example, Jewish law states that the purpose of the judicial system is not merely to punish or exact revenge, but to facilitate human development and *tshuvah* (“returning from bad deeds” or “repentance”). Similarly, the Islamic legal concept of *ta’zir* punishment,¹⁶ imposed for non-homicidal crimes, is concerned with both deterring the criminal from committing future crimes and reforming and rehabilitating him. Mohamed S. El Awa, *Punishment in Islamic Law* 96, (Indianapolis: American Trust Publications, 1982).

The focus on rehabilitation within amici’s faith traditions is also evident through each of their embrace of the principle of “restorative justice.” This concept involves constructing a system of justice “that moves from punishment to reconciliation, from vengeance against offenders to healing for victims, from alienation

¹⁶ The word *ta’zir* is derived from the Arabic verb *azar*, which means to prevent, to respect, and to reform. See Mohamed S. El Awa, *Punishment in Islamic Law* 96, (Indianapolis: American Trust Publications, 1982).

and harshness to community and wholeness, from negativity and destructiveness to healing, forgiveness, and mercy.” Michael L. Hadley, *Introduction: Multifaith Reflection on Criminal Justice, in The Spiritual Roots of Restorative Justice* 8 (Michael L. Hadley ed., 2001). True restorative justice is achieved when an offender turns away from his or her misdeeds and returns to the community to contribute as an active member of society.¹⁷

In Buddhism, this type of justice is represented most vividly through the story of Angulimala, a merciless bandit and murderer, who abandons his life of lawlessness and violence after a peaceful encounter with the Buddha. *Theragatha* 866-91; *Majhima Nikaya*, Angulima Sutta. When the king and his subjects learn that Angulimala has been reformed, they decide that he has suffered enough and that there is no need to further punish him for his past wrongs and sins. *Id.* This story, one of the most important within the Buddhist tradition, “highlights the only reason Buddhism accepts for punishing an offender: to help re-

¹⁷ Restorative justice is a foundational principle in Islam as well. Mohamed S. El Awa, *Punishment in Islamic Law* 104 (Indianapolis: American Trust Publications, 1982). For example, in the Islamic legal tradition, the *ta'zir* punishment of lifetime imprisonment without parole is imposed on habitual criminals who cannot be reformed. *Id.* However, there is an important condition for the imposition of this punishment: it can only be applied as long as the reform of the offender is viewed as completely impossible. *Id.* It is presumed that all minors have the potential to reform their behavior and redeem themselves upon reaching adulthood. Consequently, Islamic law prohibits the imposition of lifetime imprisonment without parole on minors, as a punishment greater than any crime that could be committed by someone of such a status. *Id.*

form his or her character.” David R. Loy, *Healing Justice: A Buddhist Perspective*, in *The Spiritual Roots of Restorative Justice*, 81 (Michael L. Hadley ed., 2001).

The sentences that Mr. Graham and Mr. Sullivan received cannot be reconciled with the principle of restorative justice because such sentences never give offenders the opportunity to rejoin society. It is impossible to create a fully actualized system of restorative justice without this possibility; in order to be fully effective, “restorative justice should not be allowed to end with punishment or at the walls of the prison.” Luc Roberts & Tony Peters, *How Restorative Justice Is Able To Transcend the Prison Walls: A Discussion of the “Restorative Detention” Project*, in *Restorative Justice in Context: International Practice and Directions* 95, 98 (Elmar G.M. Weitekamp & Hans-Jurgen Kerner eds., 2003).

The sentence of life imprisonment without the possibility of parole for juveniles convicted of non-homicide offenses is unjust because it does not reflect juveniles’ vast potential for change and denies them any meaningful opportunity to ever rejoin society.

C. The Fundamental Values Espoused by Christianity, Judaism, Islam, and Buddhism Demand That Juvenile Offenders Like Mr. Sullivan and Mr. Graham Be Given the Possibility of Parole

In contemporary American society, both retribution and incapacitation are among several justifications for punishment, *see, e.g., Kennedy v. Louisiana*, 128 S. Ct.

2641, 2649 (2008) (“[P]unishment is justified under one or more of three principal rationales: rehabilitation, deterrence, and retribution.”); *United States v. LaBonte*, 520 U.S. 751, 779 (1997) (“the basic goals of punishment [are] . . . deterrence, incapacitation, just deserts, [and] rehabilitation”), and amici acknowledge that incarcerating juveniles who pose a danger to the public is recognized a valid penological goal. However, sentencing juveniles who are convicted of severe, but non-homicide, crimes to life imprisonment without the possibility of parole runs afoul of amici’s shared belief that justice requires that this class of offenders be given the opportunity of release.

