Establishing Principled Interpretation Standards in Iowa's Cruel and Unusual Punishment Jurisprudence

Elisabeth A. Archer[*]

ABSTRACT: In 2009, the Iowa Supreme Court decided State v. Bruegger, *dramatically changing the court's cruel and unusual punishment precedent under article I, section 17 of the Iowa Constitution. Prior to* Bruegger, *the court interpreted article I, section 17 in lockstep with federal Eighth Amendment interpretation, deeming the two provisions identical in scope, import, and purpose. However,* Bruegger *inexplicably altered this precedent by applying article I, section 17 more stringently than the Eighth Amendment. Defendants in Iowa began seeking heightened protection under the Iowa Constitution—protection* Bruegger*'s new interpretation seemingly afforded. When the Iowa Supreme Court decided* State v. Null *and* State v. Pearson *on August 16, 2013, and* State v. Lyle *on July 18, 2014, it solidified* Bruegger*'s standardless interpretation and again failed to enunciate a principled basis for interpreting article I, section 17 independent of the Eighth Amendment. These recent cases do not explain what in the Iowa Constitution justifies the new interpretation, or how the new interpretation will be applied to future cases. By evaluating the problems resulting from* Null, Pearson, *and* Lyle, *demonstrating several bases supporting adherence to federal interpretation, and suggesting alternative methods of interpretation, this Note demonstrates why the Iowa Supreme Court should reject* Null, Pearson, *and* Lyle*'s standardless interpretation and adopt a principled basis for independent interpretation of article I, section 17 in the future.*

* J.D. Candidate, The University of Iowa College of Law, 2015; B.A., Luther College, 2011. I would like to thank all who chipped in throughout the writing process, especially the writers and editors of Volumes 99 and 100 of the *Iowa Law Review* for their tremendous dedication and skill. A special thank you to my parents, Roger and Lisa Archer, and my brother Christian, because without their support, this Note would not have been possible.

I. INTRODUCTION

With increasing concerns about limited budgets, declining judicial resources, and overcrowded dockets, one would not expect the state's highest court to openly invite criminal defendants to challenge their sentences, but that is exactly what the Iowa Supreme Court has done.[1] Instead of following federal interpretation under the Eighth Amendment—as it had in past decisions—or using principled standards to diverge from that interpretation, in *State v. Null*, *State v. Pearson*, and *State v. Lyle*,[2] the Iowa Supreme Court engaged in a standardless method of decision-making that does not align with federal precedent.[3] As a result, 425 juvenile inmates in Iowa may now have

1. State v. Pearson, 836 N.W.2d 88, 104 (Iowa 2013) (Mansfield, J., dissenting); *see* Mark S. Cady, Chief Justice, Iowa Supreme Court, 2011 State of the Judiciary 1–2 (Jan. 12, 2011), *available at* www.iowacourts.gov/wfdata/files/StateofJudiciary/StateoftheJudiciary2011.pdf (remarking on how "deep cuts in . . . resources are beginning to cause damage to our system of justice").

2. While recognizing that the Iowa Supreme Court's deviation from Eighth Amendment precedent began with *State v. Bruegger*, this Note focuses primarily on the standardless interpretation and decision-making that followed in *State v. Null* and *State v. Pearson* and was most recently expanded in *State v. Lyle*. When mentioned collectively, this Note will hereinafter refer to *State v. Null*, *State v. Pearson*, and *State v. Lyle* as the *Null* triad.

3. State v. Lyle, No. 11-1339, slip op. at 3 (Iowa July 18, 2014); State v. Null, 836 N.W.2d 41, 70 (Iowa 2013); *Pearson*, 836 N.W.2d at 96 (majority opinion).

the opportunity to challenge their sentences.[4] However, only 36 of these sentences fell under the holding of the United States Supreme Court's decision in *Miller v. Alabama*,[5] a holding to which the Iowa Supreme Court purportedly adhered.[6] Judges, lawyers, and citizens in Iowa must now face the uncertainty this standardless interpretation created, and the State of Iowa itself must now deal with the tremendous impact this "flurry of new proceedings" will have on accessibility to the state judicial system and its resources.[7] While "time and expense should be irrelevant if constitutional rights are affected. . . . [T]hese should be primary considerations when deciding to impose . . . a new sentencing practice that has no basis in this state's constitution."[8]

The Eighth Amendment of the United States Constitution and article I, section 17 of the Iowa Constitution prohibit imposing cruel and unusual punishment on citizens.[9] The states ratified the Eighth Amendment in 1791,[10] but the amendment originally restricted only federal action, leaving citizens unprotected from state action inflicting cruel and unusual punishment.[11] Shortly after the United States Supreme Court decided *Barron v. Baltimore*, which affirmed that the Eighth Amendment did not apply to the states, the

4. *Pearson*, 836 N.W.2d at 104 (Mansfield, J., dissenting). At the time of the decision, data from the Iowa Department of Human Rights indicated 425 inmates in Iowa prisons were serving time for offenses they committed before reaching eighteen years of age. *Id.* (citing IOWA DEP'T OF HUMAN RIGHTS, DIV. OF CRIMINAL & JUVENILE JUSTICE PLANNING, CURRENT INMATES UNDER 18 AT TIME OF OFFENSE (May 31, 2013), *available at* http://www.humanrights.iowa.gov/cjjp/images/pdf/Prison_Population_Juveniles_05312013.pdf). Of those 425 inmates, only 36 were serving life-without-parole sentences. *Id.* The United States Supreme Court's decision in *Miller v. Alabama* only rendered the 36 life-without-parole sentences unconstitutional. *Id.* However, the Iowa Supreme Court's recent and more expansive interpretation of article I, section 17 brings the constitutionality of all 425 juvenile sentences into question under the Iowa Constitution. *Id.*

5. Miller v. Alabama, 132 S. Ct. 2455, 2469 (2012).

6. *Null*, 836 N.W.2d at 70.

7. *Pearson*, 836 N.W.2d at 104.

8. *Lyle*, slip op. at 76 (Zager, J., dissenting).

9. U.S. CONST. amend. VIII; IOWA CONST. art. I, § 17.

10. CRAIG R. SMITH, TO FORM A MORE PERFECT UNION: THE RATIFICATION OF THE CONSTITUTION AND THE BILL OF RIGHTS 1787–1791, at 151 (1993).

11. It was not until debates over the passage of the Fourteenth Amendment that Congress considered whether the Bill of Rights, in this case the Eighth Amendment, could apply to restrict state action. *See* CONG. GLOBE, 42d Cong., 1st Sess. app. at 84 (1871). U.S. Representative John Bingham, famous for authoring the first clause of the Fourteenth Amendment, stated during debates over the Fourteenth Amendment that the Bill of Rights amendments "never were limitations upon the power of the States." *Id.* However, according to Representative Bingham, the privileges and immunities language used in the first clause of the Fourteenth Amendment is an "express prohibition upon every State of the Union." *Id.* Although Representative Bingham believed that the Bill of Rights restricted state action "[u]nder the Constitution as it is, not as it was . . . by force of the fourteenth amendment," many years passed before the Supreme Court adopted a similar interpretation of the Fourteenth Amendment. *Id.*

Iowa Constitution's framers adopted a cruel and unusual punishment provision to protect its citizens against state action.[12]

For over a century, the Iowa Supreme Court interpreted article I, section 17 to afford the same protections as the Eighth Amendment.[13] Even after the United States Supreme Court made the Eighth Amendment applicable to state action in *Robinson v. California* in 1962, the Iowa Supreme Court did not alter its interpretation of article I, section 17 to afford broader protections than those available through the Eighth Amendment as applied to the states.[14] This long history of conformity with federal cruel and unusual punishment interpretation changed in *State v. Bruegger*.[15] In *Bruegger*, decided in 2009, the Iowa Supreme Court applied article I, section 17 to provide a "more stringent review"[16] of criminal sentences than the review dictated by the Eighth Amendment.[17] Then, three years later in *State v. Oliver*, the court briefly realigned state and federal cruel and unusual punishment interpretation.[18] However, only one year after *Oliver*'s realignment efforts, the court again deviated from federal interpretation and applied the "more stringent review" that first occurred in *Bruegger*.[19]

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12. IOWA CONST. of 1844, art. II, § 16; Barron v. Baltimore, 32 U.S. (7 Pet.) 243, 250 (1833).

13. *See* Davenport Water Co. v. Iowa State Commerce Comm'n, 190 N.W.2d 583, 593 (Iowa 1971) (noting that when a provision in the Iowa Constitution has a similar federal counterpart, the provisions are "usually deemed to be identical in scope, import and purpose"). The Iowa Supreme Court has applied this principle in cruel and unusual punishment cases. *See infra* Part II.B.

14. *See* State v. Ramirez, 597 N.W.2d 795, 797 (Iowa 1999) (observing the Iowa Supreme Court's longstanding reluctance to exercise its authority to interpret a provision in the Iowa Constitution more expansively than a similar provision in the Federal Constitution). For examples of other states that have embraced this same reluctance to act independent of the Federal Constitution while still noting that they reserve the right to do so, see Kahn v. Griffin, 701 N.W.2d 815, 828 (Minn. 2005) ("[W]e will not, on some slight implication and vague conjecture, depart from federal precedent . . . . But, when we reach a clear and strong conviction that there is a principled basis for greater protection of the individual civil and political rights of our citizens under the Minnesota Constitution, we will not hesitate to interpret the constitution to independently safeguard those rights."); State v. Schwartz, 689 N.W.2d 430, 439–40 (S.D. 2004) ("When arguing that a provision of our Constitution should be interpreted differently from a cognate federal provision, [there must be] recognized standards [to] determine that a genuine reason exists to diverge from the federal interpretation. . . . [O]ur function as jurists [is] to reach a principled basis for deciding when and how to resolve state constitutional claims.").

15. State v. Bruegger, 773 N.W.2d 862, 883 (Iowa 2009).

16. *Id.* "[M]ore stringent review" is a phrase used by the court in *Bruegger*; however, the court does not elaborate on its meaning. *Id.* A reading of the case seems to imply that the court uses the phrase as a term of art to indicate when it is providing broader protections for defendants under article I, section 17 than under the Eighth Amendment. *See infra* notes 170, 179, 208, and accompanying text (providing one Iowa Supreme Court justice's view of the court's use of the phrase "more stringent review").

17. *Id.*

18. State v. Oliver, 812 N.W.2d 636, 648–49 (Iowa 2012).

19. State v. Null, 836 N.W.2d 41, 70 (Iowa 2013); State v. Pearson, 836 N.W.2d 88, 96 (Iowa 2013).

On August 16, 2013, the Iowa Supreme Court handed down *State v. Null* and *State v. Pearson*.[20] In both cases, the court relied on *Bruegger* and engaged in a "more stringent review" of the defendants' sentences under article I, section 17 than dictated by federal Eighth Amendment precedent.[21] Notably absent from these cases was any principled basis explaining the court's decision to apply the Iowa Constitution more expansively than the Federal Constitution. Instead, the court overturned two defendants' sentences without properly articulating why that result was appropriate. Similarly, on July 18, 2014, the Iowa Supreme Court decided *State v. Lyle*, a decision that expanded on *Null* and *Pearson* and held "all mandatory minimum sentences of imprisonment for [juveniles] . . . unconstitutional under the cruel and unusual punishment clause in article I, section 17."[22] The Iowa Supreme Court's standardless interpretation in the *Null* triad has created three problems: a rejection of interpretive responsibility, a demeaning of the Iowa Constitution's integrity, and a continuing state of uncertainty.

This Note argues that the Iowa Supreme Court should reject the standardless interpretation found in the *Null* triad and adopt a principled basis for independently interpreting the Iowa Constitution in future decisions. Part II begins by summarizing the history of the Eighth Amendment of the United States Constitution and article I, section 17 of the Iowa Constitution. Part II then summarizes the Iowa Supreme Court's cruel and unusual punishment precedent prior to the *Null* triad. Part III analyzes the *Null* triad's perpetuation of the court's standardless departure from federal interpretation that first appeared in *Bruegger*. Part III further addresses why the court's application of the Iowa Constitution in these three decisions cannot be justified under the principles of judicial federalism. Lastly, Part III addresses the problems this new strand of standardless interpretation has caused. Part IV demonstrates a textual basis for adhering to federal interpretation when applying article I, section 17 and concludes by suggesting principled interpretation standards for the court to implement if a need for deviation from federal interpretation arises. Finally, Part V argues that the Iowa Supreme Court can conform to federal interpretation in future cases to remedy the problems the *Null* triad's standardless deviation caused. Further, should a true need for deviation from federal interpretation arise in future cases, the court can implement a principled basis for independent interpretation of article I, section 17 of the Iowa Constitution to best avoid the problems standardless interpretation causes.

20. *Null*, 836 N.W.2d at 41; *Pearson*, 836 N.W.2d at 88.

21. *Null*, 836 N.W.2d at 72–73; *Pearson*, 836 N.W.2d at 96.

