

No. 25-246

IN THE
Supreme Court of the United States

KENNETH J. JOUPPI,

Petitioner,

v.

STATE OF ALASKA,

Respondent.

**On Petition for a Writ of Certiorari
to the Supreme Court of Alaska**

**BRIEF OF TYSON TIMBS AS *AMICUS CURIAE*
IN SUPPORT OF PETITIONER**

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INTEREST OF THE *AMICUS CURIAE* ¹

Few people understand the significance of the Eighth Amendment's Excessive Fines Clause better than Tyson Timbs. In 2013, Indiana seized his Land Rover following a low-level drug offense and brought a forfeiture claim to retain it. Timbs fought back in court, arguing that the forfeiture violated the Excessive Fines Clause. After the Indiana Supreme Court ruled that the Excessive Fines Clause had not been incorporated against the States through the Fourteenth Amendment's Due Process Clause, this Court granted Timbs's petition for a writ of certiorari and issued a landmark opinion holding that the Excessive Fines Clause was incorporated against the States. *Timbs v. Indiana*, 586 U.S. 146, 149-50, 154 (2019). On remand, the Indiana Supreme Court held that Indiana's forfeiture of Timbs's Land Rover violated the Excessive Fines Clause because it was grossly disproportional to the severity of Timbs's offense. Thus, after seven years, Timbs got his Land Rover back.

Having been through this ordeal and having suffered an unconstitutional forfeiture himself, Timbs seeks to use his experience to illuminate the need for vigilance against excessive fines and to promote awareness of the protections guaranteed by the Eighth Amendment.

¹ No counsel for a party authored this brief in whole or part, and no party or counsel other than the *amicus curiae* and his counsel made a monetary contribution intended to fund preparation or submission of this brief. Counsel of record for all parties received timely notice of the intent of *amicus curiae* to file this brief.

SUMMARY OF ARGUMENT

After years of litigation and a remand following this Court's decision in *Timbs v. Indiana*, 586 U.S. 146 (2019), the Indiana Supreme Court entered a final decision vindicating Tyson Timbs's constitutional protection from excessive forfeiture and ordering that Indiana could not forfeit Timbs's Land Rover based on the vehicle's incidental use in connection with one low-level drug offense. *State v. Timbs*, 169 N.E.3d 361 (Ind. 2021).

The Indiana Supreme Court's decision is a powerful example of the Eighth Amendment's Excessive Fines Clause working as it should to protect citizens from forfeitures that are grossly disproportional to the severity of their offenses. Rather than analyzing the gravity of drug offenses in the abstract or considering the general harm to society collectively caused by the illegal drug trade, the court followed this Court's decision in *United States v. Bajakajian*, 524 U.S. 321 (1998), and focused on the *specific* harms of Timbs's *specific* acts. As part of this analysis, the Indiana Supreme Court properly concluded that the minimum sentence actually imposed on Timbs—one year of house arrest and five years of probation—was far more informative of the gravity of Timbs's offense than the statutory maximum sentence. The court also aptly considered the harshness of the State's forfeiture of Timbs's Land Rover and the hardships it would cause Timbs in his journey through addiction, recovery, and reintegration into society. The Indiana Supreme Court thus correctly held that Timbs had shown gross disproportionality and that the forfeiture of his Land Rover therefore violated the Excessive Fines Clause.

But *Timbs* is not alone in suffering a forfeiture that is grossly disproportional to the gravity of his offense. And often, unlike in *Timbs*'s case, the promise of the Excessive Fines Clause is rendered hollow. Fines and forfeitures occupy a unique position in the American criminal justice system as punishments that not only financially benefit the government imposing them, but that also do so in a way where the benefit to the government increases in direct proportion to the severity of the punishment imposed on the defendant. Because of this perverse incentive, excesses in fines and forfeitures are common in jurisdictions across the country. These excesses, moreover, are made possible because, unlike the Indiana Supreme Court in *Timbs III*, prosecutors and courts disregard the defendant's actual culpability and his specific conduct underlying the offense, permitting punitive fines and forfeitures to spiral to levels that are grossly disproportional to the gravity of the offense.

This Court should grant review to reaffirm its holding in *Bajakajian* that the "touchstone" of the Excessive Fines Clause analysis is whether the forfeiture is grossly disproportional to the gravity of the specific conduct underlying the defendant's offense. 524 U.S. at 334-40. By doing so, the Court will reorient courts that have lost sight of this principle's centrality, ensure that courts act as a restraint on the strong financial incentive law enforcement has to pursue high amounts of fines and forfeitures, and lead courts away from being unduly deferential to legislatures.

