No. 25-246

In the Supreme Court of the United States

KENNETH JOHN JOOPPI,
Petitioner,

v.

STATE OF ALASKA,
Respondent.

On Writ of Certiorari
to the Supreme Court of Alaska

BRIEF OF PROFESSOR BETH A. COLGAN AS AMICUS CURIAE IN SUPPORT OF PETITIONER

H. HUNTER BRUTON
Counsel of Record
JOHN L. GIBBONS
SMITH, ANDERSON, BLOUNT, DORSETT, MITCHELL & JERNIGAN, LLP
150 Fayetteville Street
Suite 2300
Raleigh, NC 27601
hbruton@smithlaw.com
jgibbons@smithlaw.com
(919) 821-1220

Counsel for Amicus Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii
INTEREST OF AMICUS CURIAE 1
ARGUMENT SUMMARY 2
ARGUMENT 4
- I. The Excessive Fines Clause's Proportionality Guarantee Has Ancient Roots. 4
- II. Early American Proportionality Review in As-Applied Excessiveness Challenges Focused on the Specifics of the Underlying Case. 10
  - A. Published Appellate Cases on Excessive Fines Are Relatively Scarce Before the Late Nineteenth Century. 11
  - B. Early American Courts Assessing Facial Challenges Considered Broad Policy Rationales for Codification. 12
  - C. Early American Courts Assessing As-Applied Challenges Focused on Case-Specific Facts. 14
- III. The Alaska Supreme Court Departed from Early American Excessiveness Analyses and the Modern Doctrine 22
- IV. The Failure to Require Individualized Analyses Risks Eviscerating the Excessive Fines Clause's Role as a "Constant Shield." 26

CONCLUSION 30

TABLE OF AUTHORITIES

Page(s)