The institution of parole serves an important function within our criminal justice system. See *Morrissey v. Brewer*, 408 U.S. 471, 477 (1972) (explaining that “the practice of releasing prisoners on parole before the end of their sentences has become an integral part of the penological system”). Under the systems of parole used by a number of states, “parole is granted by the discretionary action of a board, which evaluates an array of information about a prisoner and makes a prediction whether he is ready to reintegrate into society.” *Id.* at 477-78. Thus, parole boards and similar institutions and programs that allow for the conditional or early release of prisoners not only allow for correctional departments to make informed and individualized judgments about the continued threat that offenders pose to the public, but they also provide offenders with an opportunity to make a case for why, given their efforts at reform and rehabilitation, they are deserving of release.

Mr. Sullivan and Mr. Graham, under the sentences they are currently serving, will never have such an opportunity. Any efforts they have taken to atone for their crimes, seek rehabilitation, or lay the groundwork for leading a productive, responsible life outside of their prison walls cannot be factored into their punishment. They are joined by over one hundred other juveniles in this country who like them have not committed the most serious offense—homicide¹⁸—but can never hope for the possibility of release, even if they avail themselves of the full array of rehabilitative options available within prison.¹⁹ It is simply impossible to reconcile amici’s faith

¹⁸ A study prepared by Florida State University found that there are currently at least 111 juveniles convicted of non-homicide offenses serving sentences of life imprisonment without the possibility of parole. Paolo Annino, et al., *Juvenile Life Without Parole for Non-Homicide Offenses: Florida Compared to Nation* (2009), available at http://www.law.fsu.edu/faculty/profiles/annino/Report_JuvenileLifeSentence.pdf.

¹⁹ There is a broad variety of programs that take widely differing approaches to reforming and rehabilitating offenders, and the diversity of offerings continues to expand. See, e.g., Barry Krisberg, *Reforming Juvenile Justice*, THE AMERICAN PROSPECT, August 14, 2005, available at http://www.prospect.org/cs/articles?article=reforming_juvenile_justice (discussing how many jurisdictions are embracing a federal initiative called Balanced and Restorative Justice, which provides “the youthful offender . . . a way to restore his or her role in the community” through, among other things, involving victims in the rehabilitation process); *The Right Model for Juvenile Justice*, N.Y. TIMES, Editorial, Oct. 28, 2007, available at <http://www.nytimes.com/2007/10/28/opinion/28sun2.html> (discussing another model, pioneered by Missouri and being imitated across the country, that does away with “mass kiddie prisons in favor

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traditions with the imposition of this permanent, unforgiving sanction on individuals who, at the time of their respective offenses, were not even old enough to fully comprehend their actions and the attendant consequences.

Parole and similar programs are among the few places within our criminal justice system that allow for consideration of the values and principles discussed above: mercy, forgiveness, compassion, redemption, and restorative justice. In order for our nation's criminal justice system to comport with these values and principles, which have been embraced by a majority of the American people, juvenile offenders convicted of non-homicide offenses must be provided with the opportunity to demonstrate that they are no longer a danger to the community and can rejoin society.

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of small community-based centers that stress therapy, not punishment” and that, to the extent possible, keeps young people “near their homes so their parents can participate in rehabilitation that includes extensive family therapy”).

CONCLUSION

For the foregoing reasons, amici respectfully request that this Court vacate Messrs. Graham and Sullivan's sentences on the ground that the imposition of life imprisonment without the possibility of parole on juveniles convicted of non-homicide offenses violates the Eighth Amendment's guarantee against cruel and unusual punishment.

Respectfully submitted,

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APPENDIX

1. *American Association of Jewish Lawyers and Jurists.* The American Association of Jewish Lawyers and Jurists (“AAJLJ”) is a membership association of lawyers and jurists open to all members of the professions regardless of religion. It is an affiliate of the International Association of Jewish Lawyers and Jurists, which is based in Israel and was founded by the late Justice Arthur Goldberg of the United States Supreme Court and the late Justice Haim Cohen of the Supreme Court of Israel. The mission of AAJLJ is to promote an understanding of the principles of traditional Jewish law among the bar, the judiciary and the public, including an understanding of the relevance and applicability of Jewish law to current legal issues and controversies, through participation as amici in appropriate cases, educational programs and other means of outreach.

2. *American Catholic Correctional Chaplains Association.* The American Catholic Correctional Chaplains Association (“ACCCA”) is a national Catholic organization committed to promoting the principles of restorative justice for all involved with, or affected by, the criminal justice system.

3. *American Correctional Chaplains Association.* The American Correctional Chaplain’s Association (“ACCA”), an affiliate of the American Correctional Association, serves as a professional organization for pastoral care personnel in the corrections field. It provides a network for the sharing of information and resources amongst its members and with corrections administrators, and it formulates standards for

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chaplaincy and religious programming in correctional facilities. ACCA strongly believes that the accommodation of spiritual development and religious study in the prison context are exceptionally valuable aids to rehabilitation.