ARGUMENT

I. Timbs’s recovery of his Land Rover is an example of the Excessive Fines Clause working properly.

Timbs’s recovery of his Land Rover is a prime example of the Excessive Fines Clause working as it should and protecting Americans from forfeitures that grossly exceed the severity of their offenses. Although Indiana’s dogged pursuit of Timbs’s Land Rover necessitated three trips to the Indiana Supreme Court and one trip to this Court, the Indiana Supreme Court’s final decision vindicating Timbs’s constitutional protection from excessive forfeiture shows how the proper Excessive Fines Clause analysis turns on whether the gravity of the defendant’s *specific conduct* underlying the offense is grossly disproportional to the harshness of the forfeiture, a principle sorely disregarded by the Alaska Supreme Court in this case.

A. Background facts and this Court’s opinion.

In 2007, Timbs began taking prescription hydrocodone pills for foot pain. *State v. Timbs (Timbs II)*, 134 N.E.3d 12, 21 (Ind. 2019). He became addicted to opioids and, after having difficulty obtaining pain pills, eventually turned to heroin. *Id.*; *State v. Timbs (Timbs III)*, 169 N.E.3d 361, 371 (Ind. 2021).

Timbs’s father died in 2012, and Timbs received approximately \$73,000 from his father’s life insurance policy. *Timbs II*, 134 N.E.3d at 21. Using these insurance proceeds, Timbs purchased a Land Rover SUV for around \$42,000. *Id.* Timbs also used the

proceeds to feed his addiction, and he would drive his Land Rover to meet his heroin supplier and obtain heroin. *Id.*

After hearing from a confidential informant that Timbs would possibly sell heroin, the local police devised a controlled-buy plan. *Id.* In the first controlled buy, Timbs drove his Land Rover to an apartment near his residence and sold two grams of heroin to an undercover police officer for \$225. *Id.* In a second buy, Timbs walked to a gas station near his residence and sold an undercover officer two grams of heroin for \$160. *Id.* A third buy was set to occur at a hotel, but before Timbs arrived there, the police stopped him in his Land Rover for a traffic violation, arrested him, and seized the vehicle. *Id.*

Indiana charged Timbs with two counts of dealing in a controlled substance and one count of conspiracy to commit theft. *Id.* After entering into a plea agreement, Timbs pleaded guilty to one of the dealing counts and to the count for conspiracy. *Id.* at 21-22. The State agreed that the minimum sentence was appropriate, and the court sentenced Timbs to one year of home detention and five years of probation. *Id.* at 22; *Timbs III*, 169 N.E.3d at 375. The sentence also required Timbs to participate in a drug-and-alcohol program and pay fees and costs totaling \$1,203. *Timbs II*, 134 N.E.3d at 22.

But that was not all. Indiana also engaged a private law firm to bring a separate civil action *in rem* for the forfeiture of Timbs's Land Rover. *Timbs v. Indiana*, 586 U.S. 146, 149 (2019); *Timbs II*, 134 N.E.3d at 22. The State alleged that the Land Rover had been used to transport heroin and that its

forfeiture was therefore warranted under Indiana law. *Timbs III*, 169 N.E.3d at 366.

The trial court rejected the State's forfeiture claim, ruling that forfeiture of the Land Rover would be grossly disproportional to the gravity of Timbs's dealing offense and would therefore violate the Eighth Amendment's Excessive Fines Clause. *Timbs II*, 134 N.E.3d at 22. The State appealed, and the Indiana Supreme Court reversed based on its conclusion that the Excessive Fines Clause had not been incorporated against the States through the Fourteenth Amendment. *Id.*

This Court granted Timbs's petition for writ of certiorari and reversed the decision of the Indiana Supreme Court. *Timbs*, 586 U.S. 146. The Court explained that the "Excessive Fines Clause traces its venerable lineage" to Magna Carta and the English Bill of Rights, that the right appeared in colonial-era state constitutions, and that "acknowledgment of the right's fundamental nature remains widespread" today. *Id.* at 151-53. The Court described how the "protection against excessive fines has been a constant shield throughout Anglo-American history," a protection that is particularly necessary because "fines may be employed 'in a measure out of accord with the penal goals of retribution and deterrence,'" as "fines are a source of revenue,' while other forms of punishment 'cost a State money.'" *Id.* at 154 (quoting *Harmelin v. Michigan*, 501 U.S. 957, 978 n.9 (1991) (opinion of Scalia, J.)). Concluding that the protection from excessive fines is "both 'fundamental to our scheme of ordered liberty' and 'deeply rooted in this Nation's history and tradition,'" the Court held that the Excessive Fines Clause is incorporated as to the