Cases

Blydenburgh v. *Miles*,
39 Conn. 484 (1872) 21

Browning-Ferris Indus. v. *Kelco Disposal,*
492 U.S. 257 (1989) 5

Bullock v. *Goodall*,
7 Va. (3 Call) 44 (1801) 21

Burroughs v. *Eastman*,
59 N.W. 817 (Mich. 1894) 13

Cagle v. *State*,
25 Tenn. (6 Hum.) 391 (1845) (per curiam) 12

Calero-Toledo v. *Pearson Yacht Leasing*,
416 U.S. 663 (1974) 27

Chandler v. *Commonwealth*,
64 Ky. (1 Bush.) 41 (1866) 20

Commonwealth v. *Morrison*,
9 Ky. (2 A.K. Marsh) 75 (1819) 12

De Beukelaer v. *People*,
25 Ill. App. 460 (1888) 19

Harmelin v. *Michigan*,
501 U.S. 957 (1991) 3, 26, 28

Hathcock v. *State*,
13 S.E. 959 (Ga. 1891) 21

Jones v. *Commonwealth*,
5 Va. (1 Call) 555 (1799) 14, 15

Leonard v. *Texas*,
137 S. Ct. 847 (2017) 29

McCain v. *State*,
57 Ga. 390 (1876) 18

Miller v. *People*,
10 Ill. App. 400 (1882) (per curiam) 19

Mugler v. *Kansas*,
123 U.S. 623 (1887) 15

O'Neil v. Vermont,
144 U.S. 323 (1892) 17

People ex rel. Robison v. *Haug*,
37 N.W. 21 (Mich. 1888) 13

Powell v. *McCormack*,
395 U.S. 486 (1969) 7

Powers v. *People*,
42 Ill. App. 427 (1891) 17, 19, 23

S. Express Co. v. *Commonwealth ex rel. Walker*,
92 Va. 59 (1895) 13

Sessions v. *Dimaya*,
584 U.S. 148 (2018) 27

State v. *Belvel*,
56 N.W. 545 (Iowa 1893) 18

State v. *Blennerhassett*,
1 Miss. 7 (1818) 19

State v. *Craig*,
13 A. 129 (Me. 1888) 14

State v. *Fertig*,
30 N.W. 633 (Iowa 1886) 26

State v. *Four Jugs of Intoxicating Liquor*,
2 A. 586 (Vt. 1886) 17

State v. *Harris*,
20 N.W. 439 (Iowa 1884) 16

State v. *Huff*,
40 N.W. 720 (Iowa 1888) 17

State v. *Little*,
42 Iowa 51 (1875) 16, 17

State v. *Lubee*,
45 A. 520 (Me. 1899) 13, 14

State v. *Main*,
37 A. 80 (Conn. 1897) 13

State v. *Maloney*,
44 N.W. 693 (Iowa 1890) 17

State v. *Manuel*,
4 Dev. & Bat. 20 (N.C. 1838).................................. 10

State v. *Mercer*,
32 Iowa 405 (1871) 16

State v. *Miller*,
94 N.C. 904 (1886) 16

State v. *Price*,
39 N.W. 291 (Iowa 1888) 16

State v. *Reid*,
11 S.E. 315 (N.C. 1890) 20

State v. *Roseman*,
12 S.E. 1039 (N.C. 1891) 18

State v. *Sheppard*,
32 S.E. 146 (S.C. 1899) 21

State ex rel. Garvey v. *Whitaker*,
19 So. 457 (La. 1896) 18

Stone v. *State*,
42 Ind. 418 (1873) 17, 20

Swinney v. *State*,
22 Ark. 215 (1860) 17, 20

Teague v. *State*,
4 Tex. App. 147 (1878) 21

Timbs v. *Indiana*,
586 U.S. 146 (2019) 2, 3, 5, 6, 10, 26

United States v. *Bajakajian*,
524 U.S. 321 (1998) 2, 4,11, 22, 23, 24, 25, 27

United States v. *James Daniel Good Real Prop.*,
510 U.S. 43 (1993) 28

United States v. *Salerno*,
481 U.S. 739 (1987) 12

Vallery v. *State*,
60 N.W. 347 (Neb. 1894) 18

Wingfield v. *Commonwealth*,
1 Ky. Op. 585 (Ky. Ct. App. 1867) 22

Young v. *State*,
19 S.W. 431 (Tex. Crim. App. 1892) 19

Statutes

16 Car. 1, c. 10 (1641) 6

1694-1726 (1712) S.C. Acts No. 331 7

1786 Va. Acts ch. 64 8

1787 N.Y. Laws ch. 1 8

Declaration of Rights of 1688,
1 Wm. & Mary, 2d Sess., ch. 2, § 10, in 3
Stat. at Large 441 (1689) 6

Northwest Ordinance of 1787, § 14, art. 2 8

N.Y. Charter of Libertyes and Priviledges,
art. 16 (1683) 7

Statute of Westminster,
3 Edw. 1 (1275) 5, 7

Va. Decl. of Rts. (1776) 8

Other Authorities

3 Joseph Story, *Commentaries on the Constitution of the United States* (1833) 9

4 William Blackstone, *Commentaries on the Laws of England* (1795) 8

9 Journals of the House of Commons (Dec. 23, 1680) 6

Kevin Arlyck, *The Founders' Forfeiture*, 119 Colum. L. Rev. 1449 (2019) 12

Banking on Crime, Al.com (2022) 29

John Bessler, *A Century in the Making: The Glorious Revolution, the American Revolution, and the Origins of the U.S. Constitution's Eighth Amendment*, 27 Wm. & Mary Bill Rts. J. 989 (2019) 6

Douglas A. Blackmon, *Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II* (2008) 10

John Southerden Burn, *The Star Chamber: Notices of the Court and Its Proceedings; with a Few Additional Notes of the High Commission* (J. Russell Smith, London, 1870) 6

Beth A. Colgan, *Revenue, Race, and the Potential Unintended Consequences of Traffic Enforcement Reform*, 101 N.C. L. Rev. 889 (2023) 28, 29

Beth A. Colgan, *Reviving the Excessive Fines Clause*, 102 Cal. L. Rev. 277 (2014) 8, 11

Thomas Cooley, *A Treatise on the Constitutional Limitations with Rest Upon the Legislative Power of the States of the American Union* (1868) 9

