No. 25-246

In the Supreme Court of the United States

KENNETH JOHN JOUPPI,

Petitioner,

v.

STATE OF ALASKA,

Respondent.

On Writ of Certiorari
to the Supreme Court of Alaska

BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF PETITIONER

LAWRENCE G. SALZMAN
Pacific Legal Foundation
555 Capitol Mall
Suite 1290
Sacramento, CA 95814

DEBORAH J. LA FETRA
Counsel of Record
CHRISTINA M. MARTIN
Pacific Legal Foundation
3100 Clarendon Blvd.
Suite 1000
Arlington, VA 22201
(202) 888-6881
DLaFetra@pacificlegal.org

Counsel for Amicus Curiae Pacific Legal Foundation

QUESTION PRESENTED

Whether, in determining whether a fine contravenes the Excessive Fines Clause, courts may consider the gravity of the underlying offense purely in the abstract or should consider the gravity of the specific defendant's wrongdoing.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases:

Statutes:

Rule:

Miscellaneous:

IDENTITY AND INTEREST OF AMICUS CURIAE[1]

Pacific Legal Foundation (PLF) is a nonprofit, nonpartisan public-interest law firm that has defended individual liberty and limited government since 1973. PLF has litigated tirelessly on behalf of property owners who suffer unconstitutional takings and excessive fines, often in the context of code enforcement. PLF has appeared before this Court in cases such as *Pung v. Isabella County*, 146 S. Ct. 1964 (2026) (raising excessive fines claim), *Tyler v. Hennepin County*, 598 U.S. 631 (2023) (raising excessive fines claim), *Cedar Point Nursery v. Hassid*, 594 U.S. 139 (2021), *Pakdel v. City & County of San Francisco*, 594 U.S. 474 (2021), and *Knick v. Township of Scott*, 588 U.S. 180 (2019). PLF also sought an emergency stay on behalf of a property owner challenging ruinous fines under the Excessive Fines Clause, *Hoopes Vineyard LLC v. Napa County*, No. 25A1429 (denied June 26, 2026), and sought certiorari for the Lent family, assessed a $4.185 million fine by the California Coastal Commission for failing to remove ordinary residential accessories located within an undeveloped public beach-access easement. *Lent v. Cal. Coastal Comm'n*, Pet. for Writ of Cert., No. 21-563 (denied Feb. 22, 2022). PLF continues to represent property owners to fight excessive fines assessed for minor code violations, a matter of particular importance when local government relies on this revenue for budgeting purposes.

[1] Pursuant to Rule 37.6, Amicus Curiae affirms that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

Alaska state law allows towns and villages to go "dry." When they choose to do so, it is a crime to "knowingly send, transport, or bring an alcoholic beverage" to such villages. Alaska Stat. § 04.11.499(a). The penalties depend on the amount of alcohol and transporting lesser amounts of alcoholic beverages has reduced penalties in most respects. First-time offenders who transport smaller amounts commit a class A misdemeanor, subject to a minimum sentence of three days' imprisonment and a fine of $1,500. *Id.* § 04.16.200(e)(1)-(3), (g)(1)(A). However, the law *mandates* the forfeiture of a plane used to convey the alcoholic beverages, regardless of the quantity or seriousness of the offense. *Id.* § 04.16.220(a)(3)(C).

Petitioner Ken Jouppi, now eighty-three and retired, owned KenAir LLC, an "air taxi" company. He piloted a Cessna airplane, worth $95,000, to transport people to remote villages in Alaska. A woman hired him to fly from Fairbanks to the "dry" village of Beaver, a hamlet with fewer than 100 residents. She decided to bring beer back for her husband: three cases in her luggage and a six-pack in a plastic grocery bag. State officials were on hand with a search warrant. *State v. Jouppi*, 397 P.3d 1026, 1029 (Alaska Ct. App. 2017). The officers spotted the six-pack of Budweiser in the mostly transparent grocery bag. They arrested both the woman and Jouppi. The woman promptly pleaded guilty to a misdemeanor. Jouppi went to trial. The jury found that he knew there was beer in his plane, although not the amount, and they found him guilty. The trial judge sentenced him to the minimum allowed: a

$1,500 fine for Jouppi, another $1,500 for KenAir, and three days' imprisonment.