States by the Fourteenth Amendment. *Id.* at 150, 154 (quoting *McDonald v. Chicago*, 561 U.S. 742, 767 (2010)).

B. The Indiana Supreme Court subsequently holds that forfeiture of Timbs’s Land Rover would violate the Excessive Fines Clause.

Following remand from this Court, the Indiana Supreme Court set forth a framework for evaluating whether the civil *in rem* forfeiture of Timbs’s Land Rover was excessive and remanded the case to the trial court to determine in the first instance whether the forfeiture was grossly disproportional to the gravity of Timbs’s offense. *Timbs II*, 134 N.E.2d 12. The trial court held an evidentiary hearing and decided that Timbs had shown gross disproportionality. *Timbs III*, 169 N.E.3d at 367. The State appealed to the Indiana Supreme Court once again. *Id.*

The Indiana Supreme Court affirmed the trial court’s judgment, thus ending the seven-year “legal saga . . . to determine the constitutionality of forfeiting” Timbs’s Land Rover. *Id.* at 366. Faithfully applying this Court’s decision in *United States v. Bajakajian*, 524 U.S. 321 (1998), the Indiana Supreme Court “focus[ed] on the specific harms” of Timbs’s “specific acts” and did not “impute to [Timbs] the offenses of others” or give weight to “generic considerations of harm” to society. *Id.* at 373 (quotation omitted). The court, electing not to indict Timbs for the ills of the illegal drug trade at large, concluded that “the severity of the underlying offense was minimal.” *Id.* at 375. Although the maximum

sentence for Timbs's crime was 20 years' imprisonment and a \$10,000 fine, the court emphasized that "the sentence actually imposed" was far more relevant, and Timbs's sentence was "indeed the minimum sentence"—one year of house arrest and five years of probation. *Id.* (emphasis omitted). The court cogently reasoned that if "the maximum statutory penalty for an offense suggests the appropriate sentence for those who commit the worst variants of the crime[,] . . . [i]t follows that Timbs, in receiving the minimum sentence, committed a crime that was much less severe relative to other potential violators." *Id.* (quotations omitted). This logic checked out, as Timbs was not a "sophisticated, experienced dealer," instead selling small amounts of drugs twice in controlled buys to help feed his addiction. *Id.* at 375-76.

The Indiana Supreme Court juxtaposed the minimal severity of Timbs's dealing offense with the harshness of the State's forfeiture of the Land Rover. Indeed, the trial court had concluded that the Land Rover's value at the time of seizure was at least \$35,000, 3.5 times the maximum statutory fine for Timbs's offense and over 29 times the amount of costs and fees Timbs paid in connection with his offense. *Id.* at 371, 375. The forfeiture had also created several hardships for Timbs in "his journey through addiction, recovery, and reintegration" into society. *Id.* at 370. At the time of his arrest, Timbs was unemployed, and the Land Rover was his only asset. *Id.* at 371. And after Timbs successfully completed his house arrest, "being without his vehicle made it harder for [him] to earn a living and reintegrate into society." *Id.* The court noted that Timbs's job was a one-hour drive from his

home and that “during the years the State seized his Land Rover, he [] had to borrow his aunt’s car to get to work and fulfill other obligations,” making it so “the forfeiture disrupted Timbs’s ability to maintain employment and seek addiction treatment.” *Id.* at 371, 373. The court further observed that the “case [was] unique in that the trial court and the parties ha[d] the benefit of seeing how the forfeiture actually affected Timbs, given the span of several years between the seizure of the Land Rover” and the trial court’s ruling on gross disproportionality. *Id.* at 373 n.3.

Given the “minimal severity of Timbs’s offense” and the harshness of the forfeiture of his Land Rover, the Indiana Supreme Court held that Timbs had shown gross disproportionality and that the forfeiture of his Land Rover therefore violated the Excessive Fines Clause. *Id.* at 376-77. Thus, after the better part of a decade, Timbs got his Land Rover back. *See id.* at 377 (“[T]he seven-plus-year pursuit for the white Land Rover comes to an end.”).

