No. 2003-90044-S

IN THE SUPREME COURT

OF THE STATE OF KANSAS

STATE OF KANSAS

Plaintiff-Appellee,

vs.

REGINALD DEXTER CARR, JR.

Defendant-Appellant.

Brief of *Amici Curiae* Concerned Conservatives About the Death Penalty, Kansas Coalition Against the Death Penalty, Dalton Glasscock, Steve Becker, Al Terwelp, Bob Weeks, Carolyn Zimmerman, Celeste Dixon, Bill Lucero, Msgr. Stuart Swetland, Catholic Mobilizing Network, Dominican Sisters and Associates of Peace of the Roman Catholic Church, Mount St. Scholastica, Sisters of Charity of Leavenworth Office of Justice, Peace and Integrity of Creation, Sister Christina Meyer, Bishop Ruben Saenz, Jr., Robert Sanders, Michael Birzer, and the American Civil Liberties Union (ACLU) and ACLU of Kansas

Appeal from the District Court of Sedgwick County, Kansas
Honorable Paul W. Clark, District Judge
District Court Case No. 00CR2978

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INTEREST OF *AMICI CURIAE*

Amici are a diverse group of individuals and organizations with background and knowledge regarding the death penalty, including Conservatives Concerned about the Death Penalty, faith organizations and individuals, victims' family members, former law enforcement, the Kansas Coalition Against the Death Penalty, and the ACLU. They share a common interest in ensuring that this Court's analysis of the constitutionality of the death penalty is informed by the factual record and legal record regarding the shortcomings in the application of the death penalty in Kansas.

ARGUMENT

In the nearly 27 years since Kansas adopted the death penalty, its promise of swift, certain and accurate justice has proven illusory. Since then, Kansas has sentenced to death 15 people. Of these, four have been resentenced to either life or lengthy terms of imprisonment after courts found errors in the proceedings; one, Douglas Belt, died of natural causes after nearly 12 years in prison; *none have been executed.* Of the 10 remaining condemned, seven were sentenced to death more than 10 years ago, and an eighth nearly 10 years ago. All 10 were convicted of killing white victims.

The question of whether this failed experiment comports with the Kansas Constitution is now before the Court. The parties dispute the governing legal standard of review under § 1 of the Bill of Rights, and whether this section even protects a person who has been convicted. Amici assert that § 1 of the Bill of Rights *does* apply to convicted individuals and is never relinquished. Amici do not brief the controlling standard of review because when evaluated under any standard the evidence shows that

the Kansas's death penalty as applied has failed to advance a valid penological purpose, and thus is unconstitutional. Indeed, this record of the failed application of the death penalty in Kansas renders it unconstitutional under § 9 of the Kansas Constitution. *See e.g.*, *State v. Gregory*, 427 P.3d 621, 636 (Wash. 2018) (the death penalty as administered "fails to serve legitimate penological goals" and thus constituted "cruel or unusual punishment" under state constitution); *State v. Santiago*, 122 A.3d 1, 98 (Conn. 2015) (similar, under Connecticut Constitution). Although this Court ruled in *State v. Kleypas*, 272 Kan. 894, 1051 (2001), that the death penalty did not *per se* violate § 9, that decision, two decades ago, did not consider and could not have considered, the history that has since developed. This history reveals nothing other than the death penalty's abject failure in this state. As applied in fact, Kansas's death penalty violates both § 9 and § 1.

I. The Kansas Death Penalty As Applied Has Not Met the Legislature's Goals of Deterrence, Retribution or Incapacitation.

Assuming it could execute both swiftly and justly, Kansas adopted the death penalty to accomplish its goals of deterrence, retribution, and incapacitation. In reality, it has accomplished none. In practice, the death penalty has been applied arbitrarily, and adequate appellate review has necessitated both lengthy delays in the cases where death sentences were imposed as well as frequent reversals. The slow and uneven application of the death penalty, combined with new social science evidence, have wholly eroded the stated justifications for the penalty and show that the death penalty in Kansas is both unjustified and unconstitutional.

A. The Kansas Legislature enacted the death penalty in 1994 based on claims of deterrence, retribution, and incapacitation.

