IN THE SUPREME COURT OF THE STATE OF OREGON

STATE OF OREGON, Plaintiff-Respondent, Petitioner on Review, v. WILLIAM MICHAEL ALTHOUSE, Defendant-Appellant, Respondent on Review.	Supreme Court No. S062909 Court of Appeals No. A152626 Multnomah County Circuit Court No. 11C48471

BRIEF ON THE MERITS OF *AMICI CURIAE*
OREGON JUSTICE RESOURCE CENTER

On Review of the Opinion of the Court of Appeals
On an appeal from a judgment of the Circuit Court for Marion County
Honorable Lindsay Partridge, Judge

Affirmed Without Opinion: October 15, 2014
Before Sercombe, Presiding Judge, and Hadlock, Judge and Tookey, Judge

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INTRODUCTION

The OJRC is a non-profit organization founded in 2011. OJRC works to "dismantle systemic discrimination in the administration of justice by promoting civil rights and enhancing the quality of legal representation to traditionally underserved communities." OJRC Mission Statement, www.ojrc.info/mission-statement. The OJRC Amicus Committee is comprised of Oregon attorneys from multiple disciplines and law students from Lewis & Clark Law School, where the OJRC is located. [1] The OJRC advocates with an eye towards real world implications as backed by empirical data

The Oregon Justice Resource Center (OJRC) has been granted permission to appear as *amicus curiae* in this case, aligned with petitioner on review, William Michael Althouse. The OJRC agrees with defendant that the life sentence imposed in this case violates Article I, section 16, of the Oregon Constitution and the Eighth Amendment of the United States Constitution. Accordingly, *amicus* urges this court to adopt defendant's proposed rules of law, reverse defendant's true life sentence, and remand for resentencing. As explained below, this court's intervention is required in order to protect

[1] Undersigned counsel would like to thank law student Erica Hayne for her invaluable assistance with this brief.

defendant's state and federal constitutional rights and to instruct the bench, bar, and the coequal branches of government that there are constitutional limits to imposing a sentence of life in prison without the possibility of parole for recidivist sex offenders.

ARGUMENT[2]

Mr. Althouse's sentence, indeed any sentence, is a result of the interaction of the legislative, executive, and judicial branches. In this case, the legislature enacted ORS 137.719, which created a presumptive true life sentence for a person convicted of three "sex crimes" as defined by ORS 181.805(5). The executive branch, through the District Attorney, brought charges against defendant and advocated for a true life sentence. And the judicial branch, through the sentencing judge, imposed a true life sentence. This court now is called to decide whether the sentence authorized by the legislature, sought by the prosecutor, and imposed by the sentencing judge violates the cruel and unusual punishment clauses of Article I, section 16, of the Oregon Constitution, and the Eighth Amendment of the United States Constitution.

Although each branch is obligated to perform its duties within the contours of the state and federal constitutions, it is a fundamental principle in

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[2] *Amicus curiae* adopt defendant's question presented and proposed rule of law.

our system of government that the judicial branch is the final arbiter of what is or is not constitutional. *Marbury v. Madison*, 5 US 137, 178 (1803). The judicial branch, by design, enforces the constitutional rights of unpopular minorities from excesses of its co-equal branches.

In this case, defendant has been sentenced to a true life sentence as a result of hastily-enacted legislation. Although that legislation is not unconstitutional on its face, as applied to defendant it results in an unconstitutional sentence. ORS 137.719, the recidivist punishment statute, was passed with virtually no discussion or debate. Moreover, that statute, like recidivist punishment statutes for sexual offenders passed in other jurisdictions, is premised on mistaken assumptions; in many cases, such statutes were enacted as a passionate response to a particularly reprehensible case. *See* Alex Ricciardulli, *The Broken Safety Valve: Judicial Discretion's Failure to Ameliorate Punishment Under California's Three Strikes Law*, 41 Duq L Rev 1, 3-5 (2002) (explaining origin of three-strikes legislation in response to the rape and murder of Polly Klaas).

Although intended to severely punish and incapacitate the most dangerous sexual offenders, in practice, recidivist sentencing laws are written far more broadly. Consequently, these statutes should be viewed with skepticism, as they sweep in a wide range of conduct that, in most cases, fall far short of the heinous conduct that the legislation was meant to address.

By confirming in this case that defendant's sentence violates the state and federal constitutions, this court's decision also will guide the discretion of all actors in the criminal justice system, particularly prosecutors and trial judges who must confront a wide-range of offender conduct and whose decisions regarding punishment impact the most people.