The Indiana Supreme Court’s vindication of Timbs’s effort to recover his Land Rover is a quintessential example of the Excessive Fines Clause working as it should: a forfeiture that is grossly disproportional to the defendant’s *specific conduct* underlying the offense is barred by the Excessive Fines Clause.

II. Despite *Bajakajian*, excesses in fines and forfeitures are common in jurisdictions across the country.

Fines and forfeitures occupy a unique position in the American criminal justice system. They are

punishments that not only financially benefit the government imposing them, but that also do so in a way where the benefit to the government increases in direct proportion to the severity of the punishment imposed on the defendant.

Because of this perverse incentive, excesses in fines and forfeitures are common in jurisdictions across the country. These excesses, moreover, are made possible because, unlike the Indiana Supreme Court in *Timbs III*, prosecutors and courts disregard defendants' actual culpability and the specific conduct underlying their offenses. These errors permit punitive fines and forfeitures to spiral to levels that are grossly disproportional to the gravity of the offense.

A. Governments across the United States use excessive fines and forfeitures to collect revenue.

As Justice Scalia observed over 30 years ago, “[t]here is good reason to be concerned that fines, uniquely of all punishments, will be imposed in a measure out of accord with the penal goals of retribution and deterrence,” because while other forms of punishment like “[i]mprisonment, corporal punishment, and even capital punishment cost a State money[,] fines are a source of revenue.” *Harmelin*, 501 U.S. at 978 n.9 (opinion of Scalia, J.). And as Justice Thomas noted in recent years, the same principle holds as to forfeiture: “[B]ecause the law enforcement entity responsible for seizing the property often keeps it, these entities have strong incentives to pursue forfeiture.” *Leonard v. Texas*, 137 S. Ct. 847, 848 (2017) (statement of Thomas, J.,

respecting denial of certiorari). Indeed, under the forfeiture laws of 32 states and the federal government, funds controlled by law enforcement receive between 80% and 100% of forfeiture proceeds. Lisa Knepper et al., *Policing for Profit: The Abuse of Civil Asset Forfeiture* 34 (3d ed. 2020).

Thus, the incentive structures surrounding fines and forfeitures create “a moral hazard that fosters aggressive and unseemly tactics that blur the line between law enforcement and profiteering.” Brianne J. Gorod & Brian R. Frazelle, *Timbs v. Indiana: Mere Constitutional Housekeeping or the Timely Revival of a Critical Safeguard?*, 2019 Cato Sup. Ct. Rev. 215, 216-17 (2019); see David Pimentel, *Forfeitures and the Eighth Amendment: A Practical Approach to the Excessive Fines Clause as a Check on Government Seizures*, 11 Harv. L. & Pol’y Rev. 541, 550 (2017) (“The fact that the law enforcement agencies get to keep the seized assets, of course, creates a conflict of interest, if not a moral hazard.”).

Consequently, governments across the country have embraced fines and forfeitures as a means of collecting revenue. “[C]ivil forfeiture has become a booming business.” *Culley v. Marshall*, 601 U.S. 377, 395 (2024) (Gorsuch, J., concurring). In 2018, “42 states, the District of Columbia, and the U.S. departments of Justice and the Treasury forfeited over \$3 billion.” Knepper et al., *supra*, at 5. “Particularly at the state and local level, forfeiture has become a cash cow, a tool used to fill the gaps of declining law-enforcement budgets without formally raising taxes.” Gorod & Frazelle, *supra*, at 216. This Court has noted the same phenomenon as to fines: “[S]tate and local governments nationwide

increasingly depend heavily on fines and fees as a source of general revenue.” *Timbs*, 586 U.S. at 154 (quotation omitted).

In fact, “police and prosecutors’ increasing ‘dependen[ce] on the money they raise from civil forfeitures’ is empirically substantiated.” Richard J.S. Peay, *To Be Given to God: Contemporary Civil Forfeiture as a Taking*, 134 Yale L.J. 2578, 2606 (2025) (alteration in original) (quoting *Culley*, 601 U.S. at 396 (Gorsuch, J., concurring)). Forfeiture revenue is not just “a supplement; many police agencies in fact depend on cash flow from forfeitures for their budgets.” *Culley*, 601 U.S. at 405 (Sotomayor, J., dissenting). The federal government, moreover, “shares a large portion of [the forfeitures] it receives with state and local law enforcement agencies that aid its forfeiture efforts.” *Id.* at 396 (Gorsuch, J., concurring).

