Received 11/09/2026 03:33 PM Supreme Court Eastern District

Filed 11/09/2026 03:33 PM Supreme Court Eastern District
34 EAP 2026

No. 34 EAP 2026

IN THE SUPREME COURT OF PENNSYLVANIA EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,

Respondent,

v.

JEROME COFFEY,

Petitioner.

On Appeal from the Judgment of the Superior Court of Pennsylvania at No. 1452 EDA 2024, Affirming the Order of the Court of Common Pleas of Philadelphia County, Pennsylvania at No. CP-51-CR-0441911-1993 dated April 25, 2024.

BRIEF OF PENNSYLVANIANS SERVING MANDATORY LWOP SENTENCES FOR SECOND-DEGREE MURDER AS *AMICI CURIAE* SUPPORTING THE PETITIONER

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Nov. 9, 2026

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INTERESTS OF THE AMICI CURIAE

Amici Cecil Holmes, John Marshall Payne III, and Lori Ann Lassiter, are three of the more than 1,100 Pennsylvanians currently serving mandatory sentences of life without the possibility of parole ("LWOP") for second-degree murder convictions. Each of the *Amici* have served over thirty years of their respective mandatory life sentences. During those terms, even without any prospect of release, *Amici* have each exhibited exemplary personal growth and rehabilitation. As *Amici* age and face various health issues, their continued incarceration places an increased burden on the limited financial resources available within the prison system.

Yet, *Amici* will serve their mandatory life sentences with no ability to petition the Pennsylvania Parole Board for release unless this Court applies its decision in *Lee* retroactively. Doing so would provide *Amici*, and others sentenced to mandatory LWOP for second-degree murder, an opportunity to seek relief from sentences this Court has held violate the Pennsylvania Constitution. As such, *Amici* offer their stories to the Court to contextualize the importance of retroactive application. While their stories are necessarily individual, they reflect the experiences of much of the population currently serving LWOP for second-degree murder in Pennsylvania's prisons.

a. Cecil Holmes

Cecil Holmes was convicted of second-degree murder in 1980 at 24 years old. The Commonwealth's theory was that he served as an unarmed lookout in a robbery that resulted in the stabbing death of a taxi driver. He was sentenced to mandatory LWOP without any individualized determination of his culpability.

Prior to his arrest, Mr. Holmes served in the army reserves. At the time of his arrest, he was working at the airport. Mr. Holmes had no criminal record prior to his second-degree murder conviction. While in prison, Mr. Holmes has exhibited good conduct and earned the trust and confidence of correctional officials. He worked in the kitchen prior to his illness, cooking for and serving Department of Corrections staff. Mr. Holmes receives positive housing and work reports, and has been free of any serious misconduct for the last thirty years. Mr. Holmes is now 70 years old. He suffers from advanced dementia, which is exacerbated by his incarceration. He hopes to obtain resentencing and if his new sentence makes him eligible, seek parole, and ultimately spend the rest of his life alongside his family: his wife, who has remained by his side since his conviction, his children, and his grandchildren.

b. John Marshall Payne, III

John Marshall Payne, III was convicted of second-degree murder in 1986 at 31 years old, and sentenced to mandatory LWOP. In 1981, a woman was found dead in her home in what the Commonwealth

suspected was a murder during the commission of a robbery. Mr. Payne became a person of interest in 1982 on the theory that he and two co-defendants robbed the house and killed the woman with a telephone when she caught them. Neither the forty-four pieces of physical evidence found at the scene nor the forensic testing by the FBI tied Mr. Payne to the crime. He was not charged until 1985. Mr. Payne's conviction rested on testimony of three witnesses that tied him to the robbery—testimony as to which the Superior Court later questioned both credibility and consistency. Mr. Payne pled not guilty and testified in his defense. Following his conviction, he sought relief via post-conviction DNA testing. Since the physical evidence is decades old, testing is difficult and has not led to his exoneration. Still, testing excluded Mr. Payne as the source of DNA recovered from the victim's nightgown. Mr. Payne maintains his innocence today.