Prosecutors make several discretionary decisions throughout the course of a criminal case that could violate the rights of criminal defendants who may be technically eligible for a true life sentence, but for various reasons, should not suffer that penalty. Additional guidance from this court regarding the constitutional limits of ORS 137.719 will instruct prosecutors, defense attorneys, and trial judges to the appropriate use of the second harshest penalty authorized by Oregon law.

I. ORS 137.719 Was Not Carefully Considered At The Time Of Its Enactment And Reflects Concerns Regarding Sex Offender Recidivism That Are Not Supported By Empirical Evidence

As defendant notes in his Brief on the Merits,

> "[a]t no point * * * did the legislature engage in debate or discussion concerning [ORS 137.719]. No purpose was offered for setting the presumptive sentence for a third felony sexual offense at life in prison without the possibility of parole. No discussion was held regarding the decision to define sexual offenses by reference to the expansive list of crimes designated by ORS 181.805(5)."

Pet Brief at 47. Instead of a deliberative discussion of the nature and extent of

the recidivist problem, Oregon's harsh sentencing scheme is the product of the national "tough on sex crime" movement, a movement that cannot be explained by an actual increase in sex crime rates. Christina Mancini et al., *It Varies from State to State: An Examination of Sex Crime Laws Nationally*, 24 Crim Just Policy Rev 166, 185 (2011).[3]

A. Sex offender recidivism laws were not based on evidence that such laws would actually reduce sexual offenses.

As noted, ORS 137.719 was passed with little discussion and no investigation into the rate of sex offender recidivism, the extent of harm caused by those offenses deemed "sex crimes," and efficacy of treatment as an alternative to lifetime imprisonment. *See* Pet Brief at 47. This absence of reflection aligns with social scientific studies documenting widespread support for severely retributive and stigmatizing sex offender laws, despite the absence of evidence that such policies effectively reduce the rate of sex offending. Justin T. Pickett et al., *Vulnerable Victims, Monstrous Offenders, and Unmanageable Risk: Explaining Public Opinion on the Social Control of Sex Crime*, 51 Criminology 729, 730 (2013). Greater support for punitive, as opposed to rehabilitative, sex crime laws are associated with the beliefs that "sex crime is

[3] Of course, states vary in their approach to sex crime, and Mancini et al. suggest explanations for state-by-state variance such as on the "symbolic threat" of larger minority populations or higher rates of unemployment and poverty. *Id.*

on the rise and that sex offenders are unreformable." *Id*. at 750.

Prevalent legislative objectives for passing draconian sex offender laws are aptly summed up by Professor Franklin Zimring:

> "[P]olicy toward sex offenders is often based on monolithic images of alien pathologies; it is rarely based on facts. *The extraordinary heterogeneity of sex offenders and sex offenses is almost never appreciated in the legislative process.* Policies are crafted in fearful haste, often as symbolic gestures to honor the crime victims whose suffering has inspired them. The factual foundations for major shifts in policy are often slender; once laws are passed they are rarely evaluated."

Michael Vitiello, *Punishing Sex Offenders: When Good Intentions Go Bad*, 40 Ariz St L J 651, 676 (2008) (quoting Franklin E. Zimring, *An American Travesty: Legal Responses to Adolescent Sexual Offending*, at xiii (2004) (emphasis added)).

In a national study surveying 61 state senators and representatives with histories of working with sex offender legislation and 25 legal practitioners with expertise working with state sex offender laws, the vast majority of respondents viewed victims of sex crimes as central to the creation of sex offender laws. Michelle Meloy et al., *Views from the Top and Bottom: Lawmakers and Practitioners Discuss Sex Offender Laws*, 38 Am J Crim Just 616, 621–22, 633 (2013). Both groups pointed to highly-publicized cases of victimization that served as the catalyst for legislation, often citing cases that did not occur in the respondent's state of residence. *Id.* at 633. The most frequently mentioned cases were those involving stranger attacks upon white, female children, despite the

"statistical rarity of a stranger attack against a child." *Id.* The policymakers and practitioners generally stated that the laws were designed to increase public safety, yet, as the researchers stated, "today's sex offender laws do fall short of their public safety goals." *Id.*

On a national level, scholars have not discovered significant reductions in sex crime as a result of harsh sex crime laws, owing perhaps to the fact that these policies are designed to address sensational and rare sex crimes, and not necessarily to address the galaxy of crimes to which they actually apply. *See* Mancini et al., 24 Crim Just Policy Rev at 171. Two conclusions emerge based upon the body of scientific research on sex offending over the past several decades: (1) "sex offenders," when viewed as a broad class, are "relatively unlikely to commit future sexual offenses,", and (2) a well-established body of research permits sentencing authorities to "predict with increasing accuracy whether a particular offender will commit additional crimes." Vitiello, 40 Ariz St L J at 678.