When Kansas reinstated the death penalty in 1994, it did so while still mourning the loss, in 1993, of five Kansas murder victims, in two separate cases, including children and a college student. In response, the Legislators' stated goals were to protect society, to severely condemn the most severe crimes, to deter future crime, and to incapacitate people who would kill again. *See* Julie Wright, *Death-Penalty Bills Herald a Get-Tough Session; House, Senate Versions Prepared*, Wichita Eagle, 1994 WLNR 4638158 (Jan. 11, 1994). *Cf. State v. Mossman*, 294 Kan. 901, 921 (2012) (citing *Graham v. Florida*, 560 U.S. 48, 70 (2010) for acknowledgment of four legitimate penological goals - "retribution, deterrence, incapacitation, and rehabilitation").

In the Legislature, Senator Parkinson, the reinstatement bill's chief sponsor, cited research he claimed supported the notion that the death penalty deters crime. *Death-Penalty Bills Herald a Get-Tough Session*, 1994 WLNR 4638158 ("The significance of that is that if you come to the conclusion that it could have a deterrent effect, then the type of crime that we are talking about being prevented by having a death penalty is of course the most heinous possible crime[.]"); *See also* Julie Wright, *A Father Tells Why He Wants Death Penalty*, Wichita Eagle, 1994 WLNR 1272083 (Jan. 26, 1994) (citing proponents' deterrence argument); Julie Wright, *Death-Penalty Bills Face Trial in Senate*, Wichita Eagle, 1994 WLNR 836006 (Feb. 12, 1994) (same).

Other legislators and proponents "cited public sentiment, rather than deterrence of crime, to justify executions." David Dvorak, *Kansas Approves Death Penalty After 22 Years, Governor Says She Won't Fight Law*, New Orleans Times-Picayune, 1994 WLNR

932485 (April 9, 1994). Their concerns sounded in retribution. "For many who testified [before the legislature], the most compelling argument is the belief that those who commit grisly murders deserve to die." *A Father Tells Why He Wants Death Penalty*, 1994 WLNR 1272083. *See also id.* (quoting Senator Packer: "'Capital punishment is a punishment deserved by criminals convicted of inhumane, vicious and merciless acts[.]'"). Senator Packer also argued incapacitation: "'The most compelling undisputed proof of deterrence is that once executed, a killer is forever deterred from killing again[.]'" *Id.*

Proponents argued these objectives would be met with swift executions, with limited time for appeals. Hearing on HB 2578 Before the House Comm. on Fed. & State Affairs, January 25, 1994. Then-Governor Finney allowed the death-penalty bill to become law, without her signature. Kansas Legislative Research Department, *Death Penalty in Kansas* 1 (Jan. 27, 2021), http://www.kslegresearch.org/KLRD-web/Publications/JudiciaryCorrectionsJuvJustice/memo_genl_deboer_death_penalty.pdf (hereafter Death Penalty in Kansas). The law took effect on July 1, 1994.

B. Kansas's death penalty has been neither swift nor fair.

The State has condemned 15 persons to death. Ten remain sentenced to death, including three who have now been waiting for execution or relief from sentence for between 18 and 19 years, and five between almost 10 and 15 years:

Name	Date of Sentence	County
Kyle Trevor Flack	May 18, 2016	Franklin
Frazier Glenn Cross, Jr.	Nov. 10, 2015	Johnson
James Kraig Kahler	Oct. 11, 2011	Osage
Justin Eugene Thurber	March 20, 2009	Cowley

Gary Wayne Kleypas	Dec. 3, 2008	Crawford
Scott Dever Cheever	Jan. 23, 2008	Greenwood
Sidney John Gleason	Aug. 28, 2006	Barton
John Edward Robinson, Sr.	Jan. 21, 2003	Johnson
Johnathan Daniel Carr	Nov. 15, 2002	Sedgwick
Reginald Dexter Carr, Jr.	Nov. 15, 2002	Sedgwick

See Kansas Department of Corrections, *Capital Punishment Information*, https://www.doc.ks.gov/newsroom/capital#:~:text=The%20State%20of%20Kansas%20has,%2C%20including%20Kansas%2C%20in%201972 (setting out similar chart) (hereafter DOC Capital Punishment Information).