This pattern of governments increasingly relying on revenue from fines and forfeitures raises concerns that they are “acting out of self-interest, overreaching, and singling out the few to shoulder what should be public burdens.” Jessica L. Asbridge, *Fines, Forfeitures, and Federalism*, 111 Va. L. Rev. 67, 70 (2025); see *Culley*, 601 U.S. at 396 (Gorsuch, J., concurring) (“[I]t seems that, when local law enforcement budgets tighten, forfeiture activity often increases.”); see also *Timbs II*, 134 N.E.3d at 31 (“[T]he way Indiana carries out civil forfeitures is both concerning and symptomatic of a shift in *in rem* forfeiture law and practice.” (citation omitted)). Indeed, there have been “egregious and well-chronicled abuses” of forfeiture. *Leonard*, 137 S. Ct. at

848 (statement of Thomas, J., respecting denial of certiorari).

Governments' forfeiture operations also "frequently target the poor and other groups least able to defend their interests in forfeiture proceedings," who are also "often the most burdened by forfeiture." *Id.*; accord *Culley*, 601 U.S. at 406 (Sotomayor, J., dissenting) (explaining that police "have a financial incentive to target marginalized groups" for forfeiture because they "are less likely to have the resources to challenge the forfeiture in court"). "[I]f these tactics and burdens work against all affected individuals, can it be any surprise the poor and other groups least able to defend their interests often suffer most?" *Culley*, 601 U.S. at 397 (Gorsuch, J., concurring) (internal quotation omitted). As in Timbs's case, these groups "are more likely to suffer in their daily lives while they litigate for the return of a critical item of property, such as a car or a home." *Leonard*, 137 S. Ct. at 848 (statement of Thomas, J., respecting denial of certiorari). Although Timbs was able to hold down jobs without his vehicle by borrowing his aunt's car and was even able to help other addicts through a local program combatting opioid addiction, many others are not as fortunate. Moreover, Timbs's reliance on his aunt's car presented serious challenges for both him and his aunt, as his aunt had long-term health issues and relied on the car to attend doctor's appointments.

B. Forfeiture decisions that disregard a defendant's actual culpability and *Bajakajian* are common.

The strong financial incentive for governments to collect revenue through fines and forfeitures has,

predictably, resulted in excessive fines and forfeitures that are grossly disproportional to the gravity of the specific conduct underlying defendants' offenses. In blessing those fines and forfeitures, courts have ignored or misunderstood this Court's command in *Bajakajian* and the meaning of the Excessive Fines Clause. A few recent examples suffice to illustrate the dysfunction in the lower courts.

For instance, in *Martinez v. City of Lantana*, 410 So. 3d 15 (Fla. App. 2025), a city fined a homeowner over \$160,000 for municipal code violations. *Id.* at 17. The odious violations behind the fines? A downed fence, a cracked driveway, and parking a vehicle partially on the driveway and partially on the grass next to it. *See id.* at 16-17; *Martinez v. City of Lantana*, No. SC2025-0726, Pet'r's Br. on Jurisdiction at 2-3 (June 2, 2025) (Florida Supreme Court). The court of appeals inexplicably concluded that fines totaling over \$160,000 were not grossly disproportionate to these minor violations, in the process failing to even mention *Bajakajian* or attempt to compare the gravity of the homeowner's conduct to the severity of the violations. *See Martinez*, 410 So. 3d at 18-19.

State v. O'Malley, 206 N.E.3d 662 (Ohio 2022), is in the same vein. In 2018, James O'Malley was arrested for driving drunk in his Chevrolet Silverado and forfeited his truck, which was his only asset. *Id.* at 667, 676. There is no question that this is harmful behavior. But how harmful? How much forfeiture is appropriate? The Ohio Supreme Court steered far afield of this Court's precedent in blessing this harsh sanction. To be sure, the court did mention the importance of the vehicle to O'Malley: it was his "only significant asset," and losing the car left him without

any “means of transportation.” *Id.* at 676. But it followed that observation with dozens of paragraphs describing the harm of the offense in the context of the Ohio statutory regime. *See, e.g., id.* at 677-86. In so holding, the Ohio Supreme Court cast aside with little explanation the dissenting Justices’ point that O’Malley’s offense was classified as a misdemeanor and that his actual sentence was the minimum that the judge could impose. *Id.* at 680-81.