B. Sex offender recidivism rates are relatively low when compared with general recidivism rates.

Empirically, "[t]he overall recidivism rate for sex offenders versus other types of criminals is comparatively low." Heather Y. Bersot & Bruce A. Arrigo, *Responding to Sex Offenders: Empirical Findings, Judicial Decision Making, and Legal Moralism*, 42 Crim. Just. & Behav. 32, 34 (2015). In a 2003

study, researchers studied recidivism rates for seven categories of sex offenses and found that "within the 5-year period following their first offense, the recidivism rate for individuals classified in each category did not exceed 6%." *Id*. By way of comparison, in a 2005 study "using a follow-up period of 5 to 6 years, the results revealed rates of 14.0% for violent nonsexual recidivism, 25.0% for violent recidivism (i.e., sexual and nonsexual violence), and 36.9% for general recidivism." *Id*. A 2003 study of by the Bureau of Justice Statistics made similar findings. That study surveyed violent sexual offenders released from prison in 1994. Patrick A. Langan et al., Bureau of Justice Statistics, *Recidivism of Sex Offenders Released from Prison in 1994*, at 1 (2003).[4] The BJS study did reveal that violent sexual offenders were more likely to be arrested for a sex crime than a non-sex offender, however, the sex offenders studied had a lower overall rearrest and reconviction rate than non-sex offenders released during the same time period. *Id*. at 2.

C. Oregon, like other states, broadly defines "sex crimes" to incorporate many different kinds and degrees of conduct.

Similar to the body of sex offender laws throughout the country, Oregon's definition of "sex crimes" under ORS 181.805(5) incorporates a broad

[4] For purposes of the study, "violent" offenders included those who "used or threatened force in the commission of the crime, or while not actually using force, the offender did not have the victim's 'factual' or 'legal' consent." *Id.* at 4.

range of conduct, from a second indecent exposure conviction to rape. Again, given how little discussion occurred when enacting ORS 137.719, it does not appear as if the legislature gave due consideration to the differences in kind and degree of the listed offenses. This is a typical legislative oversight; while "experts understand that sex offenders display a wide variety of behaviors and profiles, legislation often collapses these various distinctions into one monolithic group." Bonita M. Veysey, *Sex Offenses and Offenders Reconsidered: An Investigation of Characteristics and Correlates Over Time*, 37 Crim Just & Behav 583, 583 (2010).

Unquestionably, there are significant differences between those offenders that commit violent sex offenses and those who commit non-violent offenses, such as indecent exposure or commercialized sexual offenses. And, as noted above, the legislature has access to evidence-based tools capable of distinguishing those offenders that may, in the legislature's judgment, pose an unacceptable risk to public safety. *See* Loretta J. Stalans et al., *Comparing Nonviolent, Other-Violent, and Domestic Batterer Sex Offenders: Predictive Accuracy of Risk Assessments on Sexual Recidivism*, 47 Crim Just & Behav 613, 625 (2010) ("[T]he risk assessment field is moving toward incorporating risk factors that capture the triggers and motives of sexual offending."). Yet, in passing ORS 137.719, the legislature failed to rely upon available evidence,

thereby neglecting to distinguish the relative seriousness of the different forms recidivism may take.

This failure is particularly problematic because those convicted of public indecency simply do not pose the same risk of violent or sexual recidivism when compared to sexual offenders as a group or criminal offenders in general. As noted above, researchers studying sex offenders as a broad class for a five to six year period have documented rates of 14 percent, 25 percent, and 36.9 percent for violent nonsexual recidivism, violent recidivism (sexual or nonsexual), and general recidivism respectively. Bersot & Arrigo, 42 Crim Just & Behav at 34. A different study focused on those classified as "exhibitionists"—individuals diagnosed with exhibitionism by a psychiatrist, convicted of indecent exposure, or self-referred—revealed that within a seven-year period, the percentage of subjects convicted of sexual, violent, or other criminal acts was 12.6 percent, 18.9 percent, and 29.1 percent respectively. Phillip Firestone, et al., *Long-Term Follow-up of Exhibitionists: Psychological, Phallometric, and Offense Characteristics*, 34 J Am Acad Psychiatry Law 349, 353 (2006). This study further revealed that out of those "exhibitionists" who went on to commit a sexual offense within the mean study period of 13.24 years, 38.8 percent escalated to a "hands-on" sexual offense, such as sexual touching or sexual assault, while the rest remained "hands-off" offenders. *Id.* at 355. In sum, exhibitionists, even those who were not yet convicted of an