Jeremiah Dummer, *A Defence of the New-England Charters* (1721) 7

A. Howard, *Magna Carta: Text & Commentary* (rev. ed. 1998) 5

Calvin R. Massey, *The Excessive Fines Clause and Punitive Damages: Some Lessons from History*, 40 Vand. L. Rev. 1233 (1987) 4

Benjamin L. Oliver, *The Rights of an American Citizen* (1832) 9

Penn. Frame of Gov't, *Laws Agreed Upon in England & c.* (1682) 7

Kathryn Preyer, *Penal Measures in the American Colonies: An Overview*, 26 Am. J. Legal Hist. 326 (1982) 11

Elliot Ramos, *Chicago Police Impounded 250,000 Vehicles Since 2010. Here's why City Hall's Rethinking That*, WBEZ Chi. (July 13, 2020) 29

William Ramsey, *What's in the TAKEN Civil Forfeiture Investigation: Table of Contents*, Greenville News (Jan. 27, 2019) 29

William Rawle, *A View of the Constitution of the United States* (Philip H. Nicklin, 2d ed. 1829) 9

Lois Schwoerer, *The Declaration of Rights, 1689* (1981) 6, 7

Faith Thompson, *Magna Carta: Its Role in the Making of the English Constitution, 1300–1629* (1948) 5

U.S. Dep't of Just. Civ. R. Div., Investigation of the Ferguson Police Department (2015) 28

INTEREST OF AMICUS CURIAE[1]

Beth A. Colgan is Professor of Law at UCLA School of Law. She is one of the country's leading experts on constitutional and policy issues related to the use of financial sanctions as punishment, and particularly on the Eighth Amendment's Excessive Fines Clause.

[1] No party's counsel authored this brief in whole or part; no entity or person, aside from Professor Colgan and her counsel, made a monetary contribution intended to fund the brief's preparation or submission. Pursuant to Rule 37, all counsel of record received timely notice of Professor Colgan's intent to file this brief.

ARGUMENT SUMMARY

The Excessive Fines Clause's protections are "'fundamental to our scheme of ordered liberty' or 'deeply rooted in this Nation's history and tradition.'" *Timbs* v. *Indiana*, 586 U.S. 146, 150 (2019) (citation omitted). As detailed herein, a guarantee of protection against disproportionate fines dates back millennia. Magna Carta codified a baseline. The English Bill of Rights reaffirmed this foundation. And when the Founders drafted the amendments to our Constitution, they preserved that fundamental protection in the Eighth Amendment. Early American courts upheld that guarantee. In what today we would call "facial" challenges, courts weighed the severity of authorized fines against the generalized policy considerations leading lawmakers to codify an offense. In "as-applied" challenges, in modern parlance, courts weighed the severity of the fine actually imposed against the specific facts of the underlying offense.

This Court's modern doctrine has followed suit. In *United States* v. *Bajakajian*, this Court adopted the gross disproportionality test for measuring excessiveness, in which punishment severity is weighed against offense seriousness. 524 U.S. 321, 336–37 (1998). In doing so the Court rejected the inclusion of all potential harms by all potential defendants in the measurement of offense seriousness, opting instead for an individualized assessment of the specific defendant's culpability for his actual behavior. *Id.* at 337–40.

By focusing on broad policy concerns in assessing Petitioner's as-applied challenge, the Alaska Supreme Court diverged from both history and tradition, as well as this Court's more recent guidance. The Alaska Supreme Court's consideration of offense seriousness rested heavily upon the broad societal concerns underlying the penal statute. Doing so artificially tips the proportionality scale, making it more likely that even exorbitant financial sanctions—and the revenues they generate—will be deemed constitutionally sound. This is particularly problematic for the legitimacy of criminal justice in the United States both because financial sanctions are the most common punishment imposed in offenses great and small, and because of the inherent risk that they will be used "in a measure out of accord with the penal goals of retribution and deterrence" in light of their revenue-generating capacity. *Harmelin* v. *Michigan*, 501 U.S. 957, 979, n.9 (1991) (opinion of Scalia, J.).