What all of these cases have in common is that victims were white. R. Carr Supp. Br. 44-45 (asserting this); State Supp. Br. 24-25 (not disputing this). National empirical studies consistently "find that defendants who killed at least one white victim are more likely to be charged with a capital crime and more likely to be sentenced to death than their counterparts who did not kill a white victim." Catherine Grosso et al., *Local History, Practice, and Statistics: A study on the Influence of Race on the Administration of Capital Punishment in Hamilton County, Ohio (January 1992 – August 2017)*, 51 Colum. Hum. Rts. L. Rev. 902, 912 (2020). Kansas fits the pattern. R. Carr Supp. Br. 44-45. In contrast, as of the 2004 review, of "the six defendants whose capital trials resulted in Life/Hard 40 or 50 sentences three . . . killed minority victims." Advisory Committee 2004 Report 13. Even by then, eight persons had already been sentenced to death for killing white victims. *Id.* "The fact that a white prosecutor or a white juror may be more troubled by the death of a white victim than of a black or Hispanic victim may be psychologically explicable, but it is not morally defensible." *Santiago*, 122 A.3d at 98. As

further relevant here, a death penalty that deters or accomplishes retribution, if at all, only for the killing of white victims, utterly fails in fulfilling these penological objectives.

Several of the cases were reversed on appeal for errors in their trials, or were ultimately resolved for lesser sentences based on agreements with the State. After protracted litigation, the State has spared four of the original 15 condemned to die:

1. Michael Marsh's capital murder occurred in 1996. *State v. Marsh*, 278 Kan. 520, 525 (2004). Thirteen years later, in 2009, his death sentence "was vacated pursuant to a plea agreement." He was resentenced to two life sentences with parole eligibility after 55 years. *Death Penalty in Kansas* 5.
2. Gavin Scott, too, committed his capital murder in 1996. *State v. Scott*, 286 Kan. 54, 62 (2008) (1996 crime). Fourteen years later, in 2010, his death sentence "was vacated pursuant to a plea agreement. He was removed from administrative segregation and sentenced to two life sentences." *Death Penalty in Kansas* 5.
3. Stanley Elms committed capital murder in 1998, Offender Search, *Elms, Stanley (KDOC# 6006716)*, https://kdocrepository.doc.ks.gov/kasper/search/results (1998 offense), and was sentenced to death. *Death Penalty in Kansas* 5. In 2004, his death sentence "was vacated pursuant to a plea agreement" and he was sentenced to "the Hard 40 term[.]" *Death Penalty in Kansas* 5.
4. Phillip Cheatham's death sentence was for a 2003 capital murder. *State v. Cheatham*, 296 Kan. 417, 420 (2013). Ten years later, this Court reversed and remanded the case for a new trial, due to his counsel's ineffectiveness. *Id.* In 2015,

he pleaded no contest and was resentenced to life imprisonment to be served consecutively to other sentences. *Death Penalty in Kansas* 5.

And in 2016, Douglas Belt died in custody nearly twelve years after his 2004 death sentence. *See* DOC Capital Punishment Information.

As in every other state with the death penalty, in Kansas, the litigation necessary to prevent unjust and unconstitutional executions takes time. Taking one example from a prisoner who remains sentenced to death, the crime for which Gary Kleypas was convicted occurred in 1996. *See State v. Kleypas*, 305 Kan. 224, 233 (2016). After his first trial, this Court, in 2001, affirmed his convictions but found "reversible error relating to his capital sentence and ordered a new sentencing proceeding." *Id.* at 230. In its 2001 opinion, the Court also noted and catalogued "numerous" instances of prosecutorial misconduct in the sentencing phase, whose cumulative prejudice the Court did not need to evaluate because it was reversing the death sentence already due to the instructional error. *State v. Kleypas*, 272 Kan. 894, 1122 (2001). Kleypas was resentenced to death in 2008, which this Court affirmed. *Kleypas*, 305 Kans. at 233.

Kansas is not alone in this. The U.S. Supreme Court initially approved Texas's capital sentencing scheme in 1976 in *Jurek v. Texas*, 428 U.S. 262 (1976). Thirty-one years later, the Court was still grappling with problems with the Texas statute – over whether and when Texas's scheme allowed for the consideration of mitigation evidence the Eighth Amendment requires. *See Abdul-Kabir v. Quarterman*, 550 U.S. 233, 237-38 (2007). The prisoner in *Abdul-Kabir* had committed his capital crime two decades earlier, in 1987, and his death sentence initially affirmed in 1990. *Id.* Texas's flaw had led to

decades of litigation, culminating in relief. *See, e.g.*, *Brewer v. Quarterman,* 550 U.S. 286, 289 (2007) (relief for 1991 crime); *Penry v. Lynaugh*, 492 U.S. 302, 307 (1989) (same for 1979 crime). In California, a federal judge found "'systemic delay and dysfunction' in California's post-conviction review process" rendered that state's death penalty unconstitutional. *Jones v. Davis*, 806 F.3d 538, 542 (9th Cir. 2015). Although the decision was reversed, *id.*, appellate delay remains, there and in every death penalty state.

