

No. 25-246

IN THE
Supreme Court of the United States

KENNETH J. JOUPPI,

Petitioner,

v.

ALASKA,

Respondent.

**On Writ of Certiorari to the
Supreme Court of Alaska**

**BRIEF OF *AMICUS CURIAE*
FAIR AND JUST PROSECUTION
IN SUPPORT OF PETITIONER**

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INTEREST OF *AMICUS CURIAE*¹

Fair and Just Prosecution (FJP), a project of the Tides Center, brings together elected prosecutors from around the nation as part of a network of leaders committed to a justice system grounded in fairness, equity, compassion, and fiscal responsibility. FJP's network includes prosecutors from both rural and urban communities.

FJP is committed to protecting the integrity of our justice system, advancing accountability and fairness, and ensuring the safety of everyone in our communities. FJP believes that prosecutorial power carries profound responsibility. The prosecutor's role is not merely to secure convictions, but to achieve justice. That obligation extends to every stage of the criminal justice process, from jury selection to postconviction proceedings.

FJP understands the crucial role that prosecutors play in ensuring that punitive measures, like forfeitures, are proportionate. Disproportionate forfeiture practices violate defendants' constitutional rights and erode public confidence in the justice system at large. FJP believes that prosecutors have a fundamental duty to guard against excessive forfeitures, like the one imposed on Petitioner, that bear no reasonable relationship to the gravity of the underlying offense.

FJP has an interest in preserving the proper role of the prosecutor and the integrity of the criminal justice system and is deeply concerned about the

¹ Nobody other than counsel for *amicus* authored this brief in any part or funded its preparation or filing.

disproportionate forfeiture in Petitioner's case. FJP respectfully submits this brief to highlight the profound harm that flows from abusive, unchecked forfeiture practices.

INTRODUCTION AND SUMMARY OF ARGUMENT

"The touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality." *United States v. Bajakajian*, 524 U.S. 321, 334 (1998) (citation modified). A fine is unconstitutionally excessive if its amount "is grossly disproportional to the gravity of a defendant's offense." *Id.* at 322. This case is about whether courts, in weighing proportionality, may consider the gravity of the underlying offense purely in the abstract or should consider the gravity of the specific defendant's wrongdoing.

Though this Court's precedent and the history of the Excessive Fines Clause compel the latter, the Supreme Court of Alaska held the former. With this analytical misstep, it condoned forfeiture of Ken Jouppi's airplane for the misdemeanor of transporting—though his plane did not leave the ground—a six-pack of Budweiser to a dry Alaska village (a first-time offense, no less).

No doubt, the Alaska Supreme Court was wrong and the harm to Jouppi unjust. But this case is bigger than Jouppi. Fines and forfeitures in this country have evolved beyond their intended purpose of retribution and deterrence. They now function as a revenue-generating tool that can fill budget gaps without formally raising taxes. This accounting magic creates

perverse incentives for police and prosecutors to pursue fines and forfeitures disproportionate to their penal goals. Worse still, the abusive potential of these penalties has an outsized effect on vulnerable groups who are less equipped to defend against these practices and most burdened, too.

The Alaska Supreme Court's abstract analysis exacerbates these problems. By looking at the statutory offense only at a miles-high level of generality, courts give legislatures carte blanche to impose a one-size-fits-all punishment for any offense big or small. This deference incentivizes and enables governments to exact exorbitant forfeitures that bear little relation to the actual conduct or culpability at issue, knowing that no meaningful check awaits in the courtroom.

The abstract analysis does not merely enable abusive forfeiture practices; it also undermines a foundational principle of the criminal justice system: proportionality. Proportionality guides prosecutors and courts alike to ensure that defendants are punished only as much as necessary. For prosecutors, it guides charging decisions, requiring them to consider whether the ultimate punishment will fit the crime. And for courts, it lies at the heart of the criminal sentencing regime. Yet mandatory forfeiture statutes, like Alaska's here, strip prosecutors and courts of the ability to implement proportionality by imposing an all-or-nothing penalty. An Excessive Fines Clause standard that requires courts to evaluate the gravity of the specific defendant's conduct would backstop proportionality when those mechanisms alone cannot.