To correct this error and ensure the Excessive Fines Clause continues to serve its role as a "constant shield" against oppressive practices, *Timbs*, 586 U.S. at 153–54, the Court should reverse and clarify that in determining whether a fine is excessive as applied, a court must weigh the severity of the fine *against the defendant's culpability for a specific offense*—including the actual harm caused, if any, the defendant's scienter or lack thereof, whether the conviction was for a single offense or numerous offenses, whether the offense was tied to other criminal activity, and so on—rather than weighing the fine against the broad and generalized societal ills that gave rise to the penal statute.

ARGUMENT

In *Bajakajian*, for the first and only time, the Court conducted an excessiveness review pursuant to the Excessive Fines Clause. 524 U.S. at 337–40. As Petitioner's case shows, much work remains to guide courts on how to enforce the prohibition against excessive fines. The Court should reverse to provide that guidance and bolster this fundamental right.

This brief provides additional perspective on the Alaska Supreme Court's missteps with a special focus on historical practice and tradition. Specifically, the decision below conflicts with a core historical principle underlying the Clause: its proportionality guarantee. The proportionality guarantee is of ancient vintage extending even before 1215, when the English barons forced King John to submit to Magna Carta. The guarantee is fundamental to how the framers understood the Clause in 1791. And it pervades early American court opinions addressing as-applied challenges to excessive fines.

I. The Excessive Fines Clause's Proportionality Guarantee Has Ancient Roots.

Protection against disproportionate (or excessive) fines dates back millennia, even before protections against excessive fines were codified in Magna Carta. When an amercement (the predecessor of a fine) "was disproportionately large in relation to the offense," courts remedied that mismatch through writs *de moderata misericordia*. Calvin R. Massey, *The Excessive Fines Clause and Punitive Damages: Some Lessons from History*, 40 Vand. L. Rev. 1233, 1259–1260 (1987).

This traditional protection then became "one of the cardinal limitations" in Magna Carta, *id.*, whose authors "sought to reduce arbitrary royal power" by guaranteeing that economic sanctions would be set according to the offense's seriousness, *Browning-Ferris Indus.* v. *Kelco Disposal*, 492 U.S. 257, 270–271 (1989). "A free man," Magna Carta guaranteed, "shall be amerced for a small fault only according to the measure thereof, and for a great crime according to its magnitude." Magna Carta, ch. 20, in A. Howard, *Magna Carta: Text & Commentary* 42 (rev. ed. 1998). Likewise, "[e]arls and barons shall be amerced … only in proportion with the degree of the offence" and members of the clergy "after the manner of the other persons aforesaid." *Id.* at ch. 21–22.

Magna Carta, including its proportionality guarantee, was recodified forty-four times in the two centuries after its adoption. Faith Thompson, *Magna Carta: Its Role in the Making of the English Constitution, 1300–1629* 10 (1948). The first Statute of Westminster extended its protections to all. 3 Edw. 1 Ch. 6 (1275); see also *Timbs*, 586 U.S. at 161 (Thomas, J., concurring in judgment) (describing early English cases enforcing Magna Carta's prohibition on immoderate amercements).

This is not to say, of course, that the English crown faithfully adhered to the proportionality principle without interruption. But the breaches confirm the rule. Henry VII and his ministers, for example, were "industrious in hunting out persecutions upon old or forgotten laws, in order to extort money from the subject," and so "[t]o this end the Court of Star Chamber was remodelled, and armed with powers the most dangerous and unconstitutional over the persons and properties of the subject." John Southerden Burn, *The Star Chamber: Notices of the Court and Its Proceedings; with a Few Additional Notes of the High Commission* 30, n.1 (J. Russell Smith, London, 1870). Though the Star Chamber's oppressions ebbed and flowed over time, its infamous abuses—including its excessive fines—ultimately caused its abolition in 1641. *Id.* at 30–163. The abolishing statute, like Magna Carta, once again forbade excessive fines. 16 Car. 1, c. 10 (1641); Lois Schwoerer, *The Declaration of Rights, 1689* 90-92 (1981). Nevertheless, some courts loyal to the Crown continued imposing heavy fines "arbitrarily, illegally, and partially," and without "any Regard to the Nature of the Offences." 9 Journals of the House of Commons 692, 698 (Dec. 23, 1680); see also Schwoerer 91–92; *Timbs*, 586 U.S. at 162–164 (Thomas, J., concurring in judgment) (discussing exorbitant fines against Titus Oates, Sir Samuel Barnadiston, and John Hampton).