The state nonetheless was bound by the mandatory forfeiture statute to take the plane. Jouppi protested, arguing, among other things, that the confiscation of a $95,000 plane for illegal transportation of a single six-pack of beer violated the Excessive Fines Clause of the Eighth Amendment. After extensive proceedings, the case arrived at the Alaska Supreme Court, which held unanimously that forfeiting Jouppi's airplane was constitutional "as a matter of law." Pet. App. 2a. The court acknowledged that "Jouppi was convicted of only one instance of alcohol importation unconnected to other criminal activity." Pet. App. 19a. However, the court held that "[i]t 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," Pet. App. 25a, and "the forfeiture of Jouppi's airplane is not grossly disproportional to the gravity of the offense for which he has been convicted and, therefore, the forfeiture does not violate the Excessive Fines Clause of the Eighth Amendment." Pet. App. 27a.

In assessing gross disproportionality, courts should consider the gravity of the specific defendant's wrongdoing. The Bill of Rights, including the Eighth Amendment protection against excessive fines, exists to protect individual rights, not abstract concepts. *Timbs v. Indiana*, 586 U.S. 146, 151-52 (2019); *Massachusetts v. Upton*, 466 U.S. 727, 739 (1984) (Stevens, J., concurring) ("The Bill of Rights is now largely applicable to state authorities and is the ultimate guardian of individual rights."). When courts assess the public benefits of punishment at a high level of generality, combined with judicial deference to legislatively-imposed penalties, the result is that government could justify virtually any fine. As shown below, individual circumstances can result in a generally "fair" fine becoming excessive punishment, far beyond the scope of individual wrongdoing.

ARGUMENT

In *United States v. Bajakajian*, 524 U.S. 321, 324, 337-40 (1998), this Court held that the "touchstone" of the excessiveness inquiry is proportionality: "The amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish." *Id.* at 334. If the forfeiture is "grossly disproportional" to the gravity of the offense committed, then the forfeiture is unconstitutionally excessive. *Ibid.* The Court opted for *gross* proportionality (as opposed to strict proportionality) to provide some leeway for the legislature in setting the penalties available for a particular criminal offense and because "any judicial determination regarding the gravity of a particular criminal offense will be inherently imprecise." *Id.* at 336. In holding that the fine in *Bajakajian* was excessive, the Court discussed four, nonexclusive factors: (1) the nature and extent of the defendant's crime and its relation to other criminal activity, (2) whether the defendant falls among the class of persons for whom the statute was principally designed, (3) the other penalties that might be imposed on the defendant under the applicable provisions of law, and (4) the nature and extent of the harm caused by the defendant's offense. *Id.* at 334-44.

The Alaska Supreme Court's application of these factors improperly focused on the general public benefits of the "dry" legislation rather than Jouppi's specific wrongdoing. The court below noted that "Jouppi was convicted of only one instance of alcohol importation unconnected to other criminal activity" (Pet. App. 19a) but nonetheless viewed the combination of Jouppi's apparent willful blindness and the legislature's increasing crackdown on importation of alcoholic beverages to dry villages as the overriding public policy context that justified confiscating Jouppi's plane. *See, e.g.*, Pet. App. 20a-21a (noting that "excessive and unregulated alcohol consumption, particularly in rural areas, is a significant cause of crime in Alaska."); *see also* State of Alaska Br. in Opp'n at 4-6 (detailing the "destructive cost" of alcohol consumption and the inability of the government to respond to crime and other problems caused by alcohol abuse in remote, largely inaccessible communities).