4. *American Friends Service Committee.* The American Friends Service Committee (“AFSC”), the social justice and peace organization formed by the Religious Society of Friends (Quakers) in 1917, has worked with prisoners, their families, and prison officials since 1947. AFSC’s work stems from the belief that the way a society treats people convicted of crimes is an indicator of the human values of that society and Quakers’ belief in the intrinsic worth of all human beings.

5. *Buddhist Peace Fellowship.* The Buddhist Peace Fellowship (“BPF”) was founded in 1978 to serve as a catalyst for socially engaged Buddhism. BPF envisions a future in which people from all backgrounds come into a heartfelt realization of our interconnection to each other and to the Earth. We believe that actions generated from this understanding will create societies guided by generosity, compassion, wisdom, and justice. We are committed to helping beings liberate themselves from the suffering that manifests in individuals, relationships, institutions, and social systems.

6. *Church Women United.* Since our founding in 1941, Church Women United (“CWU”) has worked for and supported the rights of women and children. CWU strives to express God’s love, mercy, kindness, and

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forgiveness through its work for peace and justice, and we call upon the criminal justice system to do the same.

7. *The Council of Churches of the City of New York, Inc.* The Council of Churches of the City of New York, Inc., is the oldest ecumenical council in the United States. Founded in 1895, it is today a council of the major representative religious organizations representing the several Protestant and Orthodox denominations having ministry in the City of New York. It is governed by a Board of Directors comprised of the bishop or equivalent officer of each local diocese, association, synod, presbytery, conference, or district of its member denominations and of the president and executive officer of the local councils of churches serving in each of the boroughs of the City of New York.

8. *Engaged Zen Foundation.* The Engaged Zen Foundation (“EZF”) is an American Buddhist group originally founded as a prison outreach group. Its experience working in prisons throughout the United States since 1994 has compelled it to expand its efforts to focus on the complete circle of human rights imperatives. EZF has called for a comprehensive investigation into the validity of the concept of “punishment” itself by religious people, scholars, psychologists and clinical researchers. EZF’s experiences have brought the Foundation to question the efficacy of the criminal justice system’s treatment of offenders and in particular the treatment of juvenile offenders who are most vulnerable.

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9. *General Synod of the United Church of Christ.* Amicus curiae General Synod of the United Church of Christ (“UCC”) is the representative body of the national setting of the United Church of Christ and is composed of delegates chosen by its conferences from member churches, voting members of Boards of Directors of Covenanted Ministries who have been elected by General Synod as described in the Bylaws of the UCC, and ex officio delegates. The UCC was formed in 1957, by the Union of the Evangelical and Reformed Church and The General Council of the Congregational Christian Churches of the United States in order to express more fully the oneness in Christ of the churches composing it, to make effective their common witness to Christ, and to serve God’s people in the world. The UCC has 5,600 churches in the United States, with a membership of 1.2 million.

10. *Islamic Shura Council of Southern California.* The Islamic Shura Council is an umbrella organization of Mosques and Muslim organizations, serving more than half a million Muslims in Southern California.

11. *Karamah: Muslim Women Lawyers for Human Rights.* KARAMAH is a charitable, educational organization that focuses on the domestic and global issues of human rights, especially those of Muslim women. It is founded upon the ideal that education, dialogue, and action can counter the dangerous and destructive effects of ignorance, silence, and prejudice. KARAMAH envisions a world in which all human beings, regardless of their gender or other differences, enjoy

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their God-given right to dignity, which cannot be achieved without liberty and justice. The name KARAMAH is rooted in the Qur’anic verse: “We have given dignity (karamah) to the children of Adam.” (17:70).

12. Mormons for Equality and Social Justice. Mormons for Equality and Social Justice (“MESJ”) is a grassroots organization of Latter-day Saint individuals who are “anxiously engaged” (D&C 58:27) in working for the gospel values of peace, equality, justice, and wise stewardship of the earth in a spirit of Christ-like charity and concern. As Latter-day Saints, we come from a heritage of people who had “a vision of a different world, a world where injustice and oppression, poverty and ignorance would be dispelled and a world where men and women would be brothers and sisters.” Alexander B. Morrison, CHURCH NEWS, Oct. 14, 1995.

13. National Council of the Churches of Christ in the United States of America. The National Council of the Churches of Christ in the USA (“NCC”) is a community of 35 national Christian denominations, communions and conventions with 45 million adherents in 100,000 local congregations located in every state. The Council publishes the Revised and New Revised Standard Versions of the Bible and the Yearbook of American and Canadian Churches, and is engaged in interfaith dialogue, education and communication projects. The Council’s member churches also maintain a strong witness on the moral and ethical dimensions of national policy issues ranging from the environment and peace to poverty and religious liberty. This witness is

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based on a carefully crafted body of agreement on these issues developed over many decades of work together.