Ultimately, the "conflict between Parliament and the Crown culminat[ed] in the Glorious Revolution of 1688 and the English Bill of Rights of 1689," through which the proportionality principle was reinvigorated. *Powell* v. *McCormack*, 395 U.S. 486, 502 (1969); see John Bessler, *A Century in the Making: The Glorious Revolution, the American Revolution, and the Origins of the U.S. Constitution's Eighth Amendment*, 27 Wm. & Mary Bill Rts. J. 989 (2019). The Declaration of Rights of 1688, presented to William and Mary, demanded "[t]hat excessive Baile ought not be required, nor excessive Fines imposed, nor cruell and unusuall Punishments inflicted." By enacting the English Bill of Rights in 1689, Parliament constitutionalized those prohibitions. 1 Wm. & Mary, 2d Sess., ch. 2, § 10, in 3 Stat. at

Large 441 (1689). Critically, neither the Declaration nor the Bill of Rights created a *new* right against disproportionate fines. Contemporaries understood both documents to reaffirm what was "indisputably an ancient right of the subject" guaranteed by Magna Carta. Schwoerer 90–91.

As subjects of the Crown, the American colonists enjoyed these legal protections from disproportionate fines. Just as Parliament had repeatedly done, colonial legislatures reaffirmed and codified Magna Carta's proportionality guarantee. The Pennsylvania Frame of Government of 1682, for example, provided that "all fines shall be moderate." Penn. Frame of Gov't, *Laws Agreed Upon in England &c.*, art. XVIII (1682). One year later, New York's Charter of Liberties and Priviledges guaranteed "[t]hat A freeman Shall not be amerced for a small fault, but after the manner of his fault and for a great fault after the Greatnesse thereof." N.Y. Charter of Libertyes and Priviledges, art. 16 (1683). A South Carolina statute "to put in force" English laws including "The Great Charter. A Confirmation of Liberties" replicated the first Statute of Westminster and mandated no "man be amerced, without reasonable Cause, and according to the quantity of his Trespass." 1694-1726 (1712) S.C. Acts No. 331.

Influential treatises confirmed proportionality's relevance to constitutional guarantees against excessive fines. Jeremiah Dummer—a prominent defender of the early colonial charters that preceded state constitutions—observed that "[t]he Subjects Abroad claim the Privilege of *Magna Charta*, which says that no Man shall be fin'd above the Nature of his Offence." Jeremiah Dummer, *A Defence of the New-England Charters* 16–

17 (1721). Similarly, Blackstone explained at length that the "quantity of [fines] must frequently vary, from the aggravations or otherwise of the offence." 4 William Blackstone, *Commentaries on the Laws of England* *378–380 (1795). The English Bill of Rights, Blackstone wrote, "has particularly declared, that excessive fines ought not to be imposed," a guarantee that "was only declaratory of the old constitutional law." *Id.* at *378–379. Whether a punishment was excessive depended on "[t]he age, education, and character of the offender; the repetition (or otherwise) of the offence; the time, the place, the company wherein it was committed," and "a thousand other incidents, [which] may aggravate or extenuate the crime." *Id.* at *15–16.

In the revolutionary era, the new states embraced protections against disproportionate fines. Virginia's Declaration of Rights adopted verbatim the English Bill of Rights' language: "nor excessive fines imposed." Va. Decl. of Rts., § 9 (1776). Between 1776 and 1791, twelve states adopted constitutional prohibitions either including identical or analogous phrasing or declaring that their citizens continued to enjoy the rights of English subjects. Beth A. Colgan, *Reviving the Excessive Fines Clause*, 102 Cal. L. Rev. 277, 323 n.238 (2014). Other state statutes specifically referenced Magna Carta's proportionality guarantee. 1786 Va. Acts ch. 64 ("the amercement which ought to be according to degree of the fault"); 1787 N.Y. Laws ch. 1 (requiring that any "fine or amerciament shall always be according to the quantity of his or her trespass or offence"); see also Northwest Ordinance of 1787, § 14, art. 2 ("[a]ll fines shall be moderate").