22. State v. Lyle, No. 11-1339, slip op. at 41 (Iowa July 18, 2014).

II. BACKGROUND

To achieve this Note's objective of identifying and remedying recent problems with the Iowa Supreme Court's cruel and unusual punishment interpretation under the Iowa Constitution, this Part reviews the two historical frameworks necessary to give context to the analysis. First, Part II.A explores the origins of the Eighth Amendment's prohibition against cruel and unusual punishment and the path leading to inclusion of a cruel and unusual punishment provision in the Iowa Constitution. Second, Part II.B explores notable developments in the Iowa Supreme Court's interpretation of article I, section 17, specifically its relationship to the United States Supreme Court's precedent interpreting the Eighth Amendment.

A. THE BIRTH OF PROHIBITIONS AGAINST CRUEL AND UNUSUAL PUNISHMENT

The Federal Constitution's cruel and unusual punishment provision is contained in the Eighth Amendment of the Bill of Rights.[23] Most state constitutions also include a cruel and unusual punishment provision.[24] Iowa's provision is found in article I, section 17 of the Iowa Constitution.[25] The path leading to the enactment of Iowa's cruel and unusual punishment provision contained two important federal events: the ratification of the Eighth Amendment and the United States Supreme Court's decision in *Barron v. Baltimore*. After the enactment of Iowa's cruel and unusual punishment provision, two other federal events influenced Iowa's constitutional jurisprudence on the subject: the ratification of the Fourteenth Amendment and the United States Supreme Court's decision in *Robinson v. California*. This Subpart discusses how these federal events led to the adoption of article I, section 17 and subsequently impacted the Iowa Supreme Court's interpretation of the provision.

1. The Ratification of the Eighth Amendment

In 1791, the states ratified the Bill of Rights of the United States Constitution.[26] The Eighth Amendment of the Bill of Rights contains a prohibition against cruel and unusual punishment: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments

23. U.S. CONST. amend. VIII.

24. *See infra* Part IV.A.2 (discussing the various cruel and unusual punishment provisions found in state constitutions).

25. IOWA CONST. art. I, § 17.

26. SMITH, *supra* note 10. Originally the prohibition against cruel and unusual punishment was the tenth of the twelve amendments proposed. However, because the first two amendments proposed failed to survive ratification by three-fourths of the states, this proposed amendment soon became known as the Eighth Amendment to the United States Constitution. S. SUBCOMM. ON THE CONSTITUTION, S. COMM. ON THE JUDICIARY, 99TH CONG., AMENDMENTS TO THE CONSTITUTION: A BRIEF LEGISLATIVE HISTORY 10–11 (Comm. Print 1985).

inflicted."[27] Congress only engaged in limited debate over the Eighth Amendment, but the indefinite language worried certain members,[28] and concerns about the meaning of "cruel and unusual" persisted after its ratification.[29]

In the years after the ratification of the Bill of Rights, a new question emerged: did the rights apply to state action or only to federal action? The United States Supreme Court addressed this question in *Barron v. Baltimore*.[30]

2. *Barron v. Baltimore*: The United States Supreme Court's Refusal to Apply the Bill of Rights to Restrict State Action

In 1833, the United States Supreme Court confronted the issue of whether the Bill of Rights applied to the states, thus restricting state action.[31] The Court, specifically holding that the Fifth Amendment did not apply to the states,[32] found that the amendments in the Bill of Rights "contain[ed] no expression indicating an intention to apply them to the state governments" and therefore applied them only to the federal government.[33] However, the Court noted that the states themselves could restrict state action.[34] Thus, after *Barron*, one thing became clear—if states wanted to ensure that the individual rights and liberties contained in the Bill of Rights would have protection from state action, they would have to adopt safeguards in their own state constitutions.[35]

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27. U.S. CONST. amend. VIII.

28. 1 JOHN R. VILE, ENCYCLOPEDIA OF CONSTITUTIONAL AMENDMENTS, PROPOSED AMENDMENTS, AND AMENDING ISSUES, 1789–2010, at 158–59 (3d. ed. 2010). The words used in the Eighth Amendment do not seem to be Congress's own creation. Justice Scalia noted in *Harmelin v. Michigan* that "the entire text of the Eighth Amendment is taken almost verbatim from the English Declaration of Rights, which provided '[t]hat excessive Baile ought not to be required nor excessive Fines imposed nor cruell and unusuall Punishments inflicted.'" Harmelin v. Michigan, 501 U.S. 957, 966 (1991).

29. 1 TOM PENDERGAST ET AL., CONSTITUTIONAL AMENDMENTS: FROM FREEDOM OF SPEECH TO FLAG BURNING 178 (Elizabeth Shaw Grunrow ed., 2001). The use of indefinite words concerned Congress because it feared that eventually the vague terms would make it impossible for the government to punish criminals. On the other hand, the use of vague terms concerned Patrick Henry because he felt they would give the government too much power and discretion in deciding criminal punishments. *Id.* at 164.

30. Barron v. Baltimore, 32 U.S. (7 Pet.) 243, 247 (1833).

31. *See id.*

32. *Id.*

33. *Id.* at 250.

34. *Id.* at 247. "Each state established a constitution for itself, and, in that constitution, provided such limitations and restrictions on the powers of its particular government as its judgment dictated." *Id.*

35. *See id.* at 249. The Court stated that if "people of the several states . . . required changes in their constitutions . . . [and] required additional safeguards to liberty from the apprehended encroachments of their particular governments the remedy was in their own hands, and would [be] applied by themselves." *Id.*

3. The Ratification of Article I, Section 17

At the time of the *Barron* decision in 1833, Iowa was merely a territory with no state action to restrict and no state constitution to enumerate the rights of the people.[36] In 1846, the United States granted Iowa statehood,[37] and over time Iowa's Framers adopted three different constitutions,[38] each containing a prohibition against cruel and unusual punishment.[39] In all three constitutions, the text of this prohibition was virtually identical.[40] Accordingly, Iowa's constitutional prohibition against cruel and unusual punishment has always been: "Excessive bail shall not be required; excessive fines shall not be imposed, and cruel and unusual punishment shall not be inflicted."[41] This language is materially identical to the Eighth Amendment.[42]

Two significant circumstances surrounded the adoption of article I, section 17. First, the timing of Iowa's decision to adopt a bill of rights, specifically a cruel and unusual punishment provision, indicates the intent of Iowa's Framers. The Court's decision in *Barron* established that the Bill of Rights imposed no restriction on state action.[43] However, in adopting a bill of rights into the state constitution after *Barron*, Iowa *voluntarily* restricted its own state action regarding a series of rights similar to those in the Federal Bill of Rights.[44] The adoption of article I, section 17 shortly after *Barron* therefore

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36. *See* BENJAMIN F. SHAMBAUGH, HISTORY OF THE CONSTITUTIONS OF IOWA 145–46 (1902).

37. *Id.* at 327–28.

38. IOWA CONST.; IOWA CONST. of 1846; IOWA CONST. of 1844. It took many debates in Congress over the borders of the new state, as well as the drafting and ratification of two state constitutions (1844 and 1846 versions), before Iowa was granted statehood. *See* SHAMBAUGH, *supra* note 36, at 299–317. However, because the territory had been so "anxious to get into the Union . . . they voted for the [1846] Constitution as the shortest road to admission. They meant to correct its errors afterwards." *Id.* at 330–31. These errors were corrected later in what is now Iowa's current constitution, the Iowa Constitution of 1857. *Id.* at 347–52.

39. IOWA CONST. art. I, § 17; IOWA CONST. of 1846, art. II, § 17; IOWA CONST. of 1844, art. II, § 16.

40. IOWA CONST. art. I, § 17; IOWA CONST. of 1846, art. II, § 17; IOWA CONST. of 1844, art. II, § 16. The only change to the provision occurred in the 1857 constitution, where the word "punishments" was changed to its singular form.

41. IOWA CONST. art. I, § 17.

42. The text of the Eighth Amendment states: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. CONST. amend. VIII. The Eighth Amendment's use of "nor" instead of "shall not" makes the provision more succinct than article I, section 17 of the Iowa Constitution. *Compare* U.S. CONST. amend. VIII, *with* IOWA CONST. art. I, §17. Although article I, section 17 uses five additional words, the provision conveys an identical meaning to the Eighth Amendment and reads: "Excessive bail shall not be required; excessive fines shall not be imposed, and cruel and unusual punishment shall not be inflicted." IOWA CONST. art. I, §17.

43. Barron v. Baltimore, 32 U.S. (7 Pet.) 243, 250–51 (1833).

44. IOWA CONST. art. I; IOWA CONST. of 1846, art. II; IOWA CONST. of 1844, art. II.

demonstrates Iowa's Framers' intent to follow the federal government in protecting citizens from the infliction of cruel and unusual punishment.[45]

Second, the fact that Iowa's Framers chose language materially identical to the Eighth Amendment is important.[46] Just as the federal government did not require Iowa's Framers to adopt a bill of rights or a cruel and unusual punishment provision, neither did it require Iowa's Framers to use specific language when doing so. Even in deciding to restrict the same types of governmental action as the Federal Constitution, Iowa's Framers could have chosen different language than the Federal Constitution to provide greater or lesser protections under the Iowa Constitution.[47] However, by including a bill of rights in the Iowa Constitution that largely mirrored the language of the Federal Bill of Rights, Iowa's Framers demonstrated their desire to adopt the same restrictions on state action as those that already existed on federal action.[48] Therefore, the inclusion of a cruel and unusual punishment provision in the Iowa Constitution that is materially identical to the Eighth

45. The Iowa Supreme Court finds it necessary "to ascertain the intent of the framers" when construing a constitution, which can be determined by examining constitutional history. Redmond v. Ray, 268 N.W.2d 849, 853 (Iowa 1978). Since the court considers the constitutional history to be an important facet of the constitutional interpretation process, it is necessary for this Note to place the ratification of article I, section 17 of the Iowa Constitution in the broader historical context of its adoption, with the goal that "the object to be attained" by article I, section 17 will be "disclosed by circumstances at the time of adoption." *Id.*; *see also* G. Alan Tarr, *Constitutional Theory and State Constitutional Interpretation*, 22 RUTGERS L.J. 841, 848 (1991) ("If a divergent interpretation may be justified by reference to the distinctive origins or purpose of a provision, then state jurists must pay particular attention to the intent of the framers and to the historical circumstances out of which the constitutional provisions arose."); Stephen F. Aton, Note, *State Constitutions Realigning Federalism: A Special Look at Florida*, 39 U. FLA. L. REV. 733, 770 (1987) ("Courts can always justify state-based decisionmaking when the federal wording on point is different. But even when wording in state and federal provisions is identical, state interpretation may reasonably differ. In attempting to interpret a constitutional provision, the court will consider the intent of the framers.").

46. *See supra* note 42 (demonstrating the minor structural differences and materially identical language of the Iowa and federal cruel and unusual punishment provisions).

47. *See infra* Part IV.A.2 (discussing the textual variations of the cruel and unusual punishment provisions of state constitutions, sometimes used to connote instances of greater or lesser protection under the state constitution than the Federal Constitution).

48. Even though the result was nearly identical to the Federal Constitution's Bill of Rights, it was necessary for Iowa's Framers to include a bill of rights in the Iowa Constitution. Mark S. Cady, *A Pioneer's Constitution: How Iowa's Constitutional History Uniquely Shapes Our Pioneering Tradition in Recognizing Civil Rights and Civil Liberties*, 60 DRAKE L. REV. 1133, 1145 (2012). Iowa's Framers included provisions that mirrored the Bill of Rights in the Iowa Constitution because at the time, the Federal Constitution "serv[ed] only as a second layer of protection" because it "applied only to actions by the federal government for most of our country's history." *Id.* For examples of nearly identical provisions between the Iowa Constitution and the Federal Constitution, compare IOWA CONST. art. I, § 8, with U.S. CONST. amend. IV (demonstrating the similarities between the Iowa and federal search and seizure provisions); IOWA CONST. art. I, § 9, with U.S. CONST. amend. V, XIV (demonstrating the similarities between the Iowa and federal due process provisions); and IOWA CONST. art. I, § 10, with U.S. CONST. amend. VI (demonstrating the similarities between the Iowa and federal guarantees to a speedy trial by jury).

Amendment demonstrates Iowa's Framers' desire to self-impose the exact restrictions found in the Eighth Amendment.[49]

4. *Robinson v. California*: The United States Supreme Court's Decision to Apply the Eighth Amendment to Restrict State Action

The states ratified the Fourteenth Amendment to the United States Constitution in 1868.[50] The amendment states, in relevant part, "nor shall any State deprive any person of life, liberty, or property, without due process of law."[51] While the text of the Fourteenth Amendment did not directly apply the provisions of the Bill of Rights to the states, the United States Supreme Court has given it that effect through the incorporation doctrine.[52] Incorporation is the Court's process of deciding whether to apply provisions of the Bill of Rights to the states.[53] After several decades of piecemeal federal jurisprudence, nearly all of the amendments to the Bill of Rights have been fully incorporated and applied to the states.[54]

The Court incorporated the prohibition on cruel and unusual punishments into the Fourteenth Amendment in 1962.[55] In *Robinson v. California*, the Court held that a California statute making addiction to narcotics a crime punishable by imprisonment violated the Eighth Amendment through its application to the states under the Fourteenth Amendment.[56] However, by the time *Robinson* applied the Eighth Amendment to the states, article I, section 17 of the Iowa Constitution had been operating to restrict state action for more than a century.[57]

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49. *See* Barron v. Baltimore, 32 U.S. 243, 247–48 (1833) (illustrating that states, such as Iowa, "imposed such [a] restriction[] on their respective government[] as their own wisdom suggested, such as they deemed most proper for themselves").