indecency offense, have a lower rate of recidivism than both sexual offenders and other offenders, and when they do commit additional crimes, they are not the types of offenses that inspired harsh sentences for sex offenders.

Significantly, the broad treatment of sex offenders as a class tends to affect individuals with serious mental illness disproportionately to the actual risk that those individuals pose to the community. When individuals with serious mental illness engage in behaviors such as lewd proposals, indecent exposure, or other "nuisance" sexual behavior, the broad designation of "sex offender" fails to distinguish between those whose behavior indicates a heightened risk of sexual violence, and those who engage in these behaviors because of "poor impulse control or social inappropriateness caused by the treatable symptoms of psychiatric illness." Harris et al., *Sex Offending and Serious Mental Illness: Directions for Policy and Research*, 37 Crim Just & Behav 596, 601 (2010). Furthermore, individuals with mental illness face an increased chance of being subjected to Oregon's sex offender recidivist laws, as rates of recidivism has been linked to the absence of stable housing, employment, and social supports—factors that fall upon individuals with mental illness at a much higher rate than the general population. *Id*. at 606.

To summarize, the legislature enacted ORS 137.719 as a tool to address a perceived threat of dangerous recidivist sex offenders. However, the tool that it fashioned is a hammer, when the particular threat requires a scalpel. The

empirical data suggests that not all sex offenders are equally dangerous, yet ORS 137.719 treats what is really a continuum of conduct as equally reprehensible and deserving of extremely severe penalties. Because a law enacted under these circumstances will necessarily result in unconstitutional penalties for some sex offenders, this court should not defer to the mere fact of a legislative enactment in carefully reviewing the constitutionality of defendant's sentence.

II. Reversing Defendant's Sentence Will Guide Prosecutors And Trial Courts As To The Limits Of Their Discretion

Given the wide disparity of seriousness and dangerousness for the various felony sexual offenses in ORS 181.805(5) which can trigger the presumptive true-life sentence under ORS 137.719, prosecutors and trial courts are required to make significant discretionary choices. Although the legislative record is scant, evidence exists that the legislature contemplated that the discretionary choices of its coequal branches would result in true life sentences only half of eligible offenders. A report produced to the legislature noted:

> "The Criminal Justice Commission assumes that a life sentence will be imposed for half of the offenders eligible to receive such a sentence. A court may impose a lesser sentence if they find a "substantial and compelling" reason to impose such a departure sentence and it is assumed this will occur in half the cases."

Legislative Fiscal Office, Fiscal Analysis of Proposed Legislation, June 18, 2001. This case, however, demonstrates that neither prosecutors nor trial courts

are exercising discretion in the manner contemplated by the legislature, and this court must provide guidance to the bench and bar to correct the unconstitutional outcome in this case and prevent that outcome in future cases.

A. In the course of a criminal prosecution, the prosecutor will make several decisions that will impact a defendant's sentence, and the prosecutor must exercise that discretion to avoid unconstitutional outcomes.

Even in a case such as this one, in which a legislatively-enacted statute prescribes a presumptive sentence, prosecutors still wield considerable power. As a general matter, "Prosecutorial decisions--such as whether to prosecute, how long to sentence, and whether to dismiss charges--all contribute to the creation of the prosecutor as the real policy-maker within the criminal justice system." Robert L. Misner, *Recasting Prosecutorial Discretion*, 86 J Crim L & Criminology 717, 743 (1996); *see also* Angela J. Davis, *Prosecutors' Overreaching Goes Unchecked*, N.Y. TIMES (updated Jan. 14, 2015)[5] ("Prosecutors are the most powerful officials in the criminal justice system. They decide whether criminal charges should be brought and what those charges should be, and they exercise almost boundless discretion in making those crucial decisions.") These decisions receive limited scrutiny from the legislative and judicial branches. Daniel S. Medwed, *Emotionally Charged:*

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[5] *Available at*: http://www.nytimes.com/roomfordebate/2012/08/19/do-prosecutors-have-too-much-power/federalproscutors-have-way-too-much-power.