From a societal perspective, undermining proportionality is no less consequential. The criminal justice system relies on community participation to report crimes, assist with investigations, and participate in court proceedings. This partnership depends on institutional legitimacy—trust in, respect for, and deference to legal authorities. And institutional legitimacy, in turn, depends on whether litigants are treated fairly and with proportionality. When the public perceives that the system operates unfairly—be it bias, disproportionate punishments, or otherwise—public confidence in the system is eroded, which disincentivizes the community participation that it needs to function properly.

Forfeiture is uniquely positioned to damage institutional legitimacy, as this case aptly illustrates. Mandatory forfeiture statutes create not only disproportionate punishments, like Jouppi’s, but also the perception that the system has self-serving goals other than public safety in mind. An abstract proportionality analysis that ignores the defendant’s individual culpability only compounds this problem.

To protect these interests, the Court should reverse.

ARGUMENT

I. The Alaska Supreme Court’s abstract analysis encourages already abuse-prone forfeiture practices to run rampant.

Forfeiture has evolved into a cash cow ripe for abuse. It plugs budget holes without raising taxes, and the benefits accrue to those doing the forfeiting.

Not only does this distort police and prosecutorial priorities, but abusive forfeiture practices have an outsized negative effect on historically underprivileged groups and those living in poverty. Analyzing proportionality in the abstract by deferring to legislative intent effectively rubber-stamps government action, incentivizing police and prosecutors to over-pursue abusive forfeiture without accountability.

A. Courts and scholars have long been suspicious of forfeiture’s abusive tendencies.

1. Though its stated purpose is to deter crime, forfeiture—both criminal and civil—does double duty as a revenue generator. To be sure, a legitimate “object” of criminal and civil forfeiture “is to penalize for the commission of an offense against the law” and deter future illegal acts. *One 1958 Plymouth Sedan v. Pennsylvania*, 380 U.S. 693, 700 (1965); *see also* Fair & Just Prosecution, *21 Principles for the 21st Century Prosecutor*, Brennan Ctr. for Justice, at 20, bit.ly/4gOIJX1 (“When fines are imposed after a conviction, they’re intended as a form of deterrent and punishment.”).

But forfeiture goes beyond that object: it “has become a booming business.” *Culley v. Marshall*, 601 U.S. 377, 395 (2024) (Gorsuch, J., concurring). At every level of government, “forfeiture has become a cash cow, a tool used to fill the gaps of declining law-enforcement budgets without formally raising taxes.” 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 (2019). In 2023, “45 states collected

nearly \$300 million, on top of \$4.5 billion at the federal level.” Lisa Knepper et al., *Policing for Profit*, Inst. for Justice, at 6 (4th ed. 2026), <https://ij.org/report/policing-for-profit-4/>. And since 2000, “forfeiture has generated at least \$82 billion nationwide.” *Id.* All told, governments “increasingly depend heavily on fines and fees as a source of general revenue.” *Timbs v. Indiana*, 586 U.S. 146, 154 (2019) (citation modified).

2. Forfeiture’s profitability creates perverse incentives for police and prosecutors. Whereas “other forms of punishment cost a State money,” fines and forfeitures “are a source of revenue,” increasing the chance they will be deployed “in a measure out of accord with the penal goals of retribution and deterrence.” *Timbs*, 586 U.S. at 154 (quoting *Harmelin v. Michigan*, 501 U.S. 957, 979, n.9 (1991) (citation modified)); see Ram Subramanian et al., *Revenue Over Public Safety: How Perverse Financial Incentives Warp the Criminal Justice System*, Brennan Ctr. for Justice, at 10 (July 6, 2022), <https://bit.ly/4zsWsv4> (documenting forfeiture abuses).

Not only does forfeiture generate revenue in the abstract, but law-enforcement agencies—the very entities initiating the forfeiture process, together with prosecutors—receive between 90% and 100% of forfeiture proceeds. Knepper et al., *supra*, at 13. And “because 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) (Thomas, J., statement respecting denial of certiorari) (citation

omitted). These incentives “encourage[] the pursuit of property for the sake of revenue,” Knepper et al., *supra*, at 12, “foster[] aggressive and unseemly tactics,” and “blur the line between law enforcement and profiteering,” Gorod & Frazelle, *supra*, at 216–17.