A focus on the broader public benefits of a punishment converts the grossly disproportionate standard into broad permission for the government to fine a willfully blind pilot for tourists the same as a full-time, smuggling one. While this is troubling in the criminal context; it is horrifyingly broad in the civil context. Local building codes, for example, subject property owners to fines for a wide array of violations—some harmless and other far more dangerous to the community. The same statute authorizes both, but the seriousness of the offense can vary dramatically.

I. The Excessive Fines Clause Protects *Individual* Rights

Protection against excessive fines "has been a constant shield throughout Anglo-American history," one that, as codified in the Eighth Amendment, is "both fundamental to our scheme of ordered liberty and deeply rooted in this Nation's history and tradition." *Timbs*, 586 U.S. at 154 (internal quotations omitted).[2] The purpose of the Excessive Fines Clause is "to limit the government's power to punish." *Austin v. United States*, 509 U.S. 602, 609-10 (1993).

The Court should analyze the confiscation of a person's property based on individual culpability because the Constitution protects individual rights. *Roper v. Simmons*, 543 U.S. 551, 560 (2005) (the Eighth Amendment "guarantees *individuals* the right not to be subjected to excessive sanctions") (emphasis added). Proportionality in this context is best understood "as an external limitation on the state's power" to punish individuals, regardless of whether the purpose of the punishment is retribution, deterrence, or something else. Alice Ristroph, *Proportionality as a Principle of Limited Government*, 55 Duke L.J. 263, 266 (2005). The power to punish is "always limited by general political principles—such as respect for individual liberty and equality—that stand independent of penal purposes. More

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[2] History teaches that the power to impose fines may be abused for political ends; this remains a relevant consideration today. If modern federal courts presume that the fines of the political branches are lawful, they "eliminat[e] much of the check that law—whether it be the English or American Bill of Rights—is meant to have upon the power to fine the People." *Robson 200, LLC v. City of Lakeland*, 593 F. Supp. 3d 1110, 1121 (M.D. Fla. 2022).

specifically, each individual's interest in liberty means that restrictions on liberty must be proportionate to the conduct that allegedly justifies the restriction." *Id.* at 268. That is, the context of a public purpose (such as supporting temperance laws) cannot override the constitutional mandate of individually-determined proportionality.

One guardrail that reflects individual culpability rather than overall public policy is whether the punishment follows an act that itself causes harm (malfeasance) or an omission that allows harm to occur by the actions of others (nonfeasance). *See, e.g.*, Restatement (Third) of Torts: Phys. & Emot. Harm § 37 (Am. L. Inst. 2012) ("No Duty of Care with Respect to Risks Not Created by Actor"); *Lambert v. People*, 355 U.S. 225, 228 (1957) (holding unconstitutional a felon registration ordinance in part because it regulated "conduct that is wholly passive . . . unlike the commission of acts"). This distinction exists within the excessive fines and forfeiture context. *See Bajakajian*, 524 U.S. at 337-38 (nature of the offense as merely "a willful failure to report the removal of currency from the United States" that was "unrelated to any other illegal activities" supported determination that the currency's forfeiture was unconstitutionally excessive); *United States v. Parcel of Land*, 507 U.S. 111, 129 (1993) (both Congress and common law allow "innocent owner defense" to distinguish between affirmative wrongdoing and those who unknowingly are caught in a web of criminal activity); *von Hofe v. United States*, 492 F.3d 175, 191 (2d Cir. 2007) (forfeiture of wife's one-half interest in home unconstitutionally excessive because her "offensive conduct boil[ed] down to her joint ownership" yet she was "being punished as if she were distributing drugs"); *Wilson v. Comm'r of Rev.*, 656 N.W.2d 547, 555 (Minn. 2003) (imposition of employee's tax liability on employer company and its owner unconstitutionally excessive in part because "neither [the owner] nor [the employer company] participated in the creation of the underlying tax liability").