50. VILE, *supra* note 28, at 201.

51. U.S. CONST. amend. XIV, § 1. The Fourteenth Amendment contains five sections, and the portion of the amendment cited above is known as the Due Process Clause. The Due Process Clause of the Fourteenth Amendment has formed the basis for the Supreme Court's incorporation doctrine.

52. KATHLEEN M. SULLIVAN & NOAH FELDMAN, CONSTITUTIONAL LAW 425 (18th ed. 2013).

53. *See id.*

54. First Amendment incorporation: Everson v. Board of Education, 330 U.S. 1, 15 (1947); Second Amendment incorporation: McDonald v. Chicago, 130 S. Ct. 3020, 3050 (2010); Fifth Amendment incorporation: Benton v. Maryland, 395 U.S. 784, 795–96 (1969); Sixth Amendment incorporation: Klopfer v. North Carolina, 386 U.S. 213, 222 (1967). Nearly all of the criminal process guarantees of the Bill of Rights now apply to the states as the result of selective incorporation under the incorporation doctrine. SULLIVAN & FELDMAN, *supra* note 52, at 453.

55. Robinson v. California, 370 U.S. 660, 667 (1962).

56. *Id.* "The command of the Eighth Amendment, banning 'cruel and unusual punishments' . . . is applicable to the States by reason of the Due Process Clause of the Fourteenth Amendment." *Id.* at 675 (Douglas, J., concurring) (citation omitted).

57. By the time *Robinson* incorporated the Eighth Amendment to the states, the Iowa Constitution of 1857 had provided 105 important years of service to Iowans in protecting them from otherwise unrestricted state action.

B. THE IOWA SUPREME COURT'S CRUEL AND UNUSUAL PUNISHMENT PRECEDENT UNDER ARTICLE I, SECTION 17

Since article I, section 17's adoption, the Iowa Supreme Court routinely analyzed cruel and unusual punishment challenges under the Iowa Constitution in the same manner it analyzed challenges under the Federal Constitution—i.e., the court interpreted the two cruel and unusual punishment provisions as being materially identical. Although petitioners would often bring challenges under both provisions, the Iowa Supreme Court never interpreted the two provisions differently until it changed course in 2009.[58] This Subpart explores the court's history of interpreting the Iowa cruel and unusual punishment provision in accordance with federal interpretation of the Eighth Amendment, and its recent deviation from this practice.

1. Adherence to Federal Interpretation: The Pre-*Bruegger* Era

Early opinions of the Iowa Supreme Court indicate the longstanding view that article I, section 17 and the Eighth Amendment provide the same protections to the citizens of Iowa.[59] Historically, the court chose not to analyze the two provisions differently, instead regarding the provisions as identical and applying them in tandem.[60] Interpretation of the Iowa Constitution and Federal Constitution as a single unit is not unique to the area of cruel and unusual punishment; the Iowa Supreme Court frequently utilizes joint interpretation when a litigant challenges a provision of the Iowa Constitution that has a similar counterpart in the Federal Constitution.[61]

Even where defendants challenged their sentences solely under Iowa's cruel and unusual punishment provision without invoking the Eighth Amendment, the court still chose to adhere to federal interpretation. In *State v. Ramirez*, Ramirez urged the court to declare his sentence, which required a full term of imprisonment without possibility of parole, unconstitutional under Iowa's cruel and unusual punishment provision.[62] The court noted its

58. *See supra* notes 13–18 and accompanying text.

59. *See* State v. Bowers, 197 N.W. 17, 18 (Iowa 1924) (providing a brief, but historical, look into the court's view of the two provisions). As early as 1924, the court began to construe the Eighth Amendment and article I, section 17 as providing the same protections against cruel and unusual punishment: "The second error is that the judgment is excessive and is cruel and inhuman, therefore unconstitutional in that it violates article 8 of the amendment to the federal Constitution, and section 17, article I, of the Constitution of Iowa, to the effect that cruel and unusual punishments shall not be inflicted." *Id.*

60. *Id.*

61. Redmond v. Ray, 268 N.W.2d 849, 852 (Iowa 1978). "When the federal and state constitutions contain similar provisions, we usually deem the provisions to be identical in scope, import and purpose." *Id.* The court further noted that where similar provisions exist in the Iowa and Federal Constitutions, it "accord[s] special respect and deference to United States Supreme Court interpretations of similar language in the Federal Constitution." *Id.*

62. State v. Ramirez, 597 N.W.2d 795, 796 (Iowa 1999).

reluctance to interpret the state provision more expansively than its federal counterpart because of its "desire for consistency."[63] The court then explicitly applied federal precedent to interpret article I, section 17: "In addressing Ramirez' state constitutional challenge . . . we will look to cases interpreting the comparable federal constitutional right."[64] The court declined the opportunity to interpret the Iowa Constitution more expansively than the Federal Constitution and elected to follow federal interpretation.[65]

In *State v. Musser*, the court again confined its interpretation of the Iowa Constitution to existing federal interpretation.[66] Musser challenged his sentence under both the Iowa and Federal Constitutions.[67] The court chose to "address the clauses together," reiterating that its "discussion of the Eighth Amendment applies equally to Musser's claim under the Iowa Constitution."[68] The Iowa Supreme Court deviated from *Musser*'s joint interpretation of the Iowa and Federal Constitutions three years later, however, when it decided *State v. Bruegger*.[69]

2. First Deviation from Federal Interpretation: *State v. Bruegger*

In *State v. Bruegger*, decided in 2009, the Iowa Supreme Court faced the question of whether Bruegger could pursue an as-applied challenge[70] to his individual sentence by claiming that it constituted cruel and unusual punishment.[71] At the time the court confronted this question, the United States Supreme Court had already issued three important cases on point, all of which the Iowa Supreme Court considered in its decision.[72]

In *Bruegger*, the Iowa Supreme Court concluded that in *Rummel v. Estelle* the United States Supreme Court allowed a defendant to bring an as-applied challenge to his sentence.[73] The Iowa Supreme Court reasoned that, by considering individualized factors like the defendant's criminal conduct, the length of the sentence, and the defendant's criminal history, the Court

63. *Id.* at 797.

64. *Id.*

65. *Id.* at 798–99.

66. State v. Musser, 721 N.W.2d 734, 748 (Iowa 2006).

67. *Id.* at 748 & n.8.

68. *Id.* at 748 n.8.

69. State v. Bruegger, 773 N.W.2d 862, 883–84 (Iowa 2009).

70. An as-applied challenge is "a claim that a statute is unconstitutional on the facts of a particular case or in its application to a particular party." BLACK'S LAW DICTIONARY 261 (9th ed. 2009). This is different from a facial challenge in which a party makes "[a] claim that a statute is unconstitutional on its face—that is, that it always operates unconstitutionally." *Id.*

71. *Bruegger*, 773 N.W.2d at 868, 870.

72. *Id.* at 873; *e.g.*, Harmelin v. Michigan, 501 U.S. 957 (1991); Solem v. Helm, 463 U.S. 277 (1983); Rummel v. Estelle, 445 U.S. 263 (1980).

73. *Bruegger*, 773 N.W.2d at 875; *see also Rummel*, 445 U.S. at 268 (allowing the defendant to pursue an as-applied challenge to his individual sentence instead of requiring the defendant to challenge the constitutionality of the applicable recidivist statute).

reached its decision on the particular facts of the case.[74] The Iowa Supreme Court also determined that in *Solem v. Helm* the United States Supreme Court again allowed an as-applied sentencing challenge because its decision considered the defendant's culpability, intent, and motive.[75] However, the Iowa Supreme Court found that in *Harmelin v. Michigan*, a plurality of the United States Supreme Court switched gears and "expressly refused to consider expanding the 'individualized capital sentencing doctrine' outside the capital punishment context."[76] After concluding that the most recent federal precedent would not allow an as-applied challenge in a non-capital case, the *Bruegger* court abandoned its traditional adherence to federal interpretation and "turned to the possibility of an as-applied challenge under the Iowa Constitution."[77]

Despite having "noted that in *Harmelin* the plurality of the Court seemed to retreat from allowing individualized challenges under the Eighth Amendment," the Iowa Supreme Court chose to deviate from federal cruel and unusual punishment interpretation for the first time and forged a new result under the Iowa Constitution.[78] The court concluded that "review of criminal sentences . . . under the Iowa Constitution should not be a 'toothless' review" and thus adopted "a *more stringent review* than would be available under the Federal Constitution."[79] The court ultimately allowed Bruegger to make an as-applied challenge to his sentence under the cruel and unusual punishment provision of the Iowa Constitution.[80] The court made it clear that *Bruegger* was decided independent of federal Eighth Amendment precedent by stating, "[o]ur holding is based on Article I, section 17 of the Iowa Constitution."[81]

3. Realignment with Federal Interpretation: *State v. Oliver*

State v. Oliver, decided in 2012, realigned Iowa law with federal cruel and unusual punishment interpretation.[82] *Oliver* acknowledged that *Bruegger* deviated from federal interpretation and reached a decision solely under the

74. *Bruegger*, 773 N.W.2d at 875; *see also Rummel*, 445 U.S. at 268.

75. *Bruegger*, 773 N.W.2d at 875; *see also Solem*, 463 U.S. at 293 (judging the constitutionality of the sentence based on the defendant's individual circumstances, and not the facial constitutionality of the sentence, similar to the approach in *Rummel*).

76. *Bruegger*, 773 N.W.2d at 875 (citing *Harmelin*, 501 U.S. at 995 (finding that individualized, as-applied challenges that look at the defendant's culpability and the seriousness of their crime are only appropriate in cases of capital punishment, thus breaking from the *Rummel* and *Solem* precedent)).

77. State v. Oliver, 812 N.W.2d 636, 648 (Iowa 2012); *see Bruegger*, 773 N.W.2d. at 884.

78. *Oliver*, 812 N.W.2d at 647; *see Bruegger*, 773 N.W.2d at 884.

79. *Bruegger*, 773 N.W.2d at 883 (emphasis added).

80. *Id.* at 884.

81. *Id.* at 886 n.9.

82. *Oliver*, 812 N.W.2d at 648–49.

Iowa Constitution,[83] but the *Oliver* court made great efforts to readopt federal Eighth Amendment precedent when interpreting article I, section 17, ultimately bringing Iowa law back to its pre-*Bruegger* status.[84]

The court explained that the year after it decided *Bruegger*, the United States Supreme Court decided *Graham v. Florida*.[85] *Graham* held that, despite the analysis in the *Solem* plurality, it is suitable to consider an as-applied challenge to a particular defendant's sentence.[86] In *Oliver*, the Iowa Supreme Court commented that "the [United States] Supreme Court's opinion in *Graham* is now consistent with our holding in *Bruegger*."[87] After specifically observing that the court was back to pre-*Bruegger* status—with Iowa and federal interpretation aligned once again—the court merged the cruel and unusual punishment challenges into one analysis to decide Oliver's case.[88] The discussion and analysis in *Oliver* clearly suggested that the court would once again apply the two cruel and unusual punishment provisions in lockstep to achieve a unitary result. Despite the strong signals in *Oliver*, however, the reunified cruel and unusual interpretation was short-lived.

III. THE IOWA SUPREME COURT'S STANDARDLESS NEW INTERPRETATION OF ARTICLE I, SECTION 17

In the 2009 case of *State v. Bruegger*, the Iowa Supreme Court abandoned more than a century of state constitutional interpretation and applied the Iowa Constitution "more stringently" than its federal counterpart.[89] Part III.A demonstrates how the *Null* triad, all decided within two years of the realignment effort in *State v. Oliver*, reverted to *Bruegger* and solidified the Iowa Supreme Court's new, more expansive interpretation of the Iowa Constitution. This Part then analyzes the three problems resulting from the court's perpetuation of the standardless interpretation first appearing in *Bruegger*. Part III.B illustrates the first two problems through an examination of the principles of judicial federalism, which demonstrates that the court's new interpretation disregards its interpretive responsibility and fails to account for the integrity of the Iowa Constitution. Part III.C examines the aftermath of the court's new interpretation to illustrate the final problem of uncertainty.

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83. *Id.* at 648 ("We held that, based on the unique factors of his case, Bruegger was allowed to make an individualized showing that his sentence amounted to cruel and unusual punishment under the Iowa Constitution.").

84. *Id.* at 648–49.

85. *See generally* Graham v. Florida, 560 U.S. 48 (2010).

86. *Oliver*, 812 N.W.2d at 648.