The Prosecutorial Charging Decision and the Innocence Revolution, 31 Cardozo L Rev 2187, 2189 (2010).

Strict sentencing laws, such as ORS 137.719, "provide prosecutors with a significant amount of leverage, particularly with respect to charging decisions and in plea bargaining." Norman C. Bay, *Reactions to Booker: Prosecutorial Discretion in the Post-Booker World*, 37 McGeorge L Rev 549, 574 (2006). Although ORS 137.719 is not a mandatory minimum sentence, it nonetheless vests the prosecutor with a significant advantage, in some cases effectively ″transfer[ing] sentencing power to prosecutors, who can determine sentences through the charges they decide to bring.″ *Id*. at 557 (internal quotation omitted).

Given that prosecutors will make many decisions in a case such as this one, it is especially important for this court to establish a clear rule regarding when it is unconstitutional to impose a sentence of life in prison under ORS 137.719. Such guidance is necessary because there is little external control over the decisions that prosecutors make through the course of a case. "Prosecutorial charging decisions are essentially exempt from judicial review on two grounds: (1) because courts lack the expertise and access to evidence to second-guess these choices, and (2) due to separation of powers concerns." Marc L. Miller , *Domination and Dissatisfaction: Prosecutors as Sentencers*, 56

Stan. L. Rev. 1211, 1259 (2004). Although this court cannot generally question a charging decision or a plea bargain, this court can and should review the end result of a prosecution – a sentence – for validity under Article I, section 16, and the Eighth Amendment.

B. Stringent judicial oversight of a prosecutor's discretionary decisions is warranted because defendants have no other recourse to curb prosecutorial excesses.

Any decision from this court regarding the appropriateness of charging a felony sexual offense and seeking a life sentence will help to curtail prosecutorial excesses. Defendants who have been inappropriately charged and sentenced have little recourse. Prosecutors are entitled to absolute immunity from civil rights suits under 42 U.S.C. § 1983 for conduct "intimately associated with the judicial phase of the criminal process," including the decision to initiate a particular prosecution, regardless of whether that decision violated the criminal defendant's constitutional rights. *Imbler v. Pachtman*, 424 U.S. 409, 430 431 & n.34 (1996).

Moreover, ethical rules do not place any clear limits on prosecutorial discretion. "Ethical rules for prosecutors operate under the fundamental notion that the role of the prosecutor is to 'do justice'" but fail to provide clear guidelines within that broad framework. Brandon K. Crase, *When Doing Justice Isn't Enough: Reinventing the Guidelines for Prosecutorial Discretion*, 20 Geo J Legal Ethics 475, 478 (2007). While some ethics codes forbid prosecutors

from "overcharging solely in the hopes of developing leverage for plea bargaining negotiations," prosecutors rarely face discipline for their charging decisions. Medwed, 31 Cardozo L Rev at 2190; s*ee also* Charles E. MacLean & Stephen Wilks, *Keeping Arrows in the Quiver: Mapping the Contours of Prosecutorial Discretion*, 52 Washburn LJ 59, 63, 80 (2012) (citing ABA Standard 3-3.9). In a survey of each state's most recent sanction of a prosecutor for unethical conduct, none of the sanctioned conduct involved overreaching. *Id.* at 90-96. Moreover, the ethical violations that were sanctioned—which included conflicts of interest, discovery violations, ex parte communications, meting out special favors to friends, and sexual improprieties--generally resulted in private admonitions or temporary license suspensions. *Id.* at 80.

Thus, although errors in prosecutorial decision-making result in grave injustices – loss of liberty or even loss of life – rarely does the offending prosecutor suffer any consequences. *Id*. at 63. Rules and ethical guidelines, moreover, no matter how robust, "cannot prevent an unethical prosecutor from abusing his discretion and covering it with a valid purpose." Crase, 20 Geo J Legal Ethics at 478. Moreover, external controls do not provide much protection because “much of any prosecutor’s discretionary power is exercised behind closed doors; thus, this power continues to enjoy judicial, institutional, and societal protection." MacLean & Wilks, 52 Washburn LJ at 63; *see also* Richard S. Frase, *Is Guided Discretion Sufficient? Overview of State Sentencing*

Guidelines. 44 St. Louis L.J. 425, 440 (2000) ("The absence, in all state guidelines systems, of any serious attempt to externally regulate prosecutorial decisions reflects the extraordinary difficulty of enforcing such controls in an adversary system.") In the end, out-of-the-limelight decisions of line prosecutors cause "considerable stress on the idea of honest and open punishment." Miller , 56 Stan L Rev at 1259.