Again, the point is not that anyone “disputes that drunk driving is a serious matter.” *Id.* at 688 (Donnelly, J., dissenting). The question is whether the Constitution permits a particular forfeiture for a particular crime. And, specifically, whether the Excessive Fines Clause permits “the state” to confiscate “a defendant’s entire net worth for a misdemeanor offense with a maximum fine that is not even one-tenth of the amount forfeited.” *Id.* at 689. *See also United States v. Cheeseman*, 600 F.3d 270, 284-85 (3d Cir. 2010) (holding that forfeiture of \$500,000 in firearms and ammunition possessed by owner of sporting goods store was not grossly disproportional to owner’s offense of possessing a firearm as a user of an unlawful drug, despite Sentencing Guidelines recommending fine range of \$7,500 to \$75,000).

And, as described above, the forfeiture of Timbs’s Land Rover is a textbook example of a forfeiture that is grossly disproportional to the gravity of the defendant’s actual conduct. It is further notable that the forfeiture was likely at least in part motivated by an objectionable peculiarity of Indiana law. As this Court referenced in *Timbs* in describing the “private law firm” prosecuting the forfeiture suit for Timbs’s Land Rover, 586 U.S. at 149, “Indiana allows the

State to employ outside counsel to prosecute civil forfeiture cases on a contingency fee basis, in which outside counsel takes home a certain percentage of forfeiture proceeds,” Evan Deig, *Indiana Civil Forfeiture: How Should We Proceed?*, 56 Ind. L. Rev. 143, 154 (2022). Consequently, “the more property a private lawyer can forfeit, the more money the lawyer can make for personal gain.” Louis S. Rulli, *Prosecuting Civil Asset Forfeiture on Contingency Fees: Looking for Profit in All the Wrong Places*, 72 Ala. L. Rev. 531, 537 (2021). If law enforcement collecting revenue from fines and forfeitures to fund their official operations constitutes a moral hazard, allowing private attorneys to prosecute forfeitures and retain percentages of forfeiture proceeds for their personal financial benefit is a five-alarm fire. Unseemly laws like this only exacerbate the issue of fines and forfeitures spiraling to levels that are grossly disproportional to the gravity of a defendant’s actual conduct.

III. Granting review in this case will help curb these excesses in fines and forfeitures and prevent courts from being unduly deferential to legislatures.

By resolving the growing split that has emerged after *Bajakajian* and reaffirming that the “touchstone” of the Excessive Fines Clause analysis is whether the forfeiture is grossly disproportional to the gravity of the defendant’s specific conduct, 524 U.S. at 334-40, the Court will reorient courts that have lost sight of this principle’s centrality. Thus, courts will act as a restraint on the strong financial incentive law enforcement has to pursue high amounts of fines and

forfeitures and will not be unduly deferential to legislatures.

Although the Excessive Fines Clause “traces its venerable lineage” to Magna Carta and the English Bill of Rights, *Timbs*, 586 U.S. at 151-52, its protections are not being adequately upheld in many courts in this country. Unlike the Indiana Supreme Court in *Timbs III*, these courts have disregarded *Bajakajian*’s directive that gross disproportionality between the forfeiture and the defendant’s specific conduct is the lodestar of the Excessive Fines Clause analysis. This holding is an important bulwark that prevents law enforcement and prosecutors from simply relying on the hypothetical worst variants of the offense at issue or the maximum sentences and fines available as justification for large fines and forfeitures. The “key to ensuring the Excessive Fines Clause’s protections are meaningful is addressing the reality that government decision-makers often have significant discretion in imposing fines and that such fines often benefit the government directly,” thus “increasing the risk that government will overreach and impose a fine far greater than necessary to punish.” Asbridge, *supra*, at 91. This Court’s reemphasis that courts must analyze whether the gravity of the defendant’s specific conduct is grossly disproportional to the forfeiture will thus help curb excesses resulting from law enforcement agencies’ incentive to pursue high levels of fines and forfeitures and will provide critical constitutional protection to individuals nationwide.

Reaffirming that the Excessive Fines Clause analysis turns on the specific conduct of the defendant will also lead courts away from granting undue

deference to legislatures. The Alaska Supreme Court's opinion in this case shows why this is necessary.