87. *Id.*

88. *Id.* at 649 ("Having determined that a defendant may bring an as-applied challenge under the Eighth Amendment to the United States Constitution and article I, section 17 of the Iowa Constitution, we now turn to the question of how such a challenge should proceed.").

89. *See* Part II.B.2.

A. THE IOWA SUPREME COURT'S SECOND DEVIATION FROM FEDERAL INTERPRETATION

The Iowa Supreme Court handed down *State v. Null* and *State v. Pearson* on August 16, 2013, and *State v. Lyle* on July 18, 2014.[90] Despite *Oliver*'s realignment efforts, the decisions in the *Null* triad firmly adhered to *Bruegger*'s more stringent interpretation of the Iowa Constitution.[91] In *Null* and *Pearson*, the court applied federal principles and interpretation "under" the Iowa Constitution to achieve its new and more expansive interpretation of the state's cruel and unusual punishment provision.[92] In *Lyle*, the court expanded on *Null* and *Pearson*'s deviation, creating an even more dramatic distinction between Iowa cruel and unusual punishment interpretation and Eighth Amendment interpretation.[93]

1. *State v. Null*: The Application of Federal Interpretation "Under" the Iowa Constitution

In *State v. Null*, the Iowa Supreme Court faced a cruel and unusual punishment challenge under article I, section 17 and the Eighth Amendment.[94] Defendant Denem Anthony Null alleged that his 75-year sentence, with parole eligibility after 52.5 years, constituted cruel and unusual punishment in light of the United States Supreme Court's decision in *Miller v. Alabama*.[95] In *Miller*, the Court held "that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders."[96]

Although Null was a juvenile offender, his sentence was not mandatory life-without-parole; it was an aggregated term-of-years sentence for 75 years.[97] Because Null's sentence did not rise to the level of unconstitutionality set in *Miller*, Null asked the Iowa Supreme Court to expand *Miller* past its narrow holding, which restricted only mandatory life-without-parole sentences issued to juveniles.[98] Null wanted the court to apply *Miller* to his case even though his sentence was a discretionary, term-of-years sentence.[99] To accomplish this

90. State v. Lyle, No. 11-1339, slip op. at 3 (Iowa July 18, 2014); State v. Null, 836 N.W.2d 41, 41 (Iowa 2013); State v. Pearson, 836 N.W.2d 88, 88 (Iowa 2013).

91. *See supra* note 19 and accompanying text.

92. *Null*, 836 N.W.2d at 70; *Pearson*, 836 N.W.2d at 97. Application of federal principles and interpretation "under" the Iowa Constitution is a novel conception first appearing in *Null*. *Null*, 836 N.W.2d at 70. For further explanation, see *infra* notes 100–06 and accompanying text.

93. *See infra* note 146 and accompanying text.

94. *Null*, 836 N.W.2d at 45.

95. *Id.* at 45, 51.

96. Miller v. Alabama, 132 S. Ct. 2455, 2469 (2012).

97. *Null*, 836 N.W.2d at 45. Null was 16 years and 10 months old at the time he committed the offense. *Id.* Under Iowa statute, Null is required to serve at least 52.5 years of his sentence, thereby making him parole eligible when he reaches 69 years and 4 months of age. *Id.*

98. *Id.* at 51, 70.

99. *Id.*

expansion, Null urged the court to "take the principles of *Miller* and apply them . . . *under* the Iowa Constitution."[100]

The court ceded to Null's request to apply federal precedent "under" the Iowa Constitution in two steps.[101] First, the court acknowledged that the federal principles propounded in *Miller*—which included sweeping proclamations stating the lesser culpability of juvenile defendants—were "sound and should be applied [to Null's] case."[102] Second, despite its determination that federal principles applied to Null's case, the court chose not to decide the case under both article I, section 17 *and* the Eighth Amendment (even though Null challenged his sentence under both provisions).[103] Rather, it decided the case *solely* under article I, section 17.[104] The Iowa Supreme Court restricted its holding to the Iowa Constitution, demonstrating its desire to distinguish between state and federal cruel and unusual punishment interpretation.[105] The court applied federal interpretation "under" the Iowa Constitution to achieve this distinction.[106]

When discussing the application of federal interpretation "under" the Iowa Constitution, the court defaulted to *Bruegger*'s notion of requiring a more stringent interpretation of the Iowa Constitution as compared to the Federal Constitution.[107] As in *Bruegger*, the court did not adequately explain its new, more expansive interpretation, but it did clarify a limit on its independent interpretation of article I, section 17.[108] The court said that applying federal principles more expansively under the Iowa Constitution was not the same as developing a new "substantive standard for cruel and unusual punishment different from that employed by the United States Supreme Court."[109] Although this short statement does not identify what constitutes a "substantive standard," it presumably poses a self-limitation that allows the

100. *Id.* at 70 (emphasis added).

101. *Id.* at 70–71.

102. *Id.* at 70.

103. *Id.*

104. *Id.* ("As in *Bruegger*, we reach our conclusion independently under article I, section 17 of the Iowa Constitution.").

105. The distinction the court created between state and federal interpretation is unclear at best. "Although the relevant precedent (*Miller*) is a federal constitutional case decided only one year ago, the majority proclaims that it is applying 'the principles of *Miller* . . . under the Iowa Constitution.' What this statement means is unclear. How do you 'apply' a federal constitutional decision under the state constitution?" *Id.* at 78 (Mansfield, J., concurring in part and dissenting in part). The court should have been "direct and clear" if it was "requiring something that *Miller* does not require." *Id.*

106. *Id.* at 70 (majority opinion).

107. *Id.* at 51 ("In *Bruegger*, no party argued that an approach different than the federal standards for cruel and unusual punishment should apply under the Iowa Constitution. Nonetheless, in *Bruegger* we applied established federal principles in what at the time appeared to be a more stringent fashion than federal precedent." (citations omitted)).

108. *See id.*

109. *Id.*

court to broaden the scope of protections previously afforded by the United States Supreme Court, while preventing it from creating new protections altogether. Other than creating this distinction, however, the court neither provided its rationale for interpreting and applying the Iowa Constitution more stringently than federal interpretation, nor developed standards for applying this expansive interpretation in future cases.[110]

2. *State v. Pearson*: The Solidification of *Null*'s New Strand of Interpretation

On the same day the Iowa Supreme Court decided *State v. Null*, it confronted a nearly identical cruel and unusual punishment challenge in *State v. Pearson*.[111] Juvenile defendant Desirae Pearson received two consecutive 25-year sentences for two counts of first-degree robbery, making her parole eligible after 35 years.[112] Pearson brought her cruel and unusual punishment challenge under article I, section 17 and the Eighth Amendment.[113] Like Null, Pearson asked the Iowa Supreme Court to extend *Miller*'s narrow holding to also cover her discretionary, term-of-years sentence.[114]

Yet again, when confronted with a challenge under article I, section 17 *and* the Eighth Amendment, the Iowa Supreme Court decided to resolve the challenge *solely* under the Iowa Constitution.[115] In *Pearson*, the court did not explicitly apply federal interpretation principles "under" the Iowa Constitution.[116] However, the court seemingly recycled the *Null* approach by resolving the challenge in the same way; the court used the Iowa Constitution to reach a different, more expansive result than *Miller* required.[117]

Although *Null* drew a distinction between applying a more expansive interpretation of a federal standard and creating a new, substantively different standard,[118] the court's ruling in *Pearson* clearly illustrated the creation of a new substantive standard. In *Miller v. Alabama*, the United States Supreme Court deemed mandatory life-without-parole sentences for juveniles

110. The court offered no reasoning for reaching its decision solely under the Iowa Constitution. It merely stated, "As in *Bruegger*, we reach our conclusion independently under article I, section 17 of the Iowa Constitution." *Id.* at 70.

111. State v. Pearson, 836 N.W.2d 88, 89, 92–94 (Iowa 2013).

112. *Id.* at 89.

113. *Id.*

114. *See id.* (arguing that as applied to her, Pearson's sentence should be considered cruel and unusual under the Eighth Amendment).

115. *Id.* at 96 (holding that the *Miller* principles do not need to be applied to all juvenile cases and stating that "we need only decide that article I, section 17 requires an individualized sentencing hearing where, as here, a juvenile offender receives a minimum of thirty-five years imprisonment without the possibility of parole for these offenses . . .").

116. *Cf. id.* (implicitly adopting *Null*'s approach of applying federal interpretation "under" the Iowa Constitution although not explicitly mentioning the use of the "under" technique, but instead including numerous references to the *Null* decision throughout the opinion).

117. *Id.* at 96–98.

118. State v. Null, 836 N.W.2d 41, 51 (Iowa 2013).

unconstitutional.[119] The Iowa Supreme Court, however, found that "a minimum of [35] years *without the possibility of parole* for the crimes involved in [Pearson's] case violate[d] the core teachings of *Miller*."[120] Despite the court's statement to the contrary, Pearson's 35-year sentence would *not* have violated the core teachings of *Miller* because the core teaching of any case is its holding,[121] and *Miller*'s holding was narrowly restricted to mandatory life-without-parole sentences for juveniles.[122] In Pearson's case, the 35-year sentence did not constitute a life-without-parole sentence.[123] Accordingly, *Pearson* exemplifies that the Iowa Supreme Court has not merely applied federal interpretation under the Iowa Constitution. It has created entirely new, substantive standards apart from federal interpretation without acknowledging it has done so and without clearly enunciating its new standards. Although the court observes, at great lengths, that recent United States Supreme Court decisions have begun to shift away from categorical applications of harsh sentences to juveniles, these observations do not justify the court imputing holdings from these federal decisions that do not exist. Although the United States Supreme Court may someday provide more sweeping prohibitions on term-of-years juvenile sentences, it has not yet done so. Thus, the expansive "core teachings" that the Iowa Supreme Court identified in *Miller* do not identify adequate standards for the court's new cruel and unusual punishment interpretation.

In both *Null* and *Pearson*, the Iowa Supreme Court engaged in the confusing maneuver of deviating from federal interpretation—and even creating a new substantive standard—in order to reach its desired result.[124] Neither case attempted to show exactly how far *Miller*'s "teachings" may stretch to find a sentence unconstitutional under the Iowa Constitution;[125] instead, the court decided that *Miller*'s teachings applied to the facts in *Null*,[126]

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119. Miller v. Alabama, 132 S. Ct. 2455, 2469 (2012).

120. *Pearson*, 836 N.W.2d at 96.

121. The Iowa Supreme Court used the term "core teaching" in its decision in *Pearson*, and presumably, a core teaching is synonymous with a pivotal determination or principle. *Id.* For a definition of "holding," see BLACK'S LAW DICTIONARY 800 (9th ed. 2009) ("A court's determination of a matter of law pivotal to its decision; a principle drawn from such a decision.").

122. *Miller*, 132 S. Ct. at 2469.

123. *See Pearson*, 836 N.W.2d at 96 (recognizing that a 35-year sentence is not tantamount to a life-without-parole sentence because the sentence can be warranted in rare circumstances, though "rare or uncommon").

124. For an explanation of the deviation method used in *Null*, the application of federal principles "under" the Iowa Constitution, see *supra* notes 100–06 and accompanying text. For an explanation of the deviation method used in *Pearson*, the misapplication of *Miller*'s "core teachings", see *supra* notes 115–23 and accompanying text.

125. *See Pearson*, 836 N.W.2d at 96 ("We have no occasion to consider whether *Miller*'s principles must be applied to all juvenile sentences.").

126. State v. Null, 836 N.W.2d 41, 74 (Iowa 2013). Concededly, both cases included language implying that the court wished only to vacate those sentences that were applied categorically to juveniles under mandatory sentencing or sentence enhancement schemes. *See id.*

and then again to the facts in *Pearson*.[127] *Null* and *Pearson* affirmed *Bruegger*'s deviation from federal interpretation and exemplified the new, standardless approach of the Iowa Supreme Court—an approach that the court would not waste time in revisiting.