C. Even a well-intentioned prosecutor may be swayed by improper considerations in exercising discretion.

Even though the prosecutor's role is to do justice, "Prosecutors, as well intentioned as they may be, suffer from innately human cognitive biases that deter them from rationally reviewing the evidence against a potential suspect with the requisite equanimity and distance." Medwed, 31 Cardozo L Rev at 2189. Prosecutors' assessment of evidence at the charging stage is subject to confirmation bias, which is the tendency, after a person initially develops a theory about a topic, "to selectively process newfound information in a manner that confirms, rather than challenges, the original hypothesis." *Id.* at 2201-2202. Prosecutors' working relationship with police, moreover, may lead them not to question the accuracy or outcome of an investigation. *Id.* at 2204. Additionally, "prosecutors often interact with crime victims in the early stages of a case and may develop an allegiance to their accounts of the event." *Id.* at 2205. Moreover, prosecutors may also consider inappropriate factors in reaching a

charging decision, "such as the impact each case will have on the next election, popular sentiment, what the public demands rather than what the law allows, expedience, win-loss record, and other personal benefits." MacLean & Wilks, 52 Washburn LJ at 61.

D. Experience suggests that trial courts also need guidance from this court to determine when a presumptive life sentence violates the constitutional prohibition on cruel and unusual punishment.

To be sure, ORS 137.719 contemplates that the trial court will assess the facts of an individual case and mete out the appropriate punishment. Even though a life sentence is presumptive, and the trial court has the discretion to impose a guidelines sentence, the bench also requires clearer direction with regard to the constitutional boundary of ORS 137.719. The experience of California is instructive. Like Oregon, California's three strikes rule has a judicial safety valve, which allows a judge to impose a lesser sentence. However, experience has proven that authority to be "a paper tiger." Alex Ricciardulli, *The Broken Safety Valve: Judicial Discretion's Failure to Ameliorate Punishment Under California's Three Strikes Law*, 41 Duq L Rev 1, 1 (2002). Ricciardulli notes that, notwithstanding the safety valve, trial judges rarely exercised discretion to impose lesser sentences, in large part because their authority to do so was curtailed by subsequent judicial decisions. Ultimately, many individuals were sentenced to life in prison for committing crimes that, in the absence of a criminal history, could have been prosecuted as

misdemeanors (known as "wobbler" offenses). *Id*. at 22-23. The remaining option for defendants is to assert that a three strikes sentence for a non-serious felony (or a "wobbler" crime) violates the cruel and unusual punishment clauses of the state[6] and federal constitutions. Ultimately, trial courts are similarly situated to prosecutors in making the difficult decisions required by ORS 137.719 – they too are in need of a clear methodology for determining the constitutional boundary line.

CONCLUSION

For the foregoing reasons, this court should reverse defendant's sentence, remand for resentencing and adopt defendant's proposed analysis for determining whether a true life sentence imposed pursuant to ORS 137.719 violates Article I, section 16, of the Oregon Constitution and the Eighth Amendment of the United States Constitution.

Respectfully submitted,

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[6] California interprets its cruel and unusual punishment prohibition in a similar fashion to Oregon. *See id*. at 51-52 (explaining analysis under California law).

CERTIFICATE OF COMPLIANCE
WITH BRIEF LENGTH AND TYPE SIZE REQUIREMENTS

Brief length

I certify that (1) this brief on the merits complies with the word-count limitation in ORAP 5.05(2)(b)(i) and (2) the word count of this brief (as described in ORAP 5.05(2)(a)) is 4,159 words.

Type size

I certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes as required by ORAP 5.05(4)(f).

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CERTIFICATE OF FILING AND SERVICE

I certify that on June 18, 2015, I filed the original of this BRIEF ON THE MERITS OF *AMICUS CURIAE* OREGON JUSTICE RESOURCE CENTER with the State Court Administrator by the eFiling system.

I further certify that on June 18, 2015, I served a copy of the BRIEF ON THE MERITS OF *AMICUS CURIAE* OREGON JUSTICE RESOURCE CENTER on the following parties by electronic service via the eFiling system:

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