It is not surprising, then, that as “law enforcement budgets tighten, forfeiture activity often increases.” *Culley*, 601 U.S. at 396 (Gorsuch, J., concurring); see Brian D. Kelly, *Fighting Crime or Raising Revenue?*, Inst. for Justice, at 15 (2019), <https://bit.ly/4hSq9zu> (finding a statistically significant link between a municipality’s fiscal stress and increases in forfeiture activity). Reliance on forfeiture to fund budgets, in turn, distorts police and prosecutorial priorities. It causes law-enforcement agencies to divert resources away from “nonfinancial crimes” to “more lucrative drug cases.” 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). And it leads to lower clearance rates for violent and property crimes. See Rebecca Goldstein et al., *Exploitative Revenues, Law Enforcement, and the Quality of Government Service*, Urban Affairs Rev., 2018, at 4, 16–17 (published in v. 56, 2020), <https://bit.ly/4gcwGDS>.

3. Most perversely of all, forfeiture’s abusive potential has outsized negative effects on historically underprivileged groups and those living in poverty. Forfeiture’s “egregious and well-chronicled abuses” have “frequently target[ed] the poor and other groups” that are “least able to defend their interests” and “most burdened by forfeiture.” *Leonard*, 137 S. Ct. at

848 (Thomas, J., statement respecting denial of certiorari). Indeed, 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.” *Culley*, 601 U.S. at 406 (Sotomayor, J., dissenting).

Empirical evidence confirms that “the percentage of municipal budgets derived from fines and fees increases with the percentage of” persons of color in the community. Beth A. Colgan, *The Burdens of the Excessive Fines Clause*, 63 Wm. & Mary L. Rev. 407, 435 (2021) (footnotes omitted). Reviewing data from 9000 cities, for example, a study concluded that municipalities commonly use fines as revenue in a manner significantly correlated with the share of Black residents. Michael W. Sances & Hye Young You, *Who Pays for Government? Descriptive Representation and Exploitative Revenue Sources*, 79 J. Pol. 1090, 1090–92 (2017).

The wide range of assets subject to forfeiture also redounds to the detriment of the poor in particular. At times, these can be valuable assets with a remote connection to criminal conduct but that impact loved ones who rely on them for basic needs. The “loss of a forfeited automobile,” for instance, “may mean that the person or his or her family may no longer have the means to access employment and educational services; to reach grocery stores, childcare, medical treatment, and the like; or to satisfy other legal obligations, including attending probation and parole meetings required as a separate component of punishment.” Colgan, *supra*, at 448.

B. The abstract analysis employed below fosters abusive forfeiture practices and stands at odds with the Excessive Fines Clause.

1. The abstract analysis employed below looks only to the statutory offense, deferring entirely to legislative determinations—without regard to the gravity of the actual harm or the defendant’s culpability. The Alaska Supreme Court’s decision leaned heavily on *Bajakajian*’s statement that “judgments about the appropriate punishment for an offense belong in the first instance to the legislature.” 524 U.S. at 335. That may be so, but “first instance” deference was never meant to be the last word.

Legislatures write penal statutes at a necessarily general level. *See infra* p. 15. They set maximum penalties, intended to encompass every embodiment of conduct and offender—from low-level violator to drug kingpin. *See Bajakajian*, 524 U.S. at 338. In the forfeiture context specifically, legislatures have incentives to aim high, as “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). And that is what Alaska did here: create an airplane-forfeiture statute equally applicable to perennial bootleggers and one-time six-pack carriers like Jouppe.

Courts in constitutional review must resist the temptation to define the government’s interest at the most general level, lest the Excessive Fines Clause becomes no check at all. Yet the abstract analysis employed below, wholly divorced from an individual offender’s conduct and culpability, well-nigh guarantees the government will always get whatever it asks for. *Cf. Yellowbear v. Lampert*, 741 F.3d 48, 57 (10th Cir. 2014) (Gorsuch, J.) (“The more abstract the level of inquiry, often the better the governmental interest will look.”). Indeed, if a court defers to the legislature without individualized examination, the legislature “supplies an answer to the questions of what a fine should be *and* whether it’s excessive.” *Yates v. Pinellas Hematology & Oncology, P.A.*, 21 F.4th 1288, 1318 (11th Cir. 2021) (Newsom, J., concurring) (emphasis in original).