While in prison, Mr. Payne has exhibited a strong work ethic and good character. He found religion and is a practicing Catholic. He has never been involved in any violent misconduct. In fact, since 1999, Mr. Payne's record has been free from any misconduct whatsoever. He has maintained continued employment in prison and done extensive volunteer work. In fact, he has served in various leadership positions, including as a Board Trustee for the Pennsylvania Lifers Association and Inmate General Welfare Fund; Vice President of the Vietnam Veterans Association; and Vice President of Veterans Behind the Wall. He received

a certificate of appreciation from the Vietnam Veterans Association, and two Certificates of Merit from the Huntingdon Literacy Council. The Department of Corrections itself supported Mr. Payne's commutation application, which was ultimately denied by a divided vote of the merits panel. Mr. Payne is now 70 years old. If resentenced and ultimately released on either time served or via parole, he hopes to live with his daughter and continue working as an upholsterer, a trade he acquired while incarcerated.

c. Lori Ann Lassiter

Lori Ann Lassiter was convicted in 1989 of second-degree murder at 25 years old. The Commonwealth prosecuted Ms. Lassiter on the theory that she initiated a robbery for her co-defendant, during which he shot and killed a cab driver. At the time of the crime, Ms. Lassiter was engaging in sex work and battling a severe drug addiction. In the minutes before the murder, Ms. Lassiter allegedly did cocaine with the victim. The single witness testified to having seen Ms. Lassiter and her co-defendant running from the cab and through the park after the shooting. Ms. Lassiter waived her right to a jury trial and testified against her co-defendant. After a two-day bench trial, she was convicted of second-degree murder and sentenced to mandatory LWOP. Ms. Lassiter has always maintained her innocence.

Ms. Lassiter has used her time in prison to seek treatment, receive education, and engage in service to others. She took advantage of

substance abuse programs and got clean. Ms. Lassiter now celebrates decades of sobriety. Her disciplinary record lacks any violent misconduct, and she has been completely misconduct-free since 2003. Ms. Lassiter has worked various honor jobs, including in the commissary, optical lab, and property rooms, illustrating her trustworthiness. She has also worked in dietary services, janitorial services, and medical hospice care. In her free time, she crochets and knits blankets and children's clothing. Now, Ms. Lassiter is 62 years old. She credits her time in prison for saving her life, allowing her to seek treatment for her drug addiction and relieving her from the dangerous nature of sex work. If resentenced to a parole-eligible sentence and ultimately granted parole, she hopes to spend time with her daughter and open up her own commercial cleaning business.

Amici submit this brief pursuant to Pa.R.A.P. 531(b)(2), and do not repeat arguments made by the Parties. No Party's counsel authored this brief, or any part of it. No Party's counsel contributed money to fund any part of the preparation or filing of this brief. The brief was prepared entirely by *Amici* or their counsel.

INTRODUCTION

Amici respectfully ask this Court to apply its holding in *Commonwealth v. Lee*, 357 A.3d 356 (Pa. 2026) retroactively, and ensure that *Amici* and similarly situated individuals may be re-sentenced to either time served or to parole eligible sentences and, if the latter, then petition the Pennsylvania Parole Board ("Parole Board" or "Board") to consider their release. When *Amici* were convicted decades ago, state law required mandatory LWOP sentences for anyone convicted second-degree murder. In *Lee*, this Court held that such a sentencing scheme requiring LWOP for defendants convicted of second-degree murder without individual culpability determinations violated Article I, Section 13 of the Pennsylvania Constitution. *Id.* at 396. But as individuals convicted and sentenced decades before *Lee*, they remain unable to seek release through the parole process for their unconstitutional sentences.

Amici's individual stories illustrate the need for this Court to apply its holding in *Lee* retroactively. Each of these *Amici* has served over three decades of a mandatory LWOP sentence for second-degree murder. And despite believing they would never be able to seek parole, *Amici* have demonstrated commitment to their own rehabilitation and to helping others within their prison facilities and outside of them. Today, *Amici* are all over sixty years-old. Like others older than fifty serving now-unconstitutional LWOP sentences, they experience increasingly-complex medical needs as they age—including chronic conditions like dementia.

Amici also emphasize that they seek only an opportunity. They recognize that retroactive application differs from immediate or direct release. Retroactivity gives *Amici* the opportunity to make their case for release in front of a judge at re-sentencing, and then to the Parole Board, which is all that they ask—they believe that their exemplary rehabilitation might prove compelling, if only they can access these processes. Under the circumstances, this Court should consider the examples of *Amici* and grant retroactive application to people serving now-unconstitutional mandatory LWOP sentences.