3. *State v. Lyle*: The Expansion of *Null* and *Pearson*'s Standardless Interpretation

Less than a year after the decisions in *Null* and *Pearson*, the Iowa Supreme Court took another unprecedented and standardless leap in Iowa's cruel and unusual punishment jurisprudence. Defendant Andre Lyle, Jr. alleged that an Iowa sentencing statute requiring the imposition of a mandatory seven-year minimum prison sentence constituted cruel and unusual punishment as applied to juveniles.[128] Lyle brought his appeal under article I, section 17 and the Eighth Amendment.[129] Lyle challenged the constitutionality of the mandatory sentencing statute as applied to juveniles because it did not allow district courts to mitigate punishment by considering the circumstances and distinctive attributes of youth.[130]

Decided on July 18, 2014, *State v. Lyle* held that "a statute mandating a sentence of incarceration in a prison for juvenile offenders with no opportunity for parole until a minimum period of time has been served is unconstitutional under article I, section 17 of the Iowa Constitution."[131] In short, "juvenile offenders [in Iowa] cannot be mandatorily sentenced under a mandatory minimum sentencing scheme."[132]As was the case for Null and Pearson, Lyle's sentence did not fall within the holding of *Miller* because Lyle's sentence was not a mandatory life-without-parole sentence.[133] Instead, Lyle faced a seven-year mandatory sentence, a sentence that was constitutional under existing federal Eighth Amendment precedent.[134] The Iowa Supreme

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at 71 (finding, as a threshold matter, that "a 52.5-year minimum prison term for a juvenile" requires an individualized sentencing hearing); *Pearson*, 836 N.W.2d at 96 (mandating an individualized sentencing hearing for a 35-year minimum sentence imposed on a juvenile offender). This language foreshadowed what was to come from the court later in *State v. Lyle*. However, the trial courts imposing both Null's and Pearson's sentences assessed their facts and circumstances of their crimes, but ultimately found that such individualized factors warranted longer consecutive prison terms, instead of shorter concurrent terms. *See Null*, 836 N.W.2d at 80 (Mansfield, J., dissenting); *Pearson*, 836 N.W.2d at 101 (Mansfield, J., concurring in part and dissenting in part). Thus, the facts of *Null* and *Pearson* suggest that even non-categorical juvenile sentences may also be targets for judicial challenges under the court's new cruel and unusual punishment interpretation.

127. *See Pearson*, 836 N.W.2d at 96 (majority opinion).

128. State v. Lyle, No. 11-1339, slip op. at 3 (Iowa July 18, 2014).

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.* at 4.

133. *See* Miller v. Alabama, 132 S. Ct. 2455, 2469 (2012).

134. *Lyle*, slip op. at 3.

Court therefore limited its decision to article I, section 17 of the Iowa Constitution in order to reach this expansive result, a move that also served to shelter the court's decision from review by the United States Supreme Court.[135]

Even though the court acknowledged that "Lyle d[id] not offer a substantive standard for cruel and unusual punishment that differs from the one employed by the United States Supreme Court," it ceded to Lyle's request to apply article I, section 17 "in a more stringent fashion" than Eighth Amendment precedent.[136] The court laid out its analysis by first identifying the two-step inquiry before it. First, the court needed to consider "objective indicia of society's standards."[137] Second, the court needed to exercise its own judgment, "guided by the standards elaborated by controlling precedents and by [its] own understanding and interpretation of the [Iowa Constitution's] text, history, meaning, and purpose."[138]

The first inquiry required little elaboration; the court quickly concluded that "no other court in the nation has held that its constitution or the Federal Constitution prohibits a statutory schema that prescribes a mandatory minimum sentence for a juvenile offender."[139] In fact, the court determined that the national consensus strongly favored mandatory minimum sentencing for juveniles. As to the second inquiry, the court stated that it "would abdicate [its] authority to interpret the Iowa Constitution if [it] relied exclusively on the presence or absence of a national consensus."[140] Rather, the court needed to do what it had set out to do—interpret the Iowa Constitution by looking to its history, meaning, purpose, and text.[141] But, just at it had done in *Null* and *Pearson*, the court again failed to accept its interpretative responsibility.[142]

In 15 pages of history and analysis regarding juvenile justice, the court only once mentioned article I, section 17 of the Iowa Constitution,[143] and it never referenced, let alone interpreted, the meaning and purpose of article

135. *Id.* at 49 (Waterman, J., dissenting) ("By holding Lyle's seven-year mandatory minimum sentence for his violent felony is cruel and unusual punishment and unconstitutional under article I, section 17 of the Iowa Constitution, rather than the Eighth Amendment, the majority evades review by the United States Supreme Court.").

136. *Id.* at 9–10 (majority opinion) (citing to *Null* and *Bruegger* as support for the more stringent application of federal precedent under article I, section 17 of the Iowa Constitution).

137. *Id.* at 14 (internal quotation marks omitted).

138. *Id.* (second alteration in original) (internal quotation marks omitted).

139. *Id.* at 15.

140. *Id.* at 16.

141. *Id.* at 14.

142. *See supra* Part III.B.1.

143. *Lyle*, slip op. at 33. The court's only mention of the Iowa Constitution in the 15 pages of analysis was fleeting. The court stated, "Our recent procession of cases clearly indicates that death is no longer irreconcilably different under article I, section 17 of the Iowa Constitution, at least for juveniles." *Id.* Surely the court did not believe that this cursory statement, with no interpretation of the Iowa Constitution to precede it, satisfied its "duty to interpret the Iowa Constitution" that it was so careful not to abdicate earlier in the decision. *Id.* at 16.

I, section 17 or the Iowa Framers' intent in adopting the provision.[144] Although the opinion noticeably lacked reference to or interpretation of the Iowa Constitution, the court was somehow able to conclude that there was "no other logical result" than to hold mandatory sentences for juveniles unconstitutional under the Iowa Constitution.[145] The decision diverged from federal precedent to a far greater extent than *Null* and *Pearson*,[146] but the standardless decision-making present in *Lyle* was all too familiar, inserting even more uncertainty into the already dicey waters of cruel and unusual punishment jurisprudence in Iowa.

B. JUDICIAL FEDERALISM DOES NOT JUSTIFY THE IOWA SUPREME COURT'S NEW INTERPRETATION OF ARTICLE I, SECTION 17

Judicial federalism is a recent development in constitutional law where state courts rely on "state constitutions as independent sources of rights" in order "to extend greater protection to individual liberties than was available under . . . interpretations of the Federal Constitution."[147] This modern constitutional development originated in United States Supreme Court Justice William J. Brennan's 1977 *Harvard Law Review* article in which he urged state courts to view their constitutions as potential sources of more expansive personal rights and liberties.[148] The modern judicial federalism movement, however, is a principled one involving many justifications and rationales for why and when state supreme courts should engage in judicial federalism.[149] Although the *Null* triad exemplifies the Iowa Supreme Court's expansion of individual rights through the use of the Iowa Constitution, the court's recent actions do not demonstrate a principled employment of judicial federalism. Therefore, this Subpart will demonstrate why judicial

144. *Id.* at 20–35 (citing to United States Supreme Court decisions 74 times in the text of pages 20 to 35—decisions which clearly provide no insight on the Iowa Constitution—while only citing to Iowa Supreme Court decisions 15 times and not citing to the Iowa Constitution at all).

145. *Id.* at 42.

146. *Compare* Miller v. Alabama, 132 S. Ct. 2455, 2469 (2012) (finding mandatory life-without-parole sentences for juveniles unconstitutional under the Eighth Amendment), *with Lyle*, slip op. at 3 (reversing a minimum sentence of seven years before parole eligibility under article I, section 17), State v. Null, 836 N.W.2d 41, 70–71 (Iowa 2013) (reversing a minimum sentence of 52.5 years before parole eligibility under article I, section 17), *and* State v. Pearson, 836 N.W.2d 88, 96–98 (Iowa 2013) (reversing a minimum sentence of 35 years before parole eligibility under article I, section 17).

147. Tarr, *supra* note 45, at 841.

148. Lawrence Friedman, *The Constitutional Value of Dialogue and the New Judicial Federalism*, 28 HASTINGS CONST. L.Q. 93, 93 (2000).

149. *See generally* Stewart G. Pollock, Assoc. Justice, Supreme Court of N.J., Address at Rutgers Univ., State Constitutions as Separate Sources of Fundamental Rights (Apr. 27, 1983), *in* 35 RUTGERS L. REV. 707 (1983) (exploring historical justifications for judicial federalism and discussing the theories for invoking and interpreting state constitutions independent of the Federal Constitution).

federalism does not adequately justify the Iowa Supreme Court's new method of independent interpretation.

1. Failure to Accept Interpretive Responsibility Contravened Judicial Federalism

In the *Null* triad, the Iowa Supreme Court asserted its "unfettered authority to interpret the Iowa Constitution."[150] The court undeniably possessed this authority; however, it is questionable whether the court asserted its authority in a responsible manner. To understand the role courts play when engaging in judicial federalism, it is necessary to "distinguish [between] questions of power and . . . questions of interpretive responsibility."[151] The court clearly understood and satisfied the power prong of judicial federalism, but it did not satisfy the interpretive responsibility prong.[152]

Interpretive responsibility requires courts to provide the "best justification they can devise for the rights at issue."[153] So when the Iowa Supreme Court deviated from federal interpretation and invoked the Iowa Constitution to afford greater rights, it should have justified the deviation. Merely asserting that it is entitled to engage in a "more stringent" interpretation of the Iowa Constitution does not satisfy the court's responsibility to justify and explain its choice to view the state constitution as an independent source of rights.[154]

As Iowa's highest court, the Iowa Supreme Court is charged with providing the final interpretation of the Iowa Constitution.[155] This role

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150. State v. Null, 836 N.W.2d 41, 70 n.7 (Iowa 2013).

151. Thomas Morawetz, *Deviation and Autonomy: The Jurisprudence of Interpretation in State Constitutional Law*, 26 CONN. L. REV. 635, 656 (1994).

152. "'[O]ur right under principles of federalism to stand as the final word on the Iowa Constitution is settled, long-standing, and good law.' When a state constitutional issue is raised by a party, we have a duty to engage in independent analysis of the claim." *Null*, 836 N.W.2d at 70 n.7 (internal citation and parentheses omitted). It is clear from the court's statements in *Null* that it sought to justify its expansive interpretation of article I, section 17 as an act of judicial federalism. The court's statements also seemed to acknowledge the responsibility it bore when invoking the principles of federalism, making it even more surprising that the court did not fulfill its interpretive responsibility in the *Null* triad.

153. Morawetz, *supra* note 151, at 656. "[I]t is appropriate to see state courts as needing to justify *deviation* from the federal norm, to justify expanding a right. . . . In appropriate cases, [state courts] are equipped to expand the right beyond its scope in the federal scheme and to justify that expansion with an independent account of the interests and goals at issue." *Id.* at 657.

154. In applying the Iowa Constitution to afford greater rights and protections, the "justification may not simply prescribe a *higher level* of protection but may involve a different way of conceiving the right, using factors that may or may not be idiosyncratic to the state context." *Id.* at 656. "[A] goal of written opinions is to 'provide a check on arbitrary decisionmaking.'" Aton, *supra* note 45, at 756 n.127 (citing W. REYNOLDS, JUDICIAL PROCESS 58 (1980)).

155. *See* Dorothy T. Beasley, *The Georgia Bill of Rights: Dead or Alive?*, 34 EMORY L.J. 341, 415 (1985) ("State courts must recognize that only they can assume the role as interpreter of the state constitution."). The Iowa Supreme Court acknowledged its role in *Null*, stating that its word is

requires the court to engage in a thorough analysis of the Iowa Constitution[156]—a duty it failed to uphold in the *Null* triad. The court must no longer justify constitutional interpretation with an empty and conclusive assertion that it is interpreting and applying the Iowa Constitution more stringently. The Iowa Supreme Court must identify a basis for its new interpretation within the Iowa Constitution itself.[157]

2. Failure to Uphold the Integrity of the Iowa Constitution Contravened Judicial Federalism

The Iowa Supreme Court not only ignored its primary duty as the state's highest court to engage in meaningful constitutional interpretation, it also showed a lack of deference toward the integrity of the Iowa Constitution. Treating the Iowa Constitution as a document suited for standardless and unprincipled interpretation undermines the significance of the document and its role in preserving the rights of the citizens of Iowa.[158] If the Iowa Supreme Court applied *Miller v. Alabama*'s federal interpretation, the court would have found the sentences of Null, Pearson, and Lyle constitutional.[159]

"the final word on the Iowa Constitution." *Null*, 836 N.W.2d at 70 n.7 (quoting State v. Baldon, 829 N.W.2d 785, 790 (Iowa 2013)).

156. Beasley, *supra* note 155, at 416. The undertaking of interpreting article I, section 17 of the Iowa Constitution will be neither an easy, nor a short process.

> Unearthing the meaning of just one superficially simple and rather forthright clause requires a lengthy and time consuming process, employing historical and textual methodologies. The historical investigation embraces not only the narrow issue of the introduction of the right into the state constitution and its use in case law thereafter, but also the constitutional, political, and social history of the state in order to understand the historical context in which the clause was created. . . . It is also necessary to understand the place which the courts have given the clause in the framework of the federal Constitution. This will bring another dimension to the meaning which has attached to the clause.
>
> Although the process may appear forbidding, even overwhelming, it should be eagerly pursued.

Id.

157. *See Null*, 836 N.W.2d at 83 (Mansfield, J., concurring in part and dissenting in part) (arguing that when the court deviates from federal interpretation, it should say "what in Iowa's constitution justifies it").

158. A justice of the Vermont Supreme Court observed Vermont's high court engaging in interpretive practices similar to those utilized in the *Null* triad, stating that in Vermont the "Court [reads] into our State Constitution language which is simply not there . . . such results are whim-motivated and result-oriented." State v. Brunelle, 534 A.2d 198, 207 (Vt. 1987) (Peck, J., dissenting). Continuing, the justice said "where there are no meaningful distinctions between the relevant wording of the two constitutions, the majority says there is one. This is an extract of thin air. The majority . . . has simply plucked a legal bunny from its hat." *Id.* at 208.