Ultimately, the Eighth Amendment employed the well-worn language, “nor excessive fines imposed,” in 1791. The Framers adopted the Excessive Fines Clause “as an admonition to all departments of the national government, to warn them against such violent proceedings, as had taken place in England in the arbitrary reigns of some of the Stuarts.” 3 Joseph Story, *Commentaries on the Constitution of the United States* 750–751, § 1896 (1833).

Key treatises again confirmed the constitutional imperative that fines be proportionate in light of “[t]he peculiar circumstances of each case, the contrition or general good character of the offender.” William Rawle, *A View of the Constitution of the United States* 130 (Philip H. Nicklin, 2d ed. 1829). As one noted, “[i]f therefore a law should be passed, imposing a ruinous fine upon an inconsiderable offence, or otherwise wholly disproportionate to the magnitude of it, it would be inconsistent with the spirit of [the eighth] amendment.” Benjamin L. Oliver, *The Rights of an American Citizen* 185 (1832). Contemporaries understood “[t]he merciful spirit of” the Excessive Fines Clause to arise from Magna Carta’s proportionality guarantee. Thomas Cooley, *A Treatise on the Constitutional Limitations with Rest Upon the Legislative Power of the States of the American Union* 329 (1868).

As in England, American courts sometimes fell short of faithfully implementing the proportionality guarantee, though courts continued to recognize the principle. One notorious example comes from the Black Codes, penal laws applicable explicitly or through practice only to Black people, used “to subjugate newly freed slaves and maintain the prewar racial hierarchy.”

Timbs, 586 U.S. at 153; *id.* at 167–169 (Thomas, J., concurring). Following sham trials, courts ordered Black defendants unable to pay "draconian fines" to provide "involuntary labor" instead—effectively imposing enslavement. *Id.* at 153; see Douglas A. Blackmon, *Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II* (2008).

Yet as in England, these violations of the proportionality guarantee still confirm the rule: despite the Black Codes' patent injustice, justification for the fines imposed was tied to their purported proportionality in comparison to the underlying offense. See *State* v. *Manuel*, 4 Dev. & Bat. 20, 34–35 (N.C. 1838) (stating in an antebellum Black Code case that "[w]hether a fine be reasonable or excessive ought to depend on the nature of the offence, and the ability of the offender").

In short, the Clause's proportionality guarantee is an ancient right, predating and immortalized in Magna Carta. Its promise, if not its practice, remained constant throughout early English history, in the American colonies and the new nation, in the Clause's ratification, and beyond. That guarantee is central to the Clause's ability to serve as a "constant shield" from government overreach today. *Timbs*, 586 U.S. at 153–154.

II. Early American Proportionality Review in As-Applied Excessiveness Challenges Focused on the Specifics of the Underlying Case.

Before turning to the distinction between proportionality considerations in early American jurisprudence, it bears mentioning that the record is not voluminous. Part II.A, *infra*. That said, in the early American caselaw, as now, what we would now call facial challenges presented an uphill climb, requiring a showing that the statute at issue could not be constitutionally applied in any circumstance. Part II.B, *infra.* But as-applied challenges like Petitioner's required courts to consider the defendant's specific culpability for their own conduct—including the nature of the harm, aggravating and mitigating evidence, and the number of offenses. Part II.C, *infra.*

From this record, consistent with its historical pedigree, one principle shines throughout: "[t]he touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality." *Bajakajian*, 524 U.S. at 334. Importantly, in assessing proportionality, early American courts differentiated between facial and as applied challenges. And the Alaska Supreme Court's confounding of the two does not accord with the protections of proportionality hammered out over centuries and enshrined in the Eighth Amendment.