2. Debating the abstract analysis is no academic exercise: in the real world, it unleashes forfeiture’s abusive tendencies. By deferring to legislative intent, without considering “the specific actions of the violator,” *Thomas v. County of Humboldt*, 124 F.4th 1179, 1193 (9th Cir. 2024) (citation omitted), the court below ensured that a defendant will always be fined to the statutory hilt—no matter how disproportionate or excessive under the circumstances. If the test for whether a criminal forfeiture is constitutionally excessive turns on blind deference to the government’s position, it will repeatedly condone the kind of abuse this case epitomizes: seizure of an airplane over a misdemeanor conviction for transporting a six-pack.

Ignoring the specifics of an offense “incentivizes governments” to extract “exorbitant” forfeitures “as a means of raising revenue.” *Toth v. United States*, 143 S. Ct. 552, 553 (2023) (Gorsuch, J., dissenting from denial of certiorari). Structurally biased toward the government in every case, the abstract analysis fosters—indeed, supercharges—the abusive tendencies forfeiture already exhibits. *See supra* Argument I.A. It induces law enforcement and prosecutors to ratchet up forfeiture efforts, knowing they will be financially rewarded to the maximum, all while multiplying forfeiture’s distortionary effect on enforcement priorities. With no meaningful check to speak of, the abstract analysis invites police and prosecutors to over-pursue forfeiture without accountability, since courts will not meaningfully review the outcome regardless of individualized facts.

The abstract analysis, moreover, enhances forfeiture’s particularly pernicious effects on the poor. *See supra* Argument I.A.3. Whenever fines “are levied without regard to a person’s ability to pay, they can trap poor defendants in a cycle of incarceration and debt.” Fair & Just Prosecution, *supra*, at 20. A “\$200 fine or fee,” for instance, “can pose an annoyance for an affluent person and a financial calamity for an indigent one.” *Id.* And while “debtors’ prisons are illegal, they effectively exist when people are sent to jail, or otherwise stuck in the criminal justice system, because they can’t afford to pay fines or fees.” *Id.*

In short, there is a “long history of governmental abuse of its prosecutorial power to generate revenue through economic sanctions as a means of tax-

avoidance primarily borne by the politically vulnerable.” Colgan, *supra*, at 434; *see Timbs*, 586 U.S. at 151–52 (chronicling history of fine and forfeiture abuse). Acutely “aware . . . of the abuses” accompanying revenue-generating fines, the Framers put in place a guardrail: the Excessive Fines Clause. *Browning-Ferris Indus. v. Kelco Disposal*, 492 U.S. 257, 267 (1989). But the Alaska Supreme Court’s abstract analysis topples that guardrail. Rather than “scrutinize governmental action more closely when the State stands to benefit,” *Harmelin*, 501 U.S. at 978 n.9, the abstract analysis smooths the path to financial reward. This Court should reject it.

II. Prosecutors have a duty to seek justice, and abusive forfeiture statutes conflict with and undermine this obligation.

Prosecutors are guided by the mantra to do justice. Doing justice includes exercising charging discretion responsibly by considering whether the punishment will be proportionate. By legislative design, forfeiture is all but immune from a prosecutor’s proportionality benchmark. Mandatory forfeiture statutes create all-or-nothing propositions that lead to gross disparity between punishment and culpability. And that’s where the Excessive Fines Clause should do its work. When other checks break down, the Excessive Fines Clause should safeguard the proportionality principle that runs through the system. A test that considers the gravity of the specific defendant’s conduct would best accomplish this purpose.