ARGUMENT

I. *Amici* are serving LWOP sentences for second-degree murder convictions now unconstitutional under *Lee*.

Amici ask this Court to apply *Lee* retroactively to provide relief to individuals serving unconstitutional sentences, which were imposed as a result of the mandatory sentencing scheme this Court has recently held violates Section 13 of the Pennsylvania Constitution. *Amici* are among those sentenced unconstitutionally: given LWOP without consideration of their personal circumstances or diminished culpability, or their capacities for rehabilitation. As this Court recognized, constitutionally-permissible sentences for second-degree murder require consideration of individualized details of the crime and personal circumstances—including potential for rehabilitation.

Prior to this Court's ruling in *Lee*, Pennsylvanians convicted of second-degree murder were guaranteed to die in prison. Because Pennsylvania's sentencing scheme made LWOP mandatory for second-degree murder convictions, judges and juries could make no determinations of individual culpability during sentencing. *See Lee*, 357 A.3d at 392. Earlier this year, this Court held that imposing mandatory LWOP sentences for second-degree murder convictions without making individualized determinations of culpability violated Article I Section 13 of the Pennsylvania Constitution's prohibition on cruel punishments. *Id.* at 397. This ruling ensured that LWOP will no longer be imposed on people convicted of second-degree murder who have insufficient culpability to justify such a severe sentence. Section 13 demands that defendants be sentenced with regard to their individual culpability—including their characteristics and the details of their crime. *Id.* at 395–96.

But *Lee* left open what would happen to those serving mandatory LWOP sentences that were final before its ruling. *See id.* at 397, n.20 (reserving question of retroactivity). Today there are over 1,100 people, including *Amici*, serving these mandatory LWOP sentences in Pennsylvania prisons.[1] These individuals were sentenced without regard

[1] Phila. Bar Ass'n, *Philadelphia Bar Association Resolution Supporting the Proposed Amendment to Felony Murder Sentencing*

to factors such as their age, history, or culpability in the underlying crime. This matters particularly because many of them had neither intent to kill nor even knowledge that someone else would—and therefore exhibited the sort of diminished culpability that might forestall an LWOP sentence.

Amici are among those convicted of second-degree murder and given sentences grossly disproportionate to their individual culpability. Due to the Commonwealth's mandatory sentencing scheme, their sentencing courts could not consider their individual history, the details of the crime, or any other mitigating evidence during sentencing. However, these details and mitigating evidence are significant when analyzing individual culpability, and shed light on the appropriate sentence, including whether an individual should be granted the possibility of parole. In the absence of individualized determinations, *Amici* all received LWOP sentences, despite evidence of their diminished culpability and capacity for rehabilitation.

The importance of avoiding arbitrary sentences by conducting individual culpability determinations is clear. *See Lee*, 357 A.3d at 393 (majority) (citing *Graham v. Florida*, 560 U.S. 48, 69–70 (2011)); *Lee*, 357 A.3d at 407 (Wecht, J. concurring). When a punishment is as severe as LWOP, it is crucial that individuals are sentenced based on their own

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Provision as Set Forth in House Bill No. 443, Printer's No. 421 (June 18, 2025), *available at*: https://philadelphiabar.org/?pg=ResJun25_1.

blameworthiness. Mitigating evidence, circumstances of a crime, and evidence of rehabilitative capacity all speak to whether or not someone can be appropriately sentenced to life in prison. *See, e.g.*, 204 Pa. C.S. § 303a.6(f)(1)(ii) (enumerating mitigating factors in the death penalty context). When considering mitigating evidence, courts are not limited to any particular factors, and have discretion to consider any and all details that impact the appropriateness of imposing a severe sentence. *See, e.g.*, *Lee*, 357 A.3d at 407 (Wecht, J. concurring) (citing 42 Pa. C.S. § 9711.) ("[T]he [death] penalty is governed by a statutory scheme that requires careful, circumstance-specific consideration of aggravating and mitigating circumstances, which are designed to take particular account of the defendant's individual culpability and characteristics, and to reduce the possibility of arbitrary death sentences.").