159. In *Miller v. Alabama*, the United States Supreme Court found only one type of juvenile sentence unconstitutional, a mandatory sentence of life-without-parole. *See supra* note 92 and accompanying text. None of the juvenile defendants in *State v. Null*, *State v. Pearson*, or *State v. Lyle* had been sentenced to a mandatory life-without-parole sentence. *See supra* note 97 and accompanying text (describing the term-of-years sentence received by defendant Null); *see also*

It is unclear whether the Iowa Supreme Court wanted to be more lenient on defendants Null, Pearson, and Lyle than federal interpretation would have required, whether the court wanted to evade the United States Supreme Court's review of the decisions, or both. Regardless, the court's unstated reason for employing this standardless method of constitutional interpretation is not the true concern. The true concern is preserving the integrity of the Iowa Constitution, which can only be accomplished through principled interpretation.[160]

C. STANDARDLESS INTERPRETATION CREATES UNCERTAINTY

As a long-term consequence, the Iowa Supreme Court's interpretation in the *Null* triad creates uncertainty. Instead of engaging in actual interpretation of the Iowa Constitution, the court perpetuated *Bruegger*'s standardless interpretation.[161] The court's interpretation is flawed due to the absence of two essential standards; the lack of which leaves many questions unanswered for future cases. First, the court gave no standards for identifying what in the text of article I, section 17 justifies affording defendants greater protections than the Eighth Amendment.[162] Second, the court gave no standards explaining what it means to apply federal interpretation "under" the Iowa Constitution.[163] This Subpart will address the uncertainty that the lack of these standards creates for the Iowa Legislature, and for judges, lawyers, and citizens involved in future litigation in Iowa.

1. Creates Uncertainty for the Iowa Legislature in Propagating Future Sentencing Laws

Before the *Null* triad, the Iowa Legislature only needed to consult one body of law when creating sentencing laws. Prior to its adoption of the new and separate state interpretation, the Iowa Supreme Court's decisions

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supra notes 112, 120, and accompanying text (describing the term-of-years sentence received by defendant Pearson); *supra* notes 128, 134, and accompanying text (describing the term-of-years sentence received by defendant Lyle). Therefore, none of sentences received by Null, Pearson, or Lyle were unconstitutional pursuant to *Miller* as the Iowa Supreme Court suggested.

160. "But, of course, the point here is not which result one prefers but rather the integrity of the constitutional analysis. . . . It would be a serious mistake for this Court to use its state constitution chiefly to evade the impact of the decisions of the United States Supreme Court. . . . [D]ecisions must be principled, not result-oriented." Jeffrey L. Amestoy, *State Constitutional Law: An Attorney General's Perspective*, 13 VT. L. REV. 337, 342 (1988) (quoting State v. Jewett, 500 A.2d 233, 235 (Vt. 1985)).

161. *See supra* note 110 and accompanying text (describing the Iowa Supreme Court's lack of interpretation of the Iowa Constitution in *Null* and *Pearson*).

162. *Null*, 836 N.W.2d at 83 (stating that if the court is following something other than *Miller*, "they should say what it is, why they are taking this approach, and what in Iowa's constitution justifies it").

163. *Id.*

provided a uniform body of case law for the Iowa Legislature to consult.[164] The court's previous cases demonstrated that federal and state cruel and unusual punishment interpretations were interchangeable.[165] Therefore, satisfying the requirements of federal cruel and unusual punishment precedent would simultaneously ensure constitutional compliance with Iowa's cruel and unusual punishment precedent.[166] But after the *Null* triad, the Iowa Legislature now must consider two provisions that have materially identical language but divergent interpretations.[167]

While the legislature could certainly surmount the burden of complying with two differing, but principled, lines of interpretation, that is not the burden it currently faces. Instead, the legislature must comply with article I, section 17's unprincipled and standardless line of interpretation, while also complying with the principled interpretation of its federal counterpart. Because the Iowa Supreme Court's separate line of precedent lacks identifiable standards and is therefore impossible for the Iowa Legislature to predictably conform to,[168] the constitutionality of new legislation will remain uncertain until the courts have an opportunity to adjudicate the legislation in a case or controversy.[169] Just as "'[s]tringent' is not a term that helps one

164. In particular, uniformity in interpretation is necessary in order to ensure consistency in operation, such as in the promulgation of consistent sentencing laws, and in general, uniformity is the best public policy. *See* Des Moines Joint Stock Land Bank v. Nordholm, 253 N.W. 701, 709 (Iowa 1934) ("[G]ood policy and a desired consistency between the two Constitutions rather dictate that the interpretation of the two clauses be similar. Such consistency in interpretation will accomplish consistency in operation. Uniformity in the construction . . . is most desirable, if not absolutely necessary.").

165. *See supra* Part II.B.2 (describing the Iowa Supreme Court's longtime adherence to federal cruel and unusual punishment interpretation when interpreting article I, section 17).

166. Nearly the only limitation on the legislature's discretion in promulgating sentencing laws is the constitutional prohibition on cruel and unusual punishments. State v. Duff, 122 N.W. 829, 830 (Iowa 1909). Historically, the Iowa Supreme Court recognized that the proposition "[t]hat the Legislature has the power to fix the punishment for crime, with the limitation only that it be not cruel or excessive, will hardly be seriously questioned." *Id.*

167. This is most problematic because "[w]idely divergent interpretations of similar provisions create unpredictability and confusion in the law." State v. Schwartz, 689 N.W.2d 430, 439 (S.D. 2004) (citing James A. Gardner, *The Failed Discourse of State Constitutionalism*, 90 MICH. L. REV. 761, 763–64 (1992) ("[S]tate constitutional law today is a vast wasteland of confusing, conflicting, and essentially unintelligible pronouncements. [T]he fundamental defect responsible for this state of affairs is the failure of state courts to develop a coherent discourse of state constitutional law[.]")).

168. Aton, *supra* note 45, at 756 n.127 ("[R]easoned opinions promote certainty and provide notice of what the law is in a given instance, and what it should be in an analogous situation.").

169. The divergence of state and federal interpretation creates another, more complex uncertainty. Essentially, as illustrated in the following example, the constitutionality of any given piece of legislation will not be certain until it has undergone two different reviews. The statute must be challenged and survive federal Eighth Amendment interpretation, and the statute must also be challenged and survive Iowa's article I, section 17 interpretation, in order to be certain of the constitutionality of the legislation. For example, suppose the Iowa Legislature adopts a new sentencing law, X. During its debate and passage, X encountered both bitter opposition as well

decide a particular case" but instead "describes . . . a mindset or outlook," "stringent" is likewise not a term that provides the legislature guidance when determining whether new sentencing laws will meet the constitutional requirements of article I, section 17.[170]

Broadly, the *Null* triad stands for the proposition that the Iowa Supreme Court has determined that article I, section 17 of the Iowa Constitution provides greater protection to defendants than the Eighth Amendment.[171] The Iowa Legislature will face the uncertainties described above when passing any sentencing law, for the court has not yet explained to the legislature how the state and federal provisions are different or when the differences are relevant. More specifically, the *Null* triad focused on the "differences between children and adults" and created a new line of Iowa cruel and unusual precedent regarding juveniles.[172] This line of cases culminated with *State v. Lyle*, and *Lyle* brought with it a whole new realm of legislative uncertainty.

The court held in *State v. Lyle* that "juvenile offenders cannot be mandatorily sentenced under a mandatory minimum sentencing scheme."[173] Later, the court said that "[i]t is important to be mindful that the holding in this case does not prohibit . . . the legislature from imposing a minimum time that youthful offenders must serve in prison before being eligible for parole."[174] But is that not what the legislature did in Lyle's case? The

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as fervent support. After X was passed and signed by Iowa's governor, A, who opposed the passage of X, challenges X in the federal courts on the grounds that X violates the Eighth Amendment. Iowa defends X's constitutionality and the United States Supreme Court upholds the law. In doing so, both the highest authority on United States constitutional matters—the United States Supreme Court—and the state's designated policymaker—the Iowa Legislature—agree that X is an acceptable law. However, in a system of noninterpretive state court review, A can still challenge X's constitutionality by arguing before the highest authority on Iowa constitutional matters—the Iowa Supreme Court—that X violates article I, section 17 of the Iowa Constitution. Such noninterpretive state court review settles the issue of a statute's constitutionality only after two courts have reached the same decision. *See* Earl M. Maltz, *The Dark Side of State Court Activism*, 63 TEX. L. REV. 995, 1005–06 (1985) (providing an example of noninterpretive state court review that the above, Iowa-specific, example was adapted from).

170. State v. Null, 836 N.W.2d 41, 82–83 (Iowa 2013) (Mansfield, J., concurring in part and dissenting in part).

171. *See supra* notes 107–10 and accompanying text.

172. *State v. Lyle*, No. 11-1339, slip op. at 44 (Iowa July 18, 2014).

173. *Id.* at 4.

174. *Id.* at 45–46. The only notable difference between the court's holding of what it does prohibit the legislature from imposing (mandatory minimum sentences), and the statement of what it does not prohibit the legislature from imposing (minimum sentences), is the absence of the word "mandatory." *Id.* at 3–4, 45–46. However, taking away the legislature's authority to set mandatory sentences does little if the legislature is still allowed to set minimum sentences. Allowing the legislature to determine the "smallest acceptable quantity" of time an inmate must serve implicitly creates a mandatory sentence. BLACK'S LAW DICTIONARY 1085 (9th ed. 2009). The opposite of a mandatory sentence is a discretionary one, which is defined as "involving an exercise of judgment and choice, not an implementation of a hard-and-fast rule." *Id.* at 534. Therefore, a minimum sentence is always a mandatory one because allowing the legislature to set

legislature imposed a minimum time of seven years that Lyle, a youthful offender, had to serve in prison before being eligible for parole.[175] The statement of the court's holding and the statement of the sentences the legislature can still impose seem to be contradictory to an irreconcilable degree. At best, the court's language is ambiguous. If the court meant to say that the legislature is not prohibited from imposing a minimum *percentage* that youthful offenders must serve of their prison term before being eligible for parole, then that is what the court should have said.[176] These contradictory statements by the court compound the uncertainty that *Null* and *Pearson* previously created for the legislature and raise an important new question—what role is left for the Iowa Legislature in sentencing juvenile offenders?[177]

2. Creates Uncertainty for Judges, Lawyers, and Citizens in Future Litigation

In addition to providing guidance and standards for the Iowa Legislature when creating new legislation, the Iowa Supreme Court's decisions are meant to provide guidance and standards for judges and lawyers involved in future litigation.[178] The court's decisions also provide citizens with fair notice of the rights to which they are entitled within the state. Dissenting in *Null*, Justice Mansfield keenly observed the obligations of the court:

> When [the Iowa Supreme Court] borrows from federal precedent but ultimately departs from it, we owe an obligation to be clear about the extent and nature of our departure and the analytical framework we are following. This helps trial judges and lawyers know what is expected of them in the future. 'More stringent' does not fulfill that obligation.[179]

Not only does the lack of standards in the court's new interpretation do a disservice to the Iowa Constitution, it does a disservice to Iowans in their

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the "smallest acceptable quantity" of time for a sentence leaves no room for a district court to exercise "judgment and choice" to lower that quantity.

175. *Lyle*, slip op. at 4–5.

176. There is a distinct difference between allowing the legislature to impose "a minimum time that youthful offenders must serve in prison before being eligible for parole," and allowing the legislature to impose a minimum percentage of a given prison term that youthful offenders must serve in prison before being eligible for parole. *Id.* at 45–46. The former allowance gives the legislature permission to impose, for example, a minimum time of 10 years that juveniles must serve for first degree robbery before they would be eligible for parole. The latter allowance gives the legislature permission to impose, for example, a requirement that juveniles serve a minimum of 60% of the sentence given to them by a judge.

177. This question will not likely stay contained to juvenile offenders. As Justice Waterman's dissent aptly pointed out, under the majority's reasoning, "why not prohibit mandatory minimum sentences for any offender under age 26?" *Id.* at 49 (Waterman, J., dissenting).

178. *See supra* note 164 and accompanying text (describing the role and obligations of the Iowa Supreme Court and its decisions).