The Alaska Supreme Court's opinion repeatedly disregards *Bajakajian's* instruction that courts considering an Excessive Fines Clause challenge must focus on the defendant's specific conduct. Where the Indiana Supreme Court considered Timbs's specific conduct, including the quantity of drugs involved, and did not assess generic considerations of harm to society, the Alaska Supreme Court transformed a single six-pack of beer into an embodiment of all the social harms and public health costs of alcohol and decided that Jouppi should pick up the tab for it. App. 24a-26a. Where the Indiana Supreme Court followed *Bajakajian* and considered the sentence actually imposed on Timbs, the Alaska Supreme Court ignored Jouppi's sentence and focused on the statutory maximum penalty the worst offenders could receive under the statute. App. 23a & n.87. Based on these distortions of Jouppi's actual conduct and culpability, the Alaska Supreme Court confidently proclaimed that the gravity of Jouppi's offense "strongly suggests that the forfeiture is not grossly disproportional." App. 24a. Thus, instead of performing the fact-based, culpability-specific test analysis mandated by *Bajakajian*, the Alaska Supreme Court divorced the constitutional protection of the Excessive Fines Clause from the defendant actually before the court, Jouppi.

How did the Alaska Supreme Court go this wrong? The answer largely appears to be the court's extreme reliance on and deference to the Alaska legislature. The court scoured the legislative history of the statute prohibiting the transportation of alcohol into dry

villages and hypothesized the legislature's policy goals for the statute and the legislature's view of the gravity of the conduct covered under it. App. 20a-22a. From this, the court concluded, "It is clear to us that the legislature determined that the harm from even a six-pack of beer knowingly imported into a dry village is severe enough to warrant forfeiture of an aircraft." App. 25a. But the question, of course, is not whether the statute permitted forfeiture of Jouppi's airplane or whether that was the legislature's intent. It is whether the forfeiture of Jouppi's airplane violates the Excessive Fines Clause, and that is a question only the courts can answer.

To be sure, deference to Congress's and state legislatures' judgments about the excessiveness of fines and forfeitures is sensible. *See Bajakajian*, 524 U.S. at 336; *Timbs III*, 169 N.E.3d at 368. But, as the Alaska Supreme Court's opinion in this case demonstrates, that principle should not be taken too far. As Justice Scalia observed, "it makes sense to scrutinize governmental action more closely when the State stands to benefit." *Harmelin*, 501 U.S. at 978 n.9 (opinion of Scalia, J.). And legislatures too have an incentive to enact expansive forfeiture provisions: "every dollar of law enforcement budget that comes from forfeited assets is one fewer dollar from general revenues that needs to be diverted to law enforcement from legislators' other priority projects." Barry L. Johnson, *Purging the Cruel and Unusual: The Autonomous Excessive Fines Clause and Desert-Based Constitutional Limits on Forfeiture After United States v. Bajakajian*, 2000 U. Ill. L. Rev. 461, 510 (2000).

A “hyper-deferential” approach to legislatures’ judgments regarding fines and forfeitures also creates a circularity problem in which legislatures can automatically preclude Excessive Fines Clause challenges. *Yates v. Pinellas Hematology & Oncology, P.A.*, 21 F.4th 1288, 1318 (11th Cir. 2021) (Newsom, J., concurring). If a court gives extreme deference to the legislature, the legislature “supplies an answer to the questions of what a fine should be *and* whether it’s excessive.” *Id.* That “[s]eems a bit like letting the driver set the speed limit.” *Id.* Thus, courts “must accord substantial deference to legislative judgments concerning appropriate sanctions for the conduct at issue,” but must also “be mindful not to give undue deference” to these judgments. *United States ex rel. Grant v. Zorn*, 107 F.4th 782, 800 (8th Cir. 2024) (quotations omitted).

By reaffirming its holding in *Bajakajian* that the “touchstone” of the Excessive Fines Clause analysis is whether the forfeiture is grossly disproportionate to the gravity of the defendant’s specific conduct, 524 U.S. at 334-40, this Court will also help prevent courts from incorrectly granting extreme deference to legislatures’ judgments about fines and forfeitures, as the Alaska Supreme Court did here.

CONCLUSION

The Court should grant Jouppi's petition for a writ of certiorari.

Respectfully submitted,

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