Had *Amici* been sentenced under a discretionary sentencing scheme, the courts could have considered their circumstances, involvement, and potential for rehabilitation. Take Mr. Holmes for example, who was convicted of felony murder and sentenced to mandatory LWOP based on the Commonwealth's theory that he acted as an unarmed lookout in an attempted robbery of a gas station. During the attempted robbery, Edgar Hudson stabbed a taxi driver to death in front of witnesses. At Mr. Holmes' trial, the Commonwealth never argued that Mr. Holmes participated in the stabbing, nor that he knew beforehand that a killing would take place. None of the testifying witnesses identified

Mr. Holmes as a perpetrator of the killing, nor did any witness even see a second perpetrator. Thus, Mr. Holmes was convicted solely based on his purported involvement as a lookout in the underlying robbery. Mr. Holmes has always maintained his innocence, but even under the Commonwealth's theory his sentence raises exactly the sort of culpability issue identified by *Lee* as a violation of Section 13. *See id.* at 404 (Wecht, J. concurring) ("Under the current sentencing scheme . . . the getaway driver who intended only to make off with some ill-gotten gains must always be punished identically to a person who methodically plans and executes a cold-blooded murder. Despite their differing degrees of culpability . . . both offenders spend the remainder of their natural lives in prison without . . . a chance of consideration for parole. It is this anomaly or discrepancy that serves as the cornerstone of the constitutional challenge in this case.").

Ms. Lassiter was also convicted of second-degree murder and sentenced to mandatory LWOP without any consideration of details of the crime or mitigating evidence, which if considered might not have justified a mandatory life sentence. She was twenty-five years old and suffering from a debilitating cocaine addiction when she was convicted of having initiated a robbery while engaging in sex work. According to the Commonwealth, on the night of the crime, Ms. Lassiter used drugs with a cab driver and, after leaving the scene, her co-defendant allegedly entered the cab, shooting and killing the decedent. Even at the time of

her conviction, no one disputed that Ms. Lassiter had minimal involvement in the crime and was not responsible for killing the victim, and Ms. Lassiter has maintained her innocence. Ms. Lassiter waived her right to a trial and testified against her co-defendant in exchange for only the Commonwealth taking death penalty off the table. But because of the unconstitutional sentencing scheme, the judge could not take her purported involvement in the underlying crime (which even the Commonwealth viewed as limited), age, drug addiction and use, or cooperation into account during sentencing, and she received the mandatory LWOP sentence for second-degree murder.

Mr. Payne maintains his innocence, but even the Commonwealth's own theory of conviction illustrates the problem of imposing mandatory LWOP on people who lack specific intent to kill. As to his innocence, at a jury trial, Mr. Payne was convicted of second-degree murder and sentenced to mandatory LWOP based solely on the inconsistent testimony of three witnesses—two of whom were jailhouse snitches seeking leniency, one who frequently used LSD at the time—that was contradicted by the testimony of six other witnesses. In granting him DNA testing years later, the Superior Court called out the shortcomings of the witness testimony used to convict Mr. Payne, explaining that the credibility of the Commonwealth's three main witnesses was "suspect" and that "significant details that varied between them." *In re Payne*, 129 A.3d 546, 550 (Pa. Super. Ct. 2015) (en banc). While subsequent DNA

testing has not affirmatively exonerated him because of the age of some of the evidence, it has ruled him out as contributing to the only physical evidence at the scene, and no other physical evidence then or now connected him to the crime. But beyond his potential innocence, even the Commonwealth's theory of conviction does not include him having committed the killing himself or having had any intent to kill—it argued that Mr. Payne participated in a robbery alongside two co-defendants, during which one killed the victim.

Amici take pains to emphasize that they do not relate the facts of their cases to minimize the significant tragedy each embodies for the decedents' families. They offer their stories—including the details of their cases, individual characteristics, and mitigating evidence—to illustrate common second-degree murder fact patterns and to emphasize to the Court that many people have served several decades despite not having killed anyone, or having intended or even anticipated that someone else would. These details have long been irrelevant under the Commonwealth's now-unconstitutional mandatory LWOP scheme. *Amici*'s decades of incarceration despite their individual details highlight the need for retroactive application of *Lee* to correct the injustices resulting from the scheme.

II. Incarcerating rehabilitated aging-lifers like *Amici* serves no penal purpose and imposes unnecessary costs on the prison system.

Separate from the unconstitutionality of the mandatory LWOP sentences imposed on *Amici*, they urge the Court to apply *Lee* retroactively because their continued incarceration is wasteful and advances no punitive goals. All *Amici* are over 60 years old and have records showing exemplary rehabilitation: longstanding in-facility employment, including in positions of trust; clean disciplinary records with decades free of misconduct; in-facility leadership roles; personal improvements in sobriety and habits; and significant educational attainment and successful participation in other opportunities for self-improvement. On the opposite side of the coin, *Amici* and many others also face declining physical health that requires increasingly complex medical care as they age, which increasingly burdens the already-limited financial resources available to the Pennsylvania DOC. This Court should apply *Lee* retroactively, allowing *Amici* to seek release via resentencing to time served or parole-eligible sentences, because their personal rehabilitation demonstrates that the DOC need not continue carrying the considerable financial and institutional burden of their care to serve the purposes of criminal punishment.