A. Published Appellate Cases on Excessive Fines Are Relatively Scarce Before the Late Nineteenth Century.

There are relatively few published appellate cases involving excessive fines issues from the eighteenth and nineteenth century American courts. Further research is necessary to better understand why this is so and why such cases arose more frequently in the latter half of the 1800s.[2] Of the cases that do exist, some contain little (if

[2] One reason for this dearth may be that statutes or initial sentencing adequately addressed proportionality considerations. Cf. Colgan, *Reviving*, 323–336. It may also be the result of jury nullification or the refusal to impose harsh fines. See Kathryn Preyer, *Penal Measures in the American Colonies: An Overview*, 26 Am. J. Legal Hist. 326, 346 (1982). Yet another reason may be the availability

any) analysis helpful for understanding historical views about excessiveness. E.g., *Cagle* v. *State*, 25 Tenn. (6 Hum.) 391, 394 (1845) (per curiam) (stating only: "Let the judgment be affirmed."). With that important caveat in mind, the cases set forth below provide support for the conclusion that the Alaska court's proportionality analysis here was faulty.

B. Early American Courts Assessing Facial Challenges Considered Broad Policy Rationales for Codification.

In early American jurisprudence, as now, facial challenges presented an uphill climb, requiring a showing that the statute at issue could not be constitutionally applied in any circumstance. See *United States* v. *Salerno*, 481 U.S. 739, 745 (1987) (describing a facial challenge as "the most difficult challenge to mount successfully"). For example, the Virginia Supreme Court in 1895 distinguished between facial challenges on the one hand, in which legislative "discretion and judgment" are afforded "the widest latitude" unless the crime and penalty are "plainly disproportioned," and as-applied challenges on the other, which "do[] not affect the validity of the statute" but for which "the corrective hand of the court will annul" disproportionate fines. *S. Express Co.* v. *Commonwealth ex rel. Walker*, 92 Va. 59, 66–67 (1895); see also *Commonwealth* v. *Morrison*, 9 Ky. (2 A.K. Marsh) 75, 99 (1819) (explaining that "vacat[ing] the legislative act" required "a flagrant transcension by

of other mechanisms to address excessive pecuniary sanctions. See Kevin Arlyck, *The Founders' Forfeiture*, 119 Colum. L. Rev. 1449 (2019).

the legislature in fixing the fine of that just relative proportion between offense and fine").

To be sure, courts assessing facial challenges engaged in a limited form of proportionality analysis, which included considering public policy rationales for the codification of an offense. See *State* v. *Main*, 37 A. 80, 84–85 (Conn. 1897) (rejecting a facial challenge to a statute and holding that fines for failing to cut down diseased peach trees was "not so clearly disproportioned to the offense as to come necessarily within the constitutional prohibition," since the disease might spread and kill crops or cause farmers "to abandon their business from dread of contagion" and thus damage "the public health and the agricultural interests of the state"); *People ex rel. Robison* v. *Haug*, 37 N.W. 21, 26–28 (Mich. 1888) (relying on Magna Carta in striking down a liquor law statute as excessive because the financial sanctions imposed were "not measured by any standard of proportion or amount"), abrogated on other grounds, *Burroughs* v. *Eastman*, 59 N.W. 817, 818 (Mich. 1894). But in the context of a facial challenge, the proportionality inquiry focused on the legislature's intent to address broad and generalized public implications of an offense in toto, rather than actual harms resulting from a particular offense by a specific individual.

For example, in two nineteenth-century cases the Maine Supreme Court upheld fines for illegal lobster fishing (lobstering) against facial challenges, acknowledging "the importance and magnitude of the public interest sought … to be protected." *State* v. *Lubee*, 45 A. 520, 521 (Me. 1899). First, the court held that a $1 fine per lobster was not excessive in light of the legislature's objective of "preserv[ing] a necessary and valuable source of food." *State* v. *Craig*, 13 A. 129, 130 (Me. 1888). A few years later, the same court upheld a $5 fine per under-length lobster, given fisheries' "great importance to the state" for "furnishing … employment to many people, and supplying great quantities of wholesome and nutritious food." *Lubee*, 45 A. at 521–522. In both facial cases, the relevant potential harms were caused by offenses en masse and in the abstract. That naturally altered *how* the court assessed proportionality. But nowhere did courts suggest the broad public interest would squash individualized proportionality challenges in as-applied excessive fines cases.