Another guardrail is a requirement that the conduct being punished must have a direct relationship to the public harm. The ordinary understanding of "relating to" requires a connection that is not "tenuous, remote, or peripheral." *Chevron USA Inc. v. Plaquemines Parish*, 146 S. Ct. 1052, 1061 (2026) (citation omitted). This Court thus rejected the "butterfly effect" theory of remote causation whereby present conditions are the result of a string of events set off by a seemingly inconsequential act. *Id.* at 1061 and n.4. *See also Hemi Group, LLC v. City of New York*, 559 U.S. 1, 12 (2010) ("in the RICO context, the focus is on the directness of the relationship between the conduct and the harm[,]" regardless of foreseeability); *Kemper v. Deutsche Bank AG*, 911 F.3d 383, 392 (7th Cir. 2018) (under the Anti-Terrorism Act, "[i]t is enough to note that all of the factors identified by the parties and our sister circuits—foreseeability, directness, and the substantiality of the defendant's conduct—are relevant to the inquiry."). "In a philosophical sense, the consequences of an act go forward to eternity." *CSX Transp., Inc. v. McBride*, 564 U.S. 685, 706-07 (2011) (Roberts, C.J., dissenting). When considering to what extent an individual's misconduct causes a greater societal harm, courts should not punish based on "ripples of harm" that "flow far beyond the defendant's misconduct." *Crosby v. Twitter, Inc.*, 921 F.3d 617, 625 (6th Cir.

2019) (citation omitted) (social media platform not liable where defendant "self-radicalized" after viewing content and committed mass shooting).

Here, the court below ignored both guardrails. It failed to analyze the proportionality of the plane's confiscation against Jouppi's *individual* wrongdoing that falls into the category of nonfeasance; he omitted to investigate his passengers' belongings to determine if they were carrying contraband and failed to discover a passenger's single six-pack of beer.

II. Exorbitant Code Enforcement Penalties Implicate the Excessive Fines Clause

"Fines are the most common form of punishment levied in the United States." Daniel S. Harawa, *How Much Is Too Much? A Test to Protect Against Excessive Fines*, 81 Ohio St. L.J. 65, 67 (2020). Fines for relatively minor infractions of regulatory codes demonstrate the critical importance of reviewing such fines on an individual basis. Some violations may be serious hazards to the community. But many others include harmless activities like parking in front of a house,[3] partially parking on the lawn, cracks in a driveway,[4] or long grass.[5] Indeed, in many cases the "harms" caused by often-technical code violations are neither tangible nor financial. Instead, proscribed

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[3] Renee Koury, *SF couple gets $1,500 fine for parking in their driveway despite doing so for nearly 40 years*, ABC 7 News (July 18, 2022), https://tinyurl.com/5bvx75sp.

[4] *Martinez v. City of Lantana*, No. 50-2021-CA-002564, 2024 WL 6077692, at *1 (Fla. Cir. Ct. Apr. 09, 2024), *aff'd*, 410 So.3d 15 (Fla. App. 2025) (over $160,000 in fines for cracks in driveway, cars parked in driveway partially touching grass, and a broken fence).

[5] *Ficken v. City of Dunedin*, No. 21-11773, 2022 WL 2734429, at *4 (11th Cir. July 14, 2022) ($28,500 fine for long grass).

conduct consists of such things as banning advertisement of rentals of fewer than thirty days; or wine tastings at a winery; or do-it-yourself handyman work; or forcing beachgoers to access a public beach one mile from the government's preferred access point. Despite the minimal "injuries" to the public resulting from noncompliance with many code violations, many jurisdictions are able to build their budgets on the basis of fine-derived revenue.[6]

In some jurisdictions both serious and minor violations of a building code are punished under the identical state statute. *See, e.g.*, Fla. Stat. § 162.09 (broadly authorizing up to $250 per day fines for each code violation for first-time offender, $500 per day for others). In other words, the statute sweeps in a broad array of property-related violations and threatens all with the same maximum penalty. For the individuals whose minimal activities run afoul of municipal code enforcement, these fines are not merely disproportionate, they are ruinous. Amicus Pacific Legal Foundation has represented or currently represents the following property owners subjected to catastrophic fines utterly disproportionate to their *individual* culpability. Although one could broadly justify many of the violations under the goal of health and safety, the actual violations in these cases were minor. These cases demonstrate why the individual facts matter more than the general policy goals for a particular law. For example:

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[6] One national study found that fines "account for more than 10 percent of general fund revenues in nearly 600 jurisdictions." Mike Maciag, *Addicted to Fines*, Governing (Aug. 19, 2019), https://tinyurl.com/rkerrj9s. "In at least 284 of those governments," fines account for "more than 20 percent" of general fund revenues. *Ibid.*

Sandra May. The City and County of Honolulu, Hawaii, hit Sandra May, an 83-year-old widow with two months of punishing $10,000 daily fines because of an objectively trivial error: the online advertisement for a one bedroom unit she rented in her Wilhelmina Rise home temporarily allowed users to merely check whether it was available for less than the city's 30-day minimum term, even though it remained impossible to book—or actually rent—the room for less than thirty days.[7] Ms. May did not immediately receive the city's notice of violation because she was in a serious automobile accident that resulted in multiple hospitalizations, surgery, repeated visits to urgent care and the emergency room, follow-up appointments, and physical therapy and rehabilitation sessions. She was able to correct the online platform's error fifty-nine days later. By then, the $10,000 daily fine had ballooned to $590,000.[8] Because she could not pay, municipal law barred her access to essential government services such as renewing her driver's license and her car registration, forcing her to find other methods of transportation such as taking the bus from the top of Wilhelmina Rise.

The cumulative fine, and its devastating consequences, were completely disproportionate to

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[7] City of Honolulu Ordinance 19-18 (2019), available at https://tinyurl.com/5ynncan6, required the owner or operator of a short-term rental to remove an advertisement identified in a notice of violation within seven days of receipt of the notice. *Id.* § 8. Fines for advertising were set at $1,000 per day minimum and $10,000 per day maximum for each day. *Ibid.*

[8] *See* Compl. for Violation of Const. and Civil Rts., *May v. City and Cnty. of Honolulu*, No. 1:26-cv-00253 (D. Haw. May 28, 2026), available at https://tinyurl.com/yrtrme8m.

her purported offense, which injured literally no-one and couldn't even adversely impact the ban on short-term rentals because no one accessing her advertisement could actually complete a rental for less than thirty days. In an unusually happy ending, the city in this case relented after she filed a lawsuit, settling for a 95% reduction in the fine and resolving all other claims. The settlement allowed Ms. May to keep her home, which the excessive fine otherwise would have forced her to sell. Pacific Legal Foundation, *Honolulu quickly backs down from demand that retiree pay $600,000 fine for advertising a rental*, https://tinyurl.com/5ycw6upa (last visited Aug. 19, 2026).

Lindsay Hoopes. A California superior court judgment approved Napa County's imposition of a massive $1,525,000 civil fine,[9] plus $2,253,991 to reimburse the County's private counsel fees, and an additional $111,230 in "costs of abatement" (the out-of-pocket costs of staff investigation and enforcement action).[10] The court agreed with the County that Hoopes created a public nuisance by hosting harmless, State-approved wine tastings on its vineyard where wine tastings have been hosted by prior owners for over three decades, without issue, under a historic land use entitlement that has been in

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[9] The $1,525,000 civil fine reflects the maximum $1,000 per day penalty for violating the local nuisance ordinance plus $250 per day under California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17206, accruing for 1,220 days, despite the County's failure to demonstrate that tastings occurred daily during the period.

[10] *Napa Cnty. v. Hoopes Family Winery Partners, LP*, No. 22 CV001262 (Napa Cnty. Super. Ct.), emergency stay request deniedDocket No. 25A1429 (U.S. June 26, 2026).

place since 1984. In more than forty years, the property never generated a single public complaint. Wine tastings and vineyard tours occur daily throughout Napa to the benefit of tourists and local businesses alike. The County initially sought over $8 million in fines, and not only went after the limited liability corporation and limited partnership that own and operate the winery, but also pursued Ms. Hoopes—a mother of four young children—personally. Because the nearly $4,000,000 judgment far exceeds both the property's lifetime revenues and Ms. Hoopes' personal net worth, it will force her to sell the property. The County is choosing to aggressively pursue execution and collection of the judgment, even though Ms. Hoopes' appeal challenges the fines as unconstitutionally excessive under the Eighth Amendment.