A. To do justice, prosecutors must consider proportionality when exercising charging discretion.

A prosecutor is “the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all.” *Berger v. United States*, 295 U.S. 78, 88 (1935). In a “role transcend[ing] that of an adversary,” *United States v. Bagley*, 473 U.S. 667, 675 n.6 (1985), a prosecutor’s “interest in a criminal prosecution is . . . that justice shall be done,” *Berger*, 295 U.S. at 88. This ethos is embedded in guidelines governing the profession.²

To serve justice, a prosecutor must “seek the fairest rather than necessarily the most severe outcome.” *United States v. Jones*, 983 F.2d 1425, 1433 (7th Cir. 1993); see Roger A. Fairfax, Jr., *Prosecutorial Nullification*, 52 B.C. L. Rev. 1243, 1244 (2011) (“Full enforcement of the law would not only be impractical, but also unwise.”). This path requires “treat[ing] individuals with proportionality; that is, to ensure that individuals are not punished more harshly than deserved.” Bruce A. Green, *Why Should Prosecutors*

² See, e.g., ABA Model Rules of Professional Conduct R. 3.8 cmt.1 (2024) (“A prosecutor has the responsibility of a minister of justice and not simply that of an advocate.”); ABA Criminal Justice Standards: Prosecution Function § 3-1.2(b) (4th ed. 2017) (ABA Standards) (“The primary duty of the prosecutor is to seek justice within the bounds of the law, not merely to convict.”); Nat’l District Attorneys Ass’n, National Prosecution Standards, Standard 1-1.1 (4th ed. updated June 2024) (describing prosecutors as an “independent administrator of justice” whose “primary responsibility” is to “seek justice, which can only be achieved by the representation and presentation of the truth”).

“Seek Justice”?, 26 Fordham Urb. L.J. 607, 634 (1999); *see also* Jeffrey Bellin, *Principles of Prosecutor Lenience*, 102 Tex. L. Rev. 1541, 1549 (2024) (defining “a prosecutor’s pursuit of ‘justice’ as ensuring that defendants are punished as much as is necessary and no more”).

For these reasons, proportionality is not an end-of-the-road principle reserved for the court after a conviction; it should guide prosecutorial discretion from the start. In making charging decisions, prosecutors should consider “whether the authorized or likely punishment or collateral consequences are disproportionate in relation to the particular offense or the offender.” ABA Standards § 3-4.4(a)(vi); *see also* U.S. Dep’t of Justice, Manual § 9-27.300 (June 2023) (DOJ Manual) (“In selecting the appropriate charges . . . prosecutors should consider whether the consequences of those charges for sentencing would yield a result that is proportional to the seriousness of the defendant’s conduct . . .”). A prosecutor thus “may be said to have ‘done justice’ by not bringing criminal charges that were legally supported by the evidence but which would have resulted in disproportionately harsh punishment given such considerations as the insignificance of the wrongdoing [or] the defendant’s prior exemplary conduct.” Green, *supra*, at 623 (citation modified).

When exercising this discretion, prosecutors must look past the “wide-ranging scope of a criminal statute’s highly abstract general statutory language.” *Marinello v. United States*, 584 U.S. 1, 11 (2018). Because “decisions whether to prosecute and what to

charge necessarily are individualized and involve infinite factual variations,” *McCleskey v. Kemp*, 481 U.S. 279, 295 n.15 (1987), prosecutors should not resolve charging decisions simply by asking whether the legislature was concerned about a category of harm in the abstract. See Bruce A. Green, *Prosecutorial Discretion: The Difficulty and Necessity of Public Inquiry*, 123 Dick. L. Rev. 589, 599 (2019) (“[L]egislatures tend to define crimes broadly and in abundance with the expectation that prosecutors will decide which cases deserve to be prosecuted.”). Rather, prosecutorial discretion is intended to afford prosecutors flexibility: it “permits a prosecutor in dealing with individual cases to consider special facts and circumstances not taken into account by the applicable rules.” Norman Abrams, *Internal Policy: Guiding the Exercise of Prosecutorial Discretion*, 19 UCLA L. Rev. 1, 2 (1971).