14. National Council of Jewish Women. The National Council of Jewish Women (“NCJW”) is a grassroots organization of 90,000 volunteers and advocates who turn progressive ideals into action. Inspired by Jewish values, NCJW strives for social justice by improving the quality of life for women, children, and families and by safeguarding individual rights and freedoms. NCJW’s Principles and Resolutions state that NCJW resolves to work for “the recognition and protection of children by the legal system and the provision for their unique needs.” Consistent with our Principles and Resolutions, NCJW joins this brief.

15. New Jersey Regional Coalition. The New Jersey Regional Coalition is a faith-based, grassroots organization comprised of groups from throughout New Jersey devoted to working together for the common good in eradicating all forms of segregation and in promoting equality in education, criminal justice, and wherever systemic inequality exists.

16. Office of Restorative Justice, Archdiocese of Los Angeles. The Office of Restorative Justice (ORJ) provides pastoral care for offenders, victims, and families of both. We employ education and outreach to effect changes in public policy and to transform the criminal justice system. We challenge the Church to respond to Jesus’ invitation to walk with the prisoner

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and comfort those who mourn. ORJ is a catalyst that sparks the radical transformation of Society's attitudes toward and treatment of offenders, victims, and families of both.

17. Prison Fellowship Ministries. Prison Fellowship Ministries is a tax-exempt, charitable religious organization, that ministers to prisoners, ex-prisoners and their families. Founded in 1976 PFM offers ministry in every state and in over 100 countries. It seeks to give offenders hope in the midst of their very difficult circumstances.

18. Progressive Jewish Alliance. The Progressive Jewish Alliance ("PJA") is a California-based social justice organization that educates, advocates and organizes on issues of peace, equality, diversity and justice. PJA serves as a vehicle for connecting Jews to the critical social issues of the day, to the life of the cities in which they live, and to the Jewish tradition of working for repair of the world (*tikkun olam*). Moreover, PJA is committed to the pursuit of a more just and humane world fashioned on principles of restorative, rather than retributive, justice.

19. Queens Federation of Churches, Inc. The Queens Federation of Churches, Inc., was organized in 1931 and is an ecumenical association of Christian churches located in the Borough of Queens, City of New York. It is governed by a Board of Directors composed of equal number of clergy and lay members elected by the delegates of member congregations at an annual

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assembly meeting. Over 390 local churches representing every major Christian denomination and many independent congregations participate in the Federation's ministry. We believe that a legal system that is mechanistically brutal, especially to children, lacks any moral claim to be a system of justice.

20. Rev. Dwight Lundgren. Rev. Dwight Lundgren currently serves as the director of Reconciliation Ministries for National Ministries, American Baptist Churches USA. While the American Baptist Churches USA does not have a Policy Statement of Resolution on the issue of life imprisonment for those of minor age, there are other policy statements and resolutions which reflect principles that would argue against such a practice. *See* American Baptist Policy Statement on Criminal Justice (7034:12/83); American Baptist Resolution on Restorative Justice (8212:11/01).

21. Sister JoAnne Talarico. As a 55 year member of the Roman Catholic Congregation of Humility of Mary (CHM) of Davenport, Iowa in good standing, I am called "to be attentive to the call of the spirit in the signs of our times, especially the needs of the poor and powerless . . . and to work for justice within the human family . . ." CHM Mission Statement. For 20 years, I have been visiting a woman at the Iowa Correctional Institution for Women who was sentenced to life without parole at the age of 17. Up until that first encounter with the prison system, I had never given much thought to Juvenile Life Without Parole (JLWOP), but when I connected a real face to this issue, I felt called to pursue

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it. As a Christian, I believe that Jesus gave us the supreme example of forgiveness in his work with the poor and powerless. Even though it is very difficult at times, I believe that I, along with our criminal justice system, am called to do the same.

22. Trinity United Methodist Church. Trinity United Methodist Church is a member of the Iowa Annual Conference of the United Methodist Church in good standing. As followers of Jesus Christ our faith is built on the foundation of belief in God's unfailing love for all God's children and God's grace which offers justice, redemption, and forgiveness to all. As United Methodists, our responsibilities to minister to children are spelled out in "The Social Principles of The United Methodist Church." They call for special attention to the rights of children and youth.

23. United Methodist Church, General Board of Church and Society. The General Board of Church and Society is the presence of The United Methodist Church on Capitol Hill. "The prime responsibility of the board is to seek implementation of the Social Principles and other policy statements of the General Conference on Christian social concerns. Furthermore, the board and its executives shall provide forthright witness and action on issues of human well-being, just, peace, and the integrity of creation that call Christians to respond as forgiven people for whom Christ died. In particular, the board shall conduct a program of research, education, and action on the wide range of issues that confront the Church." (2008 Book of Discipline).