179. *Null*, 836 N.W.2d at 83.

capacity as citizens, and in their additional capacities as legislators, litigants, lawyers, or judges.[180]

The most readily available example of the disservice imposed by the standardless interpretation in the *Null* triad is the hundreds of possible sentencing challenges that district courts must now adjudicate. Under the United States Supreme Court's holding in *Miller*, the district courts would have been faced with reviewing only 36 unconstitutional sentences.[181] However, under the Iowa Supreme Court's recent holdings, the district courts could potentially see sentencing challenges from all 425 juveniles that were sentenced in Iowa prior to *Miller v. Alabama*.[182] This is especially problematic because the *Null* triad lacks the necessary guidance for district courts to address the wave of challenges in an efficient and predictable fashion.[183]

State v. Lyle particularly emphasized this lack of guidance. If all sentences that were previously mandatorily imposed on juveniles are now unconstitutional, the court needed to provide guidance to the lower courts on how these juveniles are to be resentenced. The only guidance provided in the entire 47-page majority opinion is that judges should now "carefully consider all of the circumstances of each case to craft an appropriate sentence and give each juvenile the individual sentencing attention they deserve and our constitution demands."[184] *Lyle* now leaves district court judges to wonder what circumstances they should be considering—age, prior criminal history, family life, maturity—just to name a few possibilities of many.[185] Additionally, judges must figure out what weight to give these different considerations, again, with no guidance, making it a near certainty that juvenile sentencing in Iowa will soon be wrought with disparity.[186]

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180. The inability of *Null* and *Pearson* to provide sufficient guidance in future decisions was illustrated when the court decided *State v. Hoeck* less than a year later. *See generally* State v. Hoeck, 843 N.W.2d 67 (Iowa 2014) (remanding to the district court the defendant's claim that his corrected sentence violated the Iowa Constitution). Recognizing the uncertainty *Null* and *Pearson* created, Justice Mansfield stated: "We owe it to the citizens of this state to clarify the limits and scope of *State v. Null* and *State v. Pearson* when presented to us in a case that meets our prior error preservation requirements." *Id.* at 74 (Mansfield, J., concurring in part and dissenting in part).

181. *See supra* note 4 and accompanying text.

182. *Id.*

183. For example, when confronted with a person challenging a mandatory life-without-parole sentence he or she received as a juvenile, trial judges across the state are currently resentencing the person to life-with-parole. *Hoeck*, 843 N.W.2d at 74. However, because the mandate of *Null* and *Pearson* was not clear, "[i]f this procedure doesn't meet state constitutional requirements, [the Iowa Supreme Court] ought to tell them." *Id.*

184. State v. Lyle, No. 11-1339, slip op. at 46–47 (Iowa July 18, 2014).

185. *Id.* (instructing judges to "consider all of the circumstances" without instructing judges as to what circumstances may be relevant to their sentencing or how these circumstances are to be weighted).

186. *See supra* note 185.

IV. THE IOWA SUPREME COURT SHOULD ADOPT PRINCIPLED STANDARDS FOR INTERPRETATION OF ARTICLE I, SECTION 17

This Part proposes a solution to the three problems resulting from the improper interpretation in the *Null* triad. Part IV.A urges the Iowa Supreme Court to follow and conform to federal interpretation whenever possible, suggesting a textual basis for adhering to federal interpretation. Part IV.B proposes principled interpretation standards in the event that a compelling need arises for the Iowa Supreme Court to deviate from federal interpretation.

A. THE TEXTUAL BASIS FOR ADHERING TO FEDERAL INTERPRETATION

The timing of the adoption of article I, section 17 and the materially identical text of the provision demonstrate Iowa's Framers' intent to make article I, section 17 analogous to the Eighth Amendment.[187] This Subpart explores the text of article I, section 17 and discusses how Iowa's cruel and unusual punishment provision mirrors the Eight Amendment through its own construction. This Subpart also looks at how other states' courts interpret Eighth Amendment counterparts found in their own state constitutions. While there is a strong textual basis for interpreting article I, section 17 in lockstep with the Eighth Amendment, there are also additional benefits to an analogous interpretation, such as comporting with Iowa's precedent and stare decisis,[188] and avoiding uncertainty in lawmaking and litigating.[189]

1. Article I, Section 17 of the Iowa Constitution is Materially Identical to the Eighth Amendment

The cruel and unusual punishment provision that Iowa's Framers adopted is materially identical to the Eighth Amendment.[190] Article I, section 17 states, "Excessive bail shall not be required; excessive fines shall not be imposed, and cruel and unusual punishment shall not be inflicted."[191] The Eighth Amendment states, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."[192] Viewing the two provisions side by side suggests that Iowa's Framers adopted a cruel and unusual punishment provision not merely to restrict state action, but to restrict state action in the same way and to the same degree as the Eighth

187. *See supra* Part II.A.3 (outlining the timing and adoption history behind article I, section 17 of the Iowa Constitution).

188. *See supra* Part II.B.1 & 3 (describing the Iowa Supreme Court's adherence to federal Eighth Amendment interpretation in its article I, section 17 precedent).

189. *See supra* Part III.C.1 (describing the uncertainty that standardless and divergent interpretation of identical constitutional provisions creates).

190. *See supra* note 42 and accompanying text (comparing the text of the Eighth Amendment to the text of article I, section 17).

191. IOWA CONST. art. I, § 17.

192. U.S. CONST. amend. VIII.

Amendment. There is no textual support for construing article I, section 17 to afford greater protections than the Eighth Amendment. "A substantial textual difference between the federal and state constitution is the most persuasive reason for a state court to reject a United States Supreme Court decision," but there is unmistakably no substantial textual difference between article I, section 17 and the Eighth Amendment to justify the Iowa Supreme Court's deviation from federal interpretation.[193]

2. Survey of Eighth Amendment Counterparts in State Constitutions

Comparing the text of article I, section 17 and the Eighth Amendment is arguably the most important step in ascertaining Iowa's Framers' intent and meaning behind article I, section 17. However, the analysis should not end there. Along with looking at the provision's federal counterpart, it is instructive to analyze similar provisions in constitutions of other states.[194] The primary difference between various state constitutions' cruel and unusual punishment provisions is the use of conjunctive language ("and") or disjunctive language ("or").[195] Twenty-two states mirror the federal provision by employing the conjunctive language "cruel *and* unusual."[196] Twenty-one state constitutions contain the slightly varied, disjunctive language "cruel *or*

193. Robert F. Williams, *In the Supreme Court's Shadow: Legitimacy of State Rejection of Supreme Court Reasoning and Result*, 35 S.C. L. REV. 353, 369 (1984) (noting that there is legitimacy in construing state constitutions differently from the Federal Constitution, but finding the primary source of that legitimacy in textual differences between state and federal constitutions); *see also* Maltz, *supra* note 169, at 1013 ("The essence of interpretive review is the search for the intent of the drafters of the relevant provision; significant differences in language may well indicate differences in intent. Thus, differences in language are clearly relevant to courts practicing interpretive review").

194. *See* Beasley, *supra* note 155, at 358 ("In interpreting state constitutional provisions, courts should consider not only the meaning of the corresponding federal provision, but also the meaning of similar provisions in sister states' constitutions.").

195. BARRY LATZER, STATE CONSTITUTIONS AND CRIMINAL JUSTICE app. F (1991).

196. *See* ALASKA CONST. art. I, § 12; ARIZ. CONST. art. II, § 15; COLO. CONST. art. II, § 20; FLA. CONST. art. I, § 17; GA. CONST. art. I, § 1, ¶ 17; IDAHO CONST. art. 1, § 6; IND. CONST. art. I, § 16; IOWA CONST. art. I, § 17; MD. DECLARATION OF RIGHTS art. 16 (prohibiting "cruel and unusual pains"); MO. CONST. art. I, § 21; MONT. CONST. art. II, § 22; NEB. CONST. art. I, § 9; N.J. CONST. art. I, ¶ 12; N.M. CONST. art. II, § 13; N.Y. CONST. art. I, § 5; OHIO CONST. art. I, § 9; OR. CONST. art. I, § 16; TENN. CONST. art. I, § 16; UTAH CONST. art. I, § 9; VA. CONST. art. I, § 9; W. VA. CONST. art. III, § 5; WIS. CONST. art. I, § 6.

unusual."[197] Six states' constitutional provisions only ban cruel punishments with no reference to unusual punishments.[198]

a. States Adhering to Federal Interpretation Due to Textual Similarities

Chief Justice Shirley Abrahamson of the Wisconsin Supreme Court "suggest[ed] that the decisions of sister states . . . construing the same or similar provisions [in their state constitutions] may provide persuasive reasoning when the court is construing its own provision."[199] Surveying the decisions of state supreme courts in states with cruel and unusual punishment statutes that are textually similar to the Eighth Amendment reveals a strong pattern of adherence to federal interpretation across the country.[200] Although many states adhere to federal interpretation, there are some state courts that have reserved the right to construe their state constitutions more broadly than their federal counterpart. However, these states differ from the Iowa Supreme Court's interpretation in the *Null* triad in notable ways.

In *State v. Gomez*, the New Mexico Supreme Court adopted the interstitial approach to independently interpreting a state constitutional provision with an analogous federal counterpart.[201] This means that New Mexico courts first examine a challenge under the Federal Constitution.[202] If the challenge fails, it then determines whether the New Mexico Constitution can supplement the

197. LATZER, *supra* note 195, app. F at 205. *See* ALA. CONST. art. I, § 15; ARK. CONST. art. II, § 9; CAL. CONST. art. I, § 17; HAW. CONST. art. I, § 12; KAN. CONST. BILL OF RIGHTS § 9; LA. CONST. art. I, § 20 (prohibiting "cruel, excessive, or unusual punishment"); ME. CONST. art. I, § 9 (declaring there shall be neither "cruel nor unusual punishments inflicted"); MASS. CONST. pt. 1, art. XXVI; MICH. CONST. art. I, § 16; MINN. CONST. art. 1, § 5; MISS. CONST. art. III, § 28; NEV. CONST. art. I, § 6; N.H. CONST. pt. 1, art. XXXIII; N.C. CONST. art. I, § 27; N.D. CONST. art. I, § 11; OKLA. CONST. art. II, § 9; S.C. CONST. art. I, § 15 ("[N]or shall cruel, nor corporal, nor unusual punishment be inflicted."); TEX. CONST. art. I, § 13; WYO. CONST. art. I, § 14. Florida's constitution and Maryland's declaration of rights use both the conjunctive and disjunctive forms. *See* FLA. CONST. art. I, § 17; MD. DECLARATION OF RIGHTS arts. 16, 25.

198. LATZER, *supra* note 195, app. F at 205. *See* DEL. CONST. art. I, § 11; KY. BILL OF RIGHTS § 17; PA. CONST. art. I, § 13; R.I. CONST. art. I, § 8; S.D. CONST. art. VI, § 23; WASH. CONST. art. I, § 14. The constitutions of Connecticut, Illinois, and Vermont make no mention of either "cruel and unusual," "cruel or unusual," or "cruel" punishment. *See generally* CONN. CONST.; ILL. CONST.; VT. CONST.

199. Beasley, *supra* note 155, at 358 n.65.

200. *See, e.g.*, State v. Davis, 79 P.3d 64, 67–68 (Ariz. 2003) (finding no "compelling reason to interpret Arizona's cruel and unusual punishment provision differently [or to provide any broader protections] from the related provision in the federal constitution"); People v. Hale, 661 N.Y.S.2d 457, 472–73 (N.Y. Sup. Ct. 1997) (analyzing whether New York's constitution provided greater individual rights than the Eighth Amendment and determining that both interpretive and non-interpretive analysis concluded that the text of article I, section 5 of the state constitution provided no basis for interpreting New York's prohibition against cruel and unusual punishment differently from Eighth Amendment interpretation).

201. State v. Gomez, 932 P.2d 1, 7 (N.M. 1997).

202. Jennifer Cutcliffe Juste, Note, *Constitutional Law—The Effect of State Constitutional Interpretation on New Mexico's Civil and Criminal Procedure*—State v. Gomez, 28 N.M. L. REV. 355, 355 (1998).

challenger's rights and afford greater protections.[203] The New Mexico Supreme Court used this interstitial approach in *State v. Rueda*, declaring that it would only diverge from federal interpretation and afford greater protections under the New Mexico Constitution where it found "a flawed federal analysis, structural differences between state and federal government, or distinctive state characteristics."[204] The New Mexico Supreme Court's three standards for determining when to appropriately deviate from federal interpretation demonstrates the *Null* triad's greatest flaw—the lack of standards for applying the state constitution independent of the Federal Constitution.

The Colorado Supreme Court's decision in *People v. Young* illustrates another way that Iowa differs from other states in its deviation from federal interpretation.[205] While the court acknowledged that Colorado's cruel and unusual punishment provision was essentially the same as the Eighth Amendment, it said that the similarity did "not abrogate [its] responsibility to engage in an independent analysis of state constitutional principles in resolving a state constitutional question."[206] The Colorado Supreme Court's acknowledgment of the "responsibility spring[ing] from the inherently separate and independent functions of the states in a system of federalism" demonstrates the court's understanding of the interpretive responsibility prong of judicial federalism.[207] This understanding of the interpretive responsibility embedded in a federalist system was not apparent in the Iowa Supreme Court's standardless approach, which did not involve an actual interpretation of the Iowa Constitution.[208]

b. States Adhering to Federal Interpretation Despite Textual Differences

There are states with provisions that are not materially identical to the Eighth Amendment that still choose to adhere to federal interpretation. In Kansas, for example, the courts have pointed out a textual difference but still follow federal interpretation.[209] "The Eighth Amendment prohibits 'cruel and unusual punishment.' Section 9 of the Kansas Constitution Bill of Rights,

203. *Id.*

204. State v. Rueda, 975 P.2d 351, 353 (N.M. Ct. App. 1998) (citing *Gomez*, 932 P.2d at 7).

205. People v. Young, 814 P.2d 834, 842 (Colo. 1991), *superseded on other grounds by statute*, COLO. REV. STAT. 16-12-102(1) (1993), *as recognized in* People v. Vance, 933 P.2d 576, 577 n.2 (Colo. 1997).