The most recent Bureau of Justice Statistics (BJS) Report found that the "average elapsed time from sentencing to execution almost tripled from 1988 (6.7 years) to 2018 (19.8 years)." BJS, *Capital Punishment, 2018- Statistical Tables* 2 (Sept. 2020), https://www.bjs.gov/content/pub/pdf/cp18st.pdf. And despite its best efforts, "nothing suggests that Kansas will beat the national average on death penalty delays in the foreseeable future." *State v. Robinson*, 303 Kan. 11, 354 (2015) (Johnson, J., dissenting). With no executions in nearly 27 years, Kansas does not even have an average time to execution to be calculated. Delay is a feature of this system, not a bug.

For good reason, too. The Eighth and Fourteenth Amendments demand that "every safeguard" be "observed" when "a defendant's life is at stake." *Gregg v. Georgia*, 428 U.S. 153, 187 (1976) (joint opinion of Stewart, Powell, and Stevens, JJ.). These safeguards "take time to implement. And, unless [courts] abandon the procedural requirements that assure fairness and reliability, [they] are forced to confront the problem of increasingly lengthy delays in capital cases." *Glossip v. Gross*, 576 U.S. 863, 923–24 (2015) (Breyer, J., dissenting).

Most crucially, time-consuming safeguards can prevent the ultimate miscarriage of justice – the execution of an innocent person. "Half of all death-row exonerations have taken more than a decade and the length of time between conviction and exoneration has continued to grow. More than half of the exonerations since 2013 have taken 25 years or more." Death Penalty Information Center, *Time on Death Row*, https://deathpenaltyinfo.org/death-row/death-row-time-on-death-row. As Amicus Party, the Midwest Innocence Project discusses, Lamonte McIntyre was only months short of eligibility for this state's new death penalty when he was falsely accused and convicted of murder in 1994, a nightmare that took 23 years to correct.

Finally, here, but for lengthy appeals, additional safeguards, and reexamination of cases as society matures and evidence comes to light four prisoners – persons Kansas prosecutors only later agreed were not amongst the worst of the worst requiring execution, Marsh, Elms, Gavin, Cheatham – could remain in jeopardy of execution today, or could have been executed already. As shown below, however, these necessary delays frustrate beyond repair the penological objectives of the death penalty.

C. Kansas's death penalty does not deter crime any more than alternative punishments, or serve incapacitation.

Amongst the four penological objectives courts have recognized as legitimate, *Mossman*, 294 Kan. at 921, the principal purposes of capital punishment are "retribution and deterrence of capital crimes by prospective offenders." *Gregg*, 428 U.S. at 183. "Unless the death penalty …measurably contributes to one or both of these goals, it 'is nothing more than the purposeless and needless imposition of pain and suffering,' and

hence" violates the Eighth Amendment. *Enmund v. Florida*, 458 U.S. 782, 798 (1982) (quoting *Coker v. Georgia*, 433 U.S. 584, 592 (1977)). And, indeed, when the Legislature was debating reinstatement of the death penalty in this state, many legislators and proponents, in the wake of horrible murders they did not want repeated, believed the death penalty would deter future murders.

In 2004, the Judicial Council Death Penalty Advisory Committee formed. The Council later issued a report on the Kansas death penalty in its first decade. *See Report of the Kansas Judicial Council Death Penalty Advisory Committee on Certain Issues Related to the Death Penalty* 21 (November 12, 2004), https://kansasjudicialcouncil.org/Documents/Studies%20and%20Reports/Previous%20Judicial%20Council%20Studies/PDF/Death_Penalty_Adv_Comm_Nov04.pdf (hereafter Advisory Committee 2004 Report). The Council studied deterrence, concluding that "the overwhelming mass of research on the subject [reveals] no deterrent effect." *Id.*