DJB Rentals. DJB Rentals, LLC—a small business—owned a single, modest multi-unit rental property worth $815,000. The City quietly fined the company roughly $600,000 through automatically accruing daily fines of $250 per day for six years for a laundry list of mostly relatively minor code violations, including for work on a deck that had been done without permits. Once the administrive fines began, the city offered no way to end the fines other than absolute compliance, causing the fines to continue for years despite the most serious violation having been fixed within a few months of the original order. Both DJB and the sole member of DJB—74-year old Donald J. Bourgeois—lacked the means to fully comply quickly. And he did not understand the danger, because the city regularly reduced fines by more than 90% at the time, including for fines that accrued for many years. But instead of forgiving DJB after

Mr. Bourgeois brought the property into complete compliance, the City pushed forward with the foreclosure, having the property forcibly sold in a fire sale auction for a fraction of its value. The renters were all evicted by the new owner and DJB lost all assets. Mr. Bourgeois lost his retirement savings and now struggles to make ends meet. The state law that authorizes the fines broadly applies to all manner of code violations—including egregious dangerous conditions and trivial, harmless ones. Whether the fines are unconstitutionally excessive must depend on the real world facts in his case and not merely the law in the abstract.

The Lent Family. Dr. and Mrs. Warren Lent bought a three-bedroom home in Malibu, California, that sat between the Pacific Ocean and a busy stretch of the Pacific Coast Highway. When the home was originally built in 1978, the California Coastal Commission required the original property owners to grant the Commission an easement to the beach. However, the home sits twenty feet above the beach and, without stairs or a ramp, the public cannot safely access the beach. Worse, without a gate, passersby would fall onto a large drainage pipe that runs the length of the easement and drains the entire highway. When the original owners finished construction, it included a permitted outdoor stairway from the home's second story to the path, and a gate at the street's public entry point that blocked the huge drop. *See Lent v. Cal. Coastal Comm'n*, 62 Cal. App. 5th 812, 826-30 (2021).

Five years after the Lents purchased the property, the Commission told them that they were violating the terms of the easement and ordered them to remove the now 20-year-old gate and stairs connecting the home's second story to a deck. The Lents protested, insisting that the gate and stairs were necessary for security and liability reasons and that they neither knew about the previous owners' alleged permit violations nor were they responsible for them. *Ibid.* Unmoved, the Commission invoked its power to fine individuals for denying access to the beach, which allows penalties up to $11,250 per day levied on a daily basis for up to five years. Cal. Pub. Res. Code §§ 30820(b), 30821(a). The Commission fined the Lents $4.185 million. *Lent*, 62 Cal. App. 5th at 830. The California Court of Appeal held this was not "grossly disproportionate" because "the Lents' conduct was inconsistent with the Coastal Act's goal of ensuring public access to the coast." *Id.* at 859. The court weighed this deprivation heavily, despite an existing public access point only one mile down the beach. *Id.* at 858.

CONCLUSION

The Court should adopt a rule that protects private property owners against fines for minimally harmful activity and forces government to cease daily accruing fines that balloon minor infractions into life-destroying punishment.

The decision below should be reversed.

Respectfully submitted,

DEBORAH J. LA FETRA
Counsel of Record
CHRISTINA M. MARTIN
Pacific Legal Foundation
3100 Clarendon Blvd.
Suite 1000
Arlington, VA 22201
(202) 888-6881
DLaFetra@pacificlegal.org

LAWRENCE G. SALZMAN
Pacific Legal Foundation
555 Capitol Mall
Suite 1290
Sacramento, CA 95814

Counsel for Amicus Curiae Pacific Legal Foundation

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