A. Evidence of *Amici*'s successful institutional adjustment and personal rehabilitation illustrates lack of ongoing penal purpose.

Numerous people in DOC custody are serving mandatory LWOP sentences that no longer serve legitimate penal goals, if ever they did. In *Lee*, this Court recognized that a mandatory LWOP sentencing scheme cannot be justified by deterrence, retribution, rehabilitation, or incapacitation. *Lee*, 357 A.3d at 395. It noted that, "a sentence lacking any legitimate penological justification is by its nature disproportionate to the offense," and therefore may be "cruel" in violation of Section 13. *Id.* at 396 (quoting *Graham*, 560 U.S. at 71). *Amici* exemplify that credo; they prove that institutional adjustment and rehabilitation is both possible and achievable for individuals currently serving mandatory LWOP. But without retroactive application of *Lee*, the no arbiter has any authority to consider the rehabilitation of prisoners previously sentenced to mandatory LWOP.

Much of this Court's explanation of why rehabilitation undercuts LWOP sentences applies even more strongly to people who have illustrated exemplary rehabilitation than to future defendants whose rehabilitation is purely potential. As a reminder, this Court has already observed that that not all individuals convicted of second-degree murder are "outside the realm of rehabilitation." *Lee*, 357 A.3d at 394. And because "the permanent incarceration of an individual is premised upon the notion that he cannot be rehabilitated or deterred from committing a

future crime—that is, he will forever be a danger to society, he is incorrigible," *id.* at 395, an individual who can be rehabilitated should not suffer a life sentence. Parole eligibility ensures that people have the opportunity to reenter society when they have proven not to pose any further danger to society. *See id.* at 364. Because the mandatory LWOP scheme "prohibited" the Parole Board "from taking into account the intent and culpability of someone convicted of felony murder," this Court recognized it was incompatible with rehabilitation or deterrence, which seek to prevent individual recidivism and reintegrate rehabilitated individuals into society. *See id.* at 394–95.

Amici illustrate exactly those concerns and convert that potential rehabilitation into a reality. Far from being incorrigible, *Amici* have demonstrated exemplary rehabilitation over the course of 30+ years of each of their respective sentences. *Amici* have incurred no serious misconduct in decades, and most never had any violent misconducts even at the outset of their sentences. Within their prisons, *Amici* have maintained employment, earned leadership positions, and sought self-improvement through volunteer work, education, and therapy. Their evidenced institutional adjustment eviscerates any penal justifications for their continued incarceration, as they pose no continued danger to society, and are not at risk for reoffending. Each individual *Amici*'s story proves rehabilitation is possible:

- Mr. Holmes has served more than 46 years in prison. He has gone over three decades without a serious misconduct. Moreover, he earned the trust of his correctional officers and for many years prior to his illness cooked for and served Department of Corrections staff. He consistently earns positive housing and work reports.
- Mr. Payne has been in prison for 40 years. He has never been cited for a violent infraction, and since 1999, has been misconduct-free. He has worked as a painter, a library clerk, a printing press operator, and a machinist. He volunteers with organizations focused on helping Vietnam Veterans, advancing literacy, and supporting other Lifers. His volunteer work has resulted in multiple awards and commendations. In recognition of Mr. Payne's rehabilitation and conduct, the Department of Corrections supported his commutation application.
- Ms. Lassiter has been in prison for 38 years. She has been misconduct-free since 2003 and never incurred an infraction for violent misconduct. She earned a GED and high school diploma, completed numerous substance abuse programs, and obtained an associate's degree in business and multiple vocational certificates. She knits and crochets blankets and children's clothing for the Lion's Club. Her exemplary character led her to be hired for multiple honor jobs, including in the commissary,

the optical lab, and medical hospice care. As a result of her conduct and rehabilitation, the Department of Corrections supported Ms. Lassiter's commutation application.