The empirical studies since then have not changed that conclusion. The death penalty does not deter. In 2012, the National Academy of Science issued *Deterrence and the Death Penalty*, which looked at all prior studies. This study affirmed what Kansas's advisory committee had concluded eight years earlier. *See* National Academy of Science (NAS), *Deterrence and the Death Penalty* 2 (2012). Recent scholarship is in accord. *See* Daniel Nagin, *Deterrence, in Reforming Justice,* Vol. IV (2017) (arguing that the *certainty of apprehension*, not the severity of punishment, is more effective as a deterrent); Abdorrahman Boroumand Center, *What Happens to Murder Rates when the Death Penalty is Scrapped? A look at Eleven Countries Might Surprise You*,

https://www.iranrights.org/library/document/3501 (Dec. 13, 2018) ("[A] country … which abolished the death penalty could expect an average of approximately six less murders per 100,000 people a decade after abolition."). *See also Glossip*, 576 U.S. at 930-31 (Breyer, J., concurring) (reviewing studies and concluding the studies show "a lack of evidence" that the death penalty deters); *Baze v. Rees*, 553 U.S. 35, 79 (2008) (Stevens, J., concurring in judgment) (finding in 30 years of empirical research "no reliable statistical evidence that capital punishment in fact deters potential offenders").

One reason the death penalty – particularly the American death penalty – does not deter is obvious. As researchers documented in 2015, even for those relatively few who are sentenced to death in America's remaining death penalty states, only a small percentage are executed. F. Baumgartner and A. Dietrich, *Most death penalty sentences are overturned. Here's why that matters*, Washington Post (March 17, 2015), https://www.washingtonpost.com/news/monkey-cage/wp/2015/03/17/most-death-penalty-sentences-are-overturned-heres-why-that-matters/. Even when accounting for executions in higher-use states, American executions are rare. *Id.*

Kansas numbers are similar (but again with *no* rather than *rare* executions). As of 2004, the Advisory committee found that there had been 86 potential capital crimes between 1994 and 2004, with eight resulting in death sentences. Advisory Committee 2004 Report 27. As shown above, three have since had their death sentenced reduced to terms of imprisonment (Marsh, Stanley, Elms). Belt died in custody of natural causes in 2016. None have been executed. The number of potential capital crimes between the date of the 2004 report and present is unknown, but seven new prisoners were condemned

during that period (Flack, Cross, Kahler, Thurber, Cheever, Gleason, and Cheatham). Of those seven, Cheatham has been resentenced to life. Thus, the overwhelming majority of potential capital murders in Kansas since 1994 have resulted in sentences less than death, more than a quarter of which subsequently reduced to sentences less than life (4/15). No death sentence has resulted in execution. *See also Santiago*, 122 A.3d at 57–58 (noting one execution (of "volunteer") among 4,000 convicted of murder, concluding the "overwhelming majority of killers are not sentenced to death[,]" and questioning how this system of "unexecuted capital punishment promotes a respect for the law" or could ever lead to the belief that the state's punishments will be carried out).

The State cites to studies purporting to link a certain amount of deterrence to a *given number of executions*. State Supp. Br. 21. Aside from conflicting with the NAS and other authoritative studies, their conclusions do not apply here: Kansas has carried out no executions in nearly 27 years. An influential study of Texas, the nation's busiest execution state, found these executions resulted in no deterrence. *See* Sorensen, Wrinkle, Brewer, & Marquart, *Capital Punishment and Deterrence: Examining the Effect of Executions on Murder in Texas*, 45 Crime & Delinquency 481 (1999). If Texas's active executions did not deter, how can Kansas's lack of executions be expected to?

The State claims incapacitation as an additional legitimate state interest. State Supp. Br. 18-19. But, whatever its role with respect to other penalties, "incapacitation has never been embraced as a sufficient justification for the death penalty[.]" *Spaziano v. Florida*, 468 U.S. 447, 461 (1984). "*Gregg* instructs that capital punishment is excessive when it is grossly out of proportion to the crime or it does not fulfill the two distinct

social purposes served by the death penalty: retribution and deterrence of capital crimes." *Kennedy v. Louisiana*, 554 U.S. 407, 441 (2008) (citing *Gregg* and *Coker*, 433 U.S. at 592) ("A punishment might fail the test on either ground.")).

And even if incapacitation were sufficient, the State's argument fails for the same reasons set out above. Incapacitation cannot occur without execution. And incapacitation can and is met through other means: incarceration. The State of Kansas, whose Department of Corrections takes on this responsibility, https://www.doc.ks.gov/, offers no claim that its modern prisons are unable to incapacitate without the death penalty.