B. The Excessive Fines Clause should serve as a meaningful check on proportionality in forfeiture.

The same proportionality principle that governs prosecutorial charging discretion should apply with even greater force in the forfeiture context. An Excessive Fines Clause standard that considers the defendant’s culpability when evaluating “the gravity of a defendant’s offense” is the doctrinal complement to responsible charging practices that incorporate proportionality. *Bajakajian*, 524 U.S. at 334. A defendant-specific excessiveness standard helps ensure that when prosecutors correctly identify a case as low-level—as Alaska did here in charging Jouppi with only a misdemeanor, Pet. App. 161a—that

determination is not necessarily erased later by a sweeping, mandatory forfeiture statute—as the Alaska Supreme Court did here, too. *See* Pet. App. 22a (“[A]n aircraft is always subject to mandatory forfeiture under the statute, regardless of whether the conviction is a misdemeanor or felony or is the defendant’s first conviction.”).

This standard does more, however, than merely complement prosecutorial discretion. It backstops proportionality when it is needed most: at the remedial stage. Unlike forfeiture, ordinary criminal punishment is designed to be tailored to the individual offender. “It has been uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue.” *Koon v. United States*, 518 U.S. 81, 113 (1996). Underlying this tradition is the principle that “the punishment should fit the offender and not merely the crime.” *Williams v. New York*, 337 U.S. 241, 247 (1949); *see Pennsylvania ex rel. Sullivan v. Ashe*, 302 U.S. 51, 55 (1937) (“For the determination of sentences, justice generally requires consideration of more than the particular acts by which the crime was committed and that there be taken into account the circumstances of the offense together with the character and propensities of the offender.”). To this end, there is “no limit[]” on “the information concerning the background, character, and conduct” of the offender that the court can consider in

imposing a fair and just sentence. 18 U.S.C. § 3661; *see* 18 U.S.C. § 3553(a).³

Forfeiture, by legislative design, is structurally different from ordinary sentencing. “Forfeiture statutes generally do not authorize courts to forfeit only part of a piece of property or to order payment in cash or other property in lieu of the forfeited asset.” Nancy J. King, *Portioning Punishment: Constitutional Limits on Successive and Excessive Penalties*, 144 U. Pa. L. Rev. 101, 196 n.244 (1995); *see, e.g.*, Alaska Stat. § 04.16.220(a)(3)(C); Ind. Code § 34-24-1-1; Fla. Stat. Ann. §§ 932.703–.704. “A judgment of forfeiture is [thus] largely an all-or-nothing situation, and an inquiry into excessiveness can determine only on which side of the line the facts place the property.” *United States v. Chandler*, 36 F.3d 358, 364 (4th Cir. 1994) (citation modified). This indivisible quality of forfeiture can create, as it did here, an airplane-size gap between the punishment and the crime.

Because forfeiture, by its nature, cannot be scaled down like ordinary punishment, the Excessive Fines Clause must perform this calibrating function itself. Put another way, the Excessive Fines Clause comes into play most urgently when other proportionality checks built into the system break down or otherwise do not exist. *See Moore v. Texas*, 581 U.S. 1, 29 (2017) (Roberts, C.J., dissenting) (describing the Eighth Amendment as a “moral backstop” on excessive

³ For their part, prosecutors are instructed to “oppose attempts by the court to impose any sentence that is . . . not supported by the law or the evidence . . . [or] unreasonable in light of 18 U.S.C. § 3553(a).” DOJ Manual § 9-27.745.

punishment). Alaska’s statute—mandating forfeiture for all variations of alcohol-transport crimes and leaving no room for prosecutorial or judicial discretion—exemplifies such a breakdown.

The Eighth Amendment, above all, is supposed to “safeguard individuals from the abuse of legislative power.” *Gregg v. Georgia*, 428 U.S. 153, 174 n.19 (1976). It would be most effective in this worthy aim if the Excessive Fines Clause considers the gravity of the specific defendant’s wrongdoing rather than the gravity of the underlying offense purely in the abstract.

III. Disproportionate punishments undermine public safety by eroding the criminal justice system’s perceived legitimacy.

The criminal justice system functions most effectively when the community participates. Voluntary cooperation is not, however, a given. It depends on the extent to which the public views legal institutions as legitimate and trustworthy. Treating people fairly and with proportionality fosters this institutional legitimacy. Disproportionate economic sanctions, on the other hand—often motivated by external, self-serving factors rather than the pursuit of justice—undercut it. Adopting the abstract analysis endorsed below would remove an individualized proportionality guardrail that protects public trust in the system.