Amici's clear rehabilitation bolsters the Court's point in *Lee*: mandatory LWOP for second-degree murder makes little sense because people convicted of second-degree murder cannot be written off as irredeemable. Many individuals serving mandatory LWOP exhibit good behavior, strong work ethic, and engagement with their prisons and the broader community—personal characteristics that would bear directly on consideration for parole, if they were only eligible. *Amici*'s rehabilitation is perhaps more notable for them having undertaken it despite believing they would never be eligible for parole. But personal motive is irrelevant to redemption, and retroactive application of *Lee* is necessary to allow rehabilitated individuals, like *Amici*, at least an opportunity to seek relief through resentencing and/or parole from their decades of incarceration on now-unconstitutional sentences.

B. *Amici* face increasingly complex and costly health conditions as they age.

Amici also highlight one of the additional problems with confining people unnecessarily until their death. Applying *Lee* retroactively could also alleviate some of the logistical and financial pressure imposed on the DOC by aging prisoners. Aging prisoners serving LWOP, like *Amici*, face declining physical health that both sharpens the punishment of their

sentence and strains DOC resources through the need for increased medical care and supervision—costs that the DOC undertakes with very little corresponding benefit to public safety.

The financial and personnel cost incurred by the DOC to incarcerate and care for the aging mandatory LWOP population is immense. The DOC cites "the overwhelming cost of care for [the] aging prison population as one of their biggest fiscal challenges."[2] The DOC regularly identifies the ever-increasing "demand for onsite infirmary care, hospice care, chronic care, medications . . . and specialty medical care" which "results in higher medical costs and increased overtime expenditures" to staff who accompany individuals to external medical appointments.[3] That demand increases in part because the outlier-punitive mandatory LWOP sentences this Court held unconstitutional in *Lee* have until now ensured that a large population of people will age and die in prison without the possibility of release through parole.

It is particularly expensive to care for prisoners 50 years old and over. Prison already ages people faster than civilian life: according to the

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[2] Rick Krajewski, *Pa. House Approves Bipartisan Update to Medical Release System* (Dec. 17, 2025), *available at*: https://www.pahouse.com/InTheNews/NewsRelease/?id=141482.

[3] Pa. Dep't Corr., *Pennsylvania Department of Corrections 2025-2026 Budget Testimony* 7 (2024), *available at*: https://www.pa.gov/content/dam/copapwp-pagov/en/cor/documents/about-us/statistics/budget-documents/budget-testimony-2025-26.pdf.

DOC, "the incarcerated population tends to age at a rate . . . five to ten years beyond their chronological age."[4] Some researchers have estimated that each year served in prison "translates to a 2-year reduction in life expectancy."[5] Accordingly, Department of Corrections identifies the age of 50 as a significant marker of medical needs.[6] Nearly half of the over 1,100 individuals serving mandatory LWOP in Pennsylvania's prison system are over 50 years old.[7] For that group, including *Amici*, the Department of Corrections identifies a 115.5 percent increase in medication costs for individuals over 50—an increase of nearly $1,400 a year on medication per person compared to when they were younger.[8] The average medication cost for a prisoner over 50 is over $2,600.[9]

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[4] Pa. Dep't Corr., *Pennsylvania Department of Corrections Budget Testimony, 2026–27* 7 (2025), *available at*: https://www.pa.gov/content/dam/copapwp-pagov/en/cor/documents/about-us/statistics/budget-documents/budget-testimony-2026-27.pdf [DOC Budget 2026-2027].

[5] Rahul Vanjani, M.D., et al., *Physician-Public Defender Collaboration—A New Medical-Legal Partnership*, New England J. Med. 2083, 2083 (2020), *available at* https://www.brownhealth.org/sites/default/files/2024-06/NEJMms2002585.pdf.

[6] *DOC Budget 2026-2027* at 7.

[7] Andrea Lindsay, *Life Without Parole for Second-Degree Murder in Pennsylvania: An Objective Assessment of Sentencing* 21 (Jan. 2021), *available at*: https://www.plsephilly.org/wp-content/uploads/2021/01/PLSE-Second-Degree-Murder-Audit-Jan-19-2021.pdf.

[8] *DOC Budget 2026-2027* at 9.