206. *Id.*

207. *Id. See supra* Part III.B.1 (discussing the interpretive responsibility prong of judicial federalism).

208. State v. Null, 836 N.W.2d 41, 83 n.14 (Iowa 2013) (Mansfield, J., concurring in part and dissenting in part) ("Certainly, it is possible for courts to engage in legitimate forms of state constitutional interpretation and come to a different conclusion from federal precedent. However, simply saying you interpret the state constitution 'in a more stringent fashion' does not describe an actual method of interpretation.").

209. McComb v. State, 94 P.3d 715, 722 (Kan. Ct. App. 2004).

which forbids 'cruel or unusual punishment,' has been construed in the same manner as the Eighth Amendment."[210] Likewise, in *State v. Kido*, a Hawaii court mentioned and then consciously disregarded the difference between the state and federal provisions: "The 'cruel or unusual punishment' prohibition of article I, § 12 of the Hawaii Constitution is disjunctive in form whereas the 'cruel and unusual punishment' provision of the eighth amendment to the United States Constitution is conjunctive. The difference, however, appears to be only one of form and not of substance."[211] Article I, section 17 provides the Iowa Supreme Court with a strong textual basis for *adhering* to federal interpretation, especially considering that even those states with a textual basis for *differing* from federal interpretation choose not to do so.

B. PRINCIPLED INTERPRETATION STANDARDS FOR DEVIATING FROM FEDERAL INTERPRETATION WHEN THE NEED ARISES

The problems arising from the *Null* triad are all direct results of the Iowa Supreme Court's standardless interpretation.[212] Therefore, this Subpart calls on the court to adopt one of two possible tests when interpreting article I, section 17 independent of the Eighth Amendment. The court's use of either test would enable principled interpretation when the need for deviation from federal interpretation arises in Iowa.[213]

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210. *Id.* (citing State v. Scott, 961 P.2d 667, 670 (Kan. 1998); Murphy v. Nelson, 921 P.2d 1225, 1232 (Kan. 1996)).

211. State v. Kido, 654 P.2d 1351, 1353 n.3 (Haw. Ct. App. 1982). Further, this Hawaii court also embraced the interpretive responsibility lacking in the *Null* triad. In interpreting the Hawaii Constitution to understand the Hawaii cruel and unusual provision, the court found that "[w]hen the Hawaii provision was originally adopted, the delegates to the 1950 constitutional convention used the eighth amendment to the United States Constitution as a model and intended federal precedent to be followed in construing the state's 'cruel or unusual punishment' clause." *Id.*

212. *See supra* Part III.A (discussing the Iowa Supreme Court's standardless deviation from federal interpretation in *State v. Null* and *State v. Pearson*).

213. The need for deviation from federal interpretation may occur any time the Iowa Supreme Court feels that Iowans are being treated unconstitutionally by their government. Arguably, the cases in the *Null* triad each may have been times where it was necessary to deviate from federal interpretation. However, even if they were such cases, the Iowa Supreme Court should have employed standards in order to reach a principled interpretation and basis for interpreting article I, section 17 independent of the Eighth Amendment. For examples of cases where other state supreme courts found a need for deviation from federal interpretation, see Fleming v. Zant, 386 S.E.2d 339, 341–43 (Ga. 1989) (illustrating the Georgia Supreme Court's conclusion that the execution of mentally retarded persons constituted cruel and unusual punishment under the Georgia Constitution, although it had not yet been ruled cruel and unusual punishment by the United States Supreme Court); Van Tran v. State, 66 S.W.3d 790, 807–08 (Tenn. 2001) (illustrating the Tennessee Supreme Court's interpretation of the cruel and unusual provision in the Tennessee Constitution to provide greater protections for its citizens in order to prohibit the execution of mentally retarded persons). The United States Supreme Court later found the execution of mentally retarded persons unconstitutional. Atkins v. Virginia, 536 U.S. 304, 321 (2002).

1. *State v. Gunwall*: The "Principled Basis" Six-Factor Test

The test derived from the Washington Supreme Court's decision in *State v. Gunwall* is a premier example of "a principled basis for determining when courts should reject federal precedent in favor of an independent state constitutional interpretation."[214] The problems associated with standardless deviation from federal interpretation led the Washington Supreme Court to announce a six-factor test for deciding whether to afford greater protections under the state constitution.[215] First, the court must examine the text of the state constitution to see if it provides grounds for deviating from the Federal Constitution.[216] Such grounds could include a more precise state provision or a lack of an analogous federal provision.[217] Second, the court must examine the entire state constitution to identify any differences between parallel provisions of the state and federal constitutions because "[e]ven where parallel provisions of the two constitutions do not have meaningful differences, other relevant provisions of the state constitution may require that the state constitution be interpreted differently."[218] Third, the court must examine the state's constitutional and common law history because "the adoption of a particular state constitutional provision may reveal an intention that will support reading the provision independently of federal law."[219] Fourth, the court must examine preexisting state law because it "can . . . help to define the scope of a constitutional right later established."[220] Fifth, the court must examine differences in structure between the federal and state constitutions because "[t]he former is a grant of enumerated powers to the federal government, and the latter serves to limit the sovereign power which inheres directly in the people and indirectly in their elected representatives."[221] Therefore, an "explicit affirmation of fundamental rights in [a] state constitution may be seen as a guarantee of those rights rather than

214. Bruce L. Brown, *The Juvenile Death Penalty in Washington: A State Constitutional Analysis*, 15 U. PUGET SOUND L. REV. 361, 367 (1992). Washington adopted the test for the very reasons that Iowa should adopt it, or a similar test. The *Gunwall* majority observed that "[m]any of the courts now resorting to state constitutions rather than to analogous provisions of the United States Constitution simply announce that their decision is based on the state constitution but do not further explain it." State v. Gunwall, 720 P.2d 808, 811–12 (Wash. 1986). This generalized observation squarely applies to the Iowa Supreme Court's decisions in the *Null* triad. Further, the *Gunwall* decision stated that the problem with these "decisions [was] that they establish no principled basis for repudiating federal precedent and thus furnish little or no rational basis for counsel to predict the future course of state decisional law." *Id.* at 812. This summary is directly applicable to the uncertainty resulting from the *Null* triad.

215. *Gunwall*, 720 P.2d at 812–13.

216. *Id.* at 812.

217. *Id.*

218. *Id.*

219. *Id.*

220. *Id.*

221. *Id.*

as a restriction on them."[222] Finally, the court must examine the context of the case because state constitutions can "more appropriately" address "[m]atters of particular state interest or local concern," especially when there does not "appear to be a need for national uniformity."[223]

Adopting the *Gunwall* six-factor test would implement a principled basis for deviating from federal interpretation, ensuring that the Iowa Supreme Court's decisions would "be made for well founded legal reasons" and would not be the product of the court substituting its judgment for the legislature's judgment.[224] Rights and remedies available to citizens of Iowa under the Iowa Constitution "must spring not from pure intuition, but from a process that is at once articulable, reasonable and reasoned."[225]

2. *State v. Jorgensen*: The "Sound Reasons" and "Legal Deficiency" Tests

Adopting the *Gunwall* test is not the only way for the Iowa Supreme Court to correct its standardless interpretation. The consideration of other factors, like those found in *State v. Jorgensen*, would fulfill the Iowa Supreme Court's responsibility to deliver principled interpretation.[226] *Jorgensen* is a cruel and unusual punishment case from the Iowa Court of Appeals that the Iowa Supreme Court should take under advisement in creating principled interpretation standards.[227] In *Jorgensen*, the court of appeals identified that the Iowa Supreme Court had already rejected a claim similar to Jorgensen's under the Federal Constitution in *State v. Wade*.[228] Therefore, Jorgensen urged the court to interpret the cruel and unusual punishment provision in the Iowa Constitution more broadly than its federal counterpart.[229]

The court implemented a two-prong analysis to determine whether it would extend greater protections under article I, section 17 than the Eighth Amendment.[230] First, the court asked whether there were "sound reasons" to distinguish the Federal Constitution's protections from the Iowa Constitution's protections.[231] Second, with Jorgensen offering no sound

222. *Id.*

223. *Id.* at 813.

224. *Id.*

225. *Id.*

226. State v. Jorgensen, 785 N.W.2d 708, 712–13 (Iowa Ct. App. 2009).

227. *See id.*

228. *Id.* at 713; *see* State v. Wade, 757 N.W.2d 618, 624 (Iowa 2008).

229. *Jorgensen*, 785 N.W.2d at 713.

230. *Id.* at 712–13.

231. *Id.* at 713. The "sound reasons" test resulted from the Iowa Supreme Court's decision in *State v. Allen*. State v. Allen, 690 N.W.2d 684, 689 (Iowa 2005) (finding no sound reasons to interpret the Iowa Constitution more broadly than the Federal Constitution, when facing the issue of whether the Iowa Constitution allowed an enhancement of a crime based on a prior uncounseled misdemeanor conviction for which no jail time was given, and therefore finding that the use of the prior misdemeanor for enhancement did not violate the either the state or federal due process clause).

reasons to distinguish the provisions, and the court finding none, the court next looked to see if there was any legal deficiency in federal interpretation that would suggest a need for deviation under the Iowa Constitution.[232] Finding that the Iowa Supreme Court "applied the same analysis to federal and state cruel-and-unusual punishment claims in past cases," the court of appeals "conclude[d] there [was] no reason [to] deviate from the federal analysis in considering Jorgensen's state constitutional claim."[233] Thus, the court of appeals handled Jorgensen's state constitutional claim pursuant to the Iowa Supreme Court's decision in *Wade*, which utilized federal interpretation.[234]

Adopting *Jorgensen*'s "sound reasons" and "legal deficiency" tests instead of, or along with, the *Gunwall* test would be a simple and effective way to create a principled basis for constitutional interpretation in Iowa Supreme Court decisions. The analysis in *Gunwall* and *Jorgensen* would allow the Iowa Supreme Court flexibility in its decision-making, allowing for deviations from federal interpretation, but only where well-reasoned constitutional analysis supports the need for deviation. The purpose of this Note is to draw attention to the Iowa Supreme Court's recent practice of standardless decision-making and call on the court to instead adopt a principled method of interpretation involving decisional standards such as the *Gunwall* or *Jorgensen* tests. This Note does not advocate for the use of one test over another, but instead leaves it for the court to choose, as either test is fully capable of curing the problems caused by the court's standardless interpretation.

V. CONCLUSION

The *Null* triad, along with *Bruegger*, demonstrates the Iowa Supreme Court's recent affinity for standardless decision-making under article I, section 17 of the Iowa Constitution. Now, in the wake of *Miller* and the expected influx of juvenile sentencing reviews, is the time when the Iowa Supreme Court must act to correct the numerous problems the *Null* triad created.[235] It is also important to remember that the problems the *Null* triad

232. *Jorgensen*, 785 N.W.2d at 713. The "legal deficiency" test resulted from the Iowa Supreme Court's decision in *In re Detention of Garren*, where the court "refus[ed] to deviate from federal analysis in considering [a] state constitutional claim because [the] appellant 'suggested no legal deficiency in the federal principles.'" *Id.* (quoting *In re* Detention of Garren, 620 N.W.2d 275, 280 n.1 (Iowa 2000) (finding no legal deficiency in the federal principles used to decide the issue of whether the Sexually Violent Predator Act was a civil or criminal statute in order to determine whether state and federal ex post facto clauses or double jeopardy clauses had been violated and therefore deciding to decline to create their own principles under the Iowa Constitution)).

233. *Id.*

234. *Id.*

235. *See* Trish Mehaffey, *Life Sentence for Cedar Rapids Teen Ruled 'Cruel and Unusual'*, THE GAZETTE (Cedar Rapids, Iowa) (Aug. 16, 2013), http://thegazette.com/2013/08/16/iowa-supreme-court-life-sentence-for-cedar-rapids-teen-was-cruel-and-unusual/.

created reach far beyond juvenile sentencing alone. Any defendant, young or old, is now validated in challenging their sentence by asserting that that Iowa Constitution affords greater protections and requires more stringent interpretation than the Eighth Amendment. Regardless of whether the court chooses to follow the *Gunwall* test or *Jorgenson* test, it is ultimately important that the court adopt some form of principled interpretation that tests like these enable and foster.

The Iowa Supreme Court's final authority to interpret the Iowa Constitution is not limited to federal interpretation. Nevertheless, because Iowa's Framers intended to follow the Federal Constitution, the Iowa Supreme Court should interpret Iowa's cruel and unusual punishment provision in light of its materially identical counterpart in the Eighth Amendment. Where the Iowa Supreme Court finds a need to deviate from federal interpretation, it should reject the standardless interpretation applied in the *Null* triad and adopt principled standards for independent interpretation of the Iowa Constitution in future decisions.