A. Effective law enforcement depends on how the public perceives the fairness and legitimacy of legal institutions.

Effective law enforcement depends on community input. *See Illinois v. Lidster*, 540 U.S. 419, 425 (2004) (“[V]oluntary requests play a vital role in police investigatory work.”). Police, prosecutors, and courts rely on voluntary cooperation from the communities that they serve to report crimes, assist with investigations, and participate in court proceedings. *See* Tom R. Tyler & Jonathan Jackson, *Popular Legitimacy and the Exercise of Legal Authority: Motivating Compliance, Cooperation and Engagement*, 20 Psych., Pub. Pol’y & L. 78, 79 (2013) (“Legal authorities recognize the value of active voluntary public cooperation with the police and the courts.”); *New York v. Quarles*, 467 U.S. 649, 665 (1984) (“Citizens in our society have a deeply rooted social obligation to give whatever information they may have to aid in law enforcement.” (citation modified)). As the Department of Justice has observed, “[w]ithout strong ties to the community, police may not have access to pertinent information from citizens that would help solve or deter crime.” U.S. Dep’t of Justice, Bureau of Justice Assistance, *Understanding Community Policing: A Framework for Action*, at 5 (1994), bit.ly/3SFCpZX.

Because cooperation is voluntary, community input depends on institutional legitimacy. *See* Tom R. Tyler & Jeffrey Fagan, *Legitimacy and Cooperation: Why Do People Help the Police Fight Crime in Their Communities?*, 6 Ohio St. J. Crim. L. 231, 252 (2008) (finding that perceptions of legitimacy shaped

whether people cooperated with law enforcement); Margareth Etienne & Richard McAdams, *Police Deception in Interrogation as a Problem of Procedural Legitimacy*, 54 Tex. Tech L. Rev. 21, 25 (2021) (“[T]he perception of police legitimacy makes people . . . more likely to cooperate with police.”). Legitimacy is not outcome-dependent; it depends on “the perceived fairness of legal procedures,” including whether “decisions are fairly made” and whether “litigants are fairly treated.” Tom R. Tyler & Justin Sevier, *How Do the Courts Create Popular Legitimacy?: The Role of Establishing the Truth, Punishing Justly, and/or Acting Through Just Procedures*, 77 Alb. L. Rev. 1095, 1127 (2014). As this Court summed up, “[b]oth the appearance and reality of impartial justice are necessary to the public legitimacy of judicial pronouncements and thus to the rule of law itself.” *Williams v. Pennsylvania*, 579 U.S. 1, 16 (2016).

Indeed, “[e]ven when people lose, they feel better about that loss when they experience procedural fairness.” Rebecca Hollander-Blumoff & Tom R. Tyler, *Procedural Justice and the Rule of Law: Fostering Legitimacy in Alternative Dispute Resolution*, 2011 J. Disp. Resol. 1, 4 (2011); *see also* Michael M. O’Hear, *Plea Bargaining and Procedural Justice*, 42 Ga. L. Rev. 407, 420–21 (2008) (asserting that perception of fairness of decision depends on whether process provided person with opportunity to tell his or her side of the story, whether authorities were perceived as unbiased, and whether authorities were seen as benevolent). Perceptions of fairness thus foster legitimacy, which, in turn, promotes voluntary compliance and

cooperation with law enforcement. *See* Jeffrey Fagan, *Legitimacy and Criminal Justice*, 6 Ohio St. J. Crim. L. 123, 126 (2008) (explaining that the “legitimacy of the criminal law is enhanced when its legal actors and institutions act in ways that citizens perceive as consistent with popular principles of procedural fairness, security and proportionality”); *see Wardius v. Oregon*, 412 U.S. 470, 476 n.9 (1973) (“Respect for government authority will cause many people to cooperate with the police or prosecutor voluntarily.”).