[9] *Id.*

Additionally, limited personnel resources within a facility face strain as elderly individuals need specialized care, including some that cannot be provided at DOC facilities and requires transportation to outside providers. This increases both costs of care and security.[10] As the population continues to age, the DOC has increasingly spent larger amounts of money attempting to address the challenging medical needs of older prisoners—undertaking expenses for "specialized senior living units," "skilled care, hospice care, and chronic care units," and "memory care for inmates with dementia."[11]

Amici—all over the age of 60—reflect this. Some *Amici* battle health conditions which often require extensive medical treatment and support. Mr. Holmes in particular has advanced dementia, and his physical health continues to deteriorate more generally. Dementia, which causes significant cognitive impairment, is a particularly dangerous condition for individuals in prison, because it can impair their ability to engage with other people, maintain their own safety, and lead to further mental health issues, such as suicidal ideation.[12] Because of his dementia, Mr. Holmes is constantly disoriented when it comes to place

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[10] *Id.*

[11] *See id.*

[12] *See Nat'l Comm'n on Corr. Health Care, Care for Aging Patients in the Correctional Setting: Position Statement* 3 (March 2024), *available at*: https://ncchc.org/position-statements/care-for-aging-patients-in-the-correctional-setting/.

and time. In recent years, Mr. Holmes survived an assault by another prisoner that resulted in a severe eye injury and underwent multiple surgeries to treat his degenerative joint disease. Continuing to incarcerate *Amici* will only grow more costly as they age, both because of the increased costs of providing increased medical care associated with aging and through compensating staff responsible for supervising and transporting individuals seeking care. Particularly in light of their clear rehabilitation, the strain placed on the correctional department by the continued incarceration of aging prisoners, at least in *Amici*'s case, is unnecessary.

III. *Amici* emphasize to this Court that retroactive application does not release anyone, it merely offers deserving people an opportunity to make their case for new sentences and potentially parole.

Amici remind this Court that retroactive application of *Lee* would not guarantee the release of a single person or otherwise jeopardize public safety—it would merely mean people serving unconstitutional sentences could make their own individual case for resentencing, and potentially subsequently to the Parole Board, if they are not released on time-served. This Court has recognized that availability of parole can serve to bring punishment for second-degree murder in line with individual culpability. *See Lee*, 357 A.3d at 395–96. But of course, neither parole nor other release is guaranteed—parole is "a matter of grace and mercy shown to a prisoner who has demonstrated to the Parole Board's

satisfaction his future ability to function as a law-abiding member of society upon release . . . ." *Id.* at 364 (citation omitted). Sentencing judges will retain discretion to order long sentences or even life without parole on a non-mandatory basis; the Parole Board will maintain its discretion to grant or deny parole to those sentenced to parole-eligible sentences. *Amici* well known that judges' or Parole Board members' views of individual culpability or lack of rehabilitation might forestall parole in particular cases. Retroactive application would simply grant *Amici* the opportunity to make their requests for resentencing and potentially parole, unlike the status quo under which no court or board may even consider individual facts for the numerous people sentenced prior to *Lee*. *See* 61 Pa. C.S. § 6137(a).

Amici seek retroactive application of *Lee* because all they want is the chance to make their cases. For one thing, after serving 30 years of their unconstitutional LWOP sentences, *Amici* welcome even the possibility of relief. But for another, as they've explained here, they believe that individualized consideration of their particular cases—their roles in the underlying crimes, mitigating evidence of their lives at the time of those offenses, their exemplary rehabilitation, and complicated medical challenges, among other things, plus their decades of time already served—makes them strong candidates for resentencing to time-served or, if resentenced to parole-eligible sentences, release on parole. Even if they get no such relief, however, a resentencing would at least

involve the individual culpability determination required to justify a life-sentence under this Court's precedent—one they have never received. This Court should hold that *Lee* applies retroactively and provide *Amici* and the 1,100 others serving unconstitutional sentences the ability to seek relief from the sentences imposed on them by the Commonwealth in violation of Article I Section 13 of the Pennsylvania Constitution.

CONCLUSION

For all of the foregoing reasons, in addition to those reasons articulated by Mr. Coffey, this Court should grant individuals convicted of second-degree murder prior to this court's ruling in *Lee* have the chance to receive individualized culpability determinations and the possibility of parole for those serving cruelly disproportionate sentences.

Respectfully submitted,

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Dated: Nov. 9, 2026

CERTIFICATE OF COMPLIANCE WITH WORD LIMIT

I hereby certify pursuant to Pa.R.A.P. 531 that this brief does not exceed 7,000 words.

CERTIFICATE OF COMPLIANCE

I hereby certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of November, 2026, a true and correct copy of the foregoing Brief of *Amicus Curiae* was served on the Parties via PACFile.

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Dated: Nov. 9, 2026