D. Kansas's 10 active death sentences and zero executions do not further the objective of retribution.

While retribution serves as a penological objective that, in theory, could support the death penalty, *Gregg*, 428 U.S. at 183, it offers a less weighty justification than deterrence. As courts have recognized, "society has evolved and matured, the erstwhile importance of retribution as a goal of and justification for criminal sanctions has waned." *Santiago*, 122 A.3d at 61 (citing *Baze*, 553 U.S. at 80 (Stevens, J. concurring) ("[O]ur society has moved away from public and painful retribution toward ever more humane forms of punishment.")). Indeed, the U.S. Supreme Court explained long ago that "[r]etribution is no longer the dominant objective of the criminal law." *Williams v. New York*, 337 U.S. 241, 248 (1949). Justice Thurgood Marshall similarly explained that "retribution for its own sake is improper[.]" *Furman v. Georgia*, 408 U.S. 238, 342-45 (1972) (Marshall, J., concurring). Part of the difficulty, leading to this lesser weight, is in knowing with any degree of certainty that a particular punishment satisfies retribution, to

the exclusion of all other punishments. Thus, the "retributive value of an execution defies easy definition and quantification, shrouded as retribution is in metaphysical notions of moral restoration and just deserts." *Santiago*, 122 A.3d at 64.

Whatever weight retribution may carry in theory, it carries none in fact in Kansas, where an execution – if one ever happens at all – will comes only decades after the capital crime. By that time, the "offenders and the victims' families have grown far older. . . . The offender may have found himself a changed human being." *Glossip*, 576 U.S. at 932 (Breyer, J., dissenting). *See, e.g.*, Marcy Widder, *My client atoned for his sin. The Trump administration had him killed anyway*, Wash. Post (Dec. 14, 2020), https://www.washingtonpost.com/outlook/2020/12/14/trump-death-penalty-cruelty/.

"At the same time, the community and victims' families will know that, even without a further death, the offender will serve decades in prison under a sentence of life without parole." *Glossip*, 576 U.S. at 932-33 (Breyer, J., dissenting). Indeed, for many surviving family members, the death penalty and the promise of execution brings more pain, rather than closure or retribution. In an open letter to the Boston Globe, the parents of a child killed in the Boston Marathon bombings presciently wrote: "The continued pursuit of that punishment could bring years of appeals and prolong the most painful day of our lives." R. Muller, *Death Penalty May Not Bring Peace to Victims' Families*, Psychology Today (Oct. 19, 2016), https://www.psychologytoday.com/us/blog/talking-about-trauma/201610/death-penalty-may-not-bring-peace-victims-families. *See also Voices of Kansas, Murder Victims' Families Speak Out Against the Death Penalty* 4 (2015), https://www.ksabolition.org/wp-

content/uploads/2015/04/KSVictimsVoicesWCover.pdf (family member speaking of years of appeal which would only inflict more pain).

The inherent uncertainty of execution makes the death penalty *less* likely to satisfy retribution than the sure, certain and safer sentence of life without parole that the state has made available since 2004. *See State v. Scott*, 286 Kan. 54, 67 (2008) (setting out this law), *overruled on other grounds State v. Dunn*, 304 Kan. 773, 807 (2016).

The State's retribution argument is therefore purely theoretical, completely untethered to the facts of the last 27 years. The State contends that the "death penalty serves 'as an expression of society's moral outrage at particularly offensive conduct." State Supp. Br. 20 (quoting *Gregg*, 428 U.S. at 183). Further, from *Gregg* it argues, "[r]etributive punishment seeks justice for the community as a whole, thereby discouraging individuals from resorting to self-help and vigilante justice." *Id.*

This theoretical argument falters in at least three ways. *First*, the State's arguments presuppose not mere death sentences, but imposed *executions*. Whatever an actual execution may do to express moral outrage, the State does not engage with what a Kansas death sentence – with little to no promise of execution – can do in this regard beyond life without parole. *Second*, even assuming a death sentence ever did result in execution, the State fails to explain how these exceptionally rare death sentences express moral outrage for Kansas communities when the overwhelming majority of death-eligible murders in those communities result in the lesser punishment of life without parole. And *third*, the State cites to not a single incident, between 1972 and 1994 of vigilante justice or self help that resulted from the State's most recent period without the death penalty.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing will be served on counsel for each party through the Court's electronic filing system, which will send a "Notice of Electronic Filing" to each party's registered attorney. Counsel will additionally serve a true and correct copy of the above and foregoing on Mr. Carr via certified mail.

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