Consider an example close to home. To address the unique challenges of enforcing “local-option” alcohol laws in isolated, rural western Alaska villages, Alaska implemented a federally funded program called the Rural Alaska Alcohol Interdiction, Investigation, and Prosecution Program (RAI Program). Michael Shively et al., *Evaluation of the Rural Alaska Alcohol Interdiction, Investigation, and Prosecution Program* 7–8 (Nat’l Inst. of Justice 2009), bit.ly/4gPNYG4. Among other objectives, the RAI Program sought to strengthen community ties to encourage residents to report tips and information about illicit activity. *Id.* at 10. This community input is only as effective, however, as the community’s trust in the legal system.

B. Public confidence in the criminal justice system is undermined when punishment appears disproportionate.

As a cornerstone of our criminal justice system, proportionality is key to maintaining public trust. The public expects more serious misconduct to result in more serious punishment and vice versa. “Punishment is the way in which society expresses its

denunciation of wrongdoing; and, in order to maintain respect for law, it is essential that the punishment inflicted for grave crimes should adequately reflect the revulsion felt by the great majority of citizens for them.” *Coleman v. Balkcom*, 451 U.S. 949, 960 (1981) (citation modified); see *Tison v. Arizona*, 481 U.S. 137, 156 (1987) (“Deeply ingrained in our legal tradition is the idea that the more purposeful is the criminal conduct, the more serious is the offense, and, therefore, the more severely it ought to be punished.”). So when punishment appears untethered to blameworthiness, it “weaken[s]” the “criminal justice system’s credibility.” Paul H. Robinson & Lindsay Holcomb, *The Criminogenic Effects of Damaging Criminal Law’s Moral Credibility*, 31 S. Cal. Interdisc. L.J. 277, 281 (2022).

Public perception of proportionality is particularly relevant in the forfeiture context. “[T]he use of economic sanctions disproportionate to the underlying offense undercuts” the government’s “interest in operating in a way that protects its legitimacy by instilling confidence in the citizenry that it is acting to secure community safety and well-being.” Colgan, *supra*, at 442. That’s because disproportionate forfeiture signals that punishment is motivated by self-serving factors, such as generating revenue, rather than the objective pursuit of justice. See *supra* Argument I. And when this perception takes hold, people “become afraid of police involvement, learning not to call 911 out of fear that they will become the subject of enforcement.” Colgan, *supra*, at 442.

By reducing the Constitution’s proportionality check to near nothingness, the decision below

threatens public confidence and institutional legitimacy. The Alaska Supreme Court’s abstract analysis of harm addressed by a statute—untethered to the violator’s specific conduct or culpability—signals that punishment need not bear any relationship to the gravity of the harm at issue. Without an individualized proportionality guardrail, the public will lose confidence in the legal system, frustrating law enforcement from doing its job in the first place. *See Sherman v. United States*, 356 U.S. 369, 380 (1958) (“Public confidence in the fair and honorable administration of justice, upon which ultimately depends the rule of law, is the transcending value at stake.”).

The facts here crystallize the concern. One can fully accept the importance of Alaska’s local-option laws without agreeing that the forfeiture here—or anything close to it—is proportionate. The question most will ask is not whether alcohol abuse and trafficking can cause societal harm. They instead will ask whether forfeiture of a \$95,000 plane fits the crime of transporting a \$10 six-pack of beer. In the forfeiture context specifically, where punishment already raises unique concerns about governmental self-interest, the mismatch between offense and punishment risks reinforcing the perception that punishment is being imposed for reasons other than individualized justice. In short, this case presents precisely the kind of disproportionality that causes the public to lose faith in the criminal justice system.

* * *

Ken Jouppi’s passenger tried to bring a few beers to a dry town. So Alaska took Jouppi’s airplane away.

That punishment was disproportionate, incentivizes policing for profit, and erodes the public confidence on which the criminal justice system's proper functioning depends. Because the Alaska legislature made that punishment mandatory, no amount of prosecutorial discretion could stand in its way. And because of the Alaska Supreme Court's maximally deferential and maximally abstract approach, the Constitution could not stand in its way, either. That decision—and the analysis leading to it—was wrong.

CONCLUSION

The judgment of the Alaska Supreme Court should be reversed and the case remanded for further proceedings.

Respectfully submitted,

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