C. Early American Courts Assessing As-Applied Challenges Focused on Case-Specific Facts.

In contrast to facial challenges, early American courts analyzed as-applied challenges, like Petitioner's here, by considering the defendant's specific culpability for their own conduct. The distinction was evident, for example, in 1799, when Virginia's Supreme Court of Appeals considered whether a joint fine imposed on co-defendants convicted in relation to an assault were excessive. *Jones* v. *Commonwealth*, 5 Va. (1 Call) 555 (1799). The lead opinion relied on the longstanding principle, dating back to Magna Carta, that in assessing the excessiveness of a fine in a given case, "the fine should be according to the degree of the fault and the estate of the offender." *Id.* at 556–557 (opinion of Roane, J.). The lead opinion held that a joint fine was excessive because it would punish a defendant not only for his own actions, but for those of "all who may chance to be with him," which would be "so unjust and contrary to the spirit of the constitution." . *Id.* at 557. The second opinion followed suit, agreeing that fines must be "according to the degree of the fault" of each defendant, meaning "that no addition, under any pretext whatever was to be imposed, upon the offender, beyond the real measure of his own offence." *Id.* at 557–558 (Carrington, J.).[3]

The treatment of fines imposed in response to nineteenth century liquor law violations further illustrate how the question of proportionality differed between facial and as-applied challenges. The success of temperance movements led lawmakers to restrict the manufacturing, sale, and possession of alcohol to combat "the evils which confessedly result from the excessive use of ardent spirits." *Mugler* v. *Kansas*, 123 U.S. 623, 661–662 (1887). Much like the Alaska legislature's goals today—restricting the transportation of alcohol to dry villages—nineteenth-century lawmakers believed "that the public health, the public morals, and the public safety, may be endangered by the general use of intoxicating drinks," which lawmakers linked to the "idleness, disorder, pauperism, and crime existing in the country." *Id.* at 662.

When considering as-applied challenges regarding the excessiveness of fines imposed for liquor law violations, however, early American courts focused on the specifics of the underlying case rather than generalized concerns about public health, morality, and safety. Courts paid close attention to factual records, including summaries compiled by trial courts and testimonial accounts.

[3] The lone dissenter agreed that fines must be according to "the degree of the offence," thus requiring differentiation between defendants who have varying degree of culpability, but dissented on procedural grounds. *Jone*s, 5 Va. (1 Call at 560 (Pendleton, Pres., dissenting).

This highlights the importance of case specifics. For example, in a decision upholding a fine against an as-applied challenge to laws prohibiting gambling in businesses licensed to sell liquor, the North Carolina Supreme Court quoted at length from the trial court's fact summary, including that the defendant "caused the front of his building"— directly across from the federal courthouse and post office—"to be painted a glaring red, to advertise his business by day, and an electric light [was] suspended to point the way by night," which the defendant did in "open and notorious defiance of the law." *State* v. *Miller*, 94 N.C. 904, 906–907 (1886); see also *State* v. *Harris*, 20 N.W. 439, 441 (Iowa 1884) (describing witness testimony regarding a druggist's use of a "library" room for illicit liquor sales and determining that the "evidence warrants the verdict" thus justifying the fine imposed); *State* v. *Little*, 42 Iowa 51, 55–56 (1875) (quoting at length from a witness who described observing and participating in illegal liquor consumption at a drug store).

Courts assessing the constitutionality of fines imposed for liquor-law violations also considered evidence in aggravation and mitigation of the defendant's culpability for the offense. For example, the Iowa Supreme Court upheld a fine based on evidence of a druggist's awareness that his customers would illegally consume purchased liquor as a beverage. *State* v. *Price*, 39 N.W. 291, 293 (Iowa 1888). The court noted that had there been proof showing that the druggist sold the liquors "for the actual 'necessities of medicine,' and that he was simply mistaken as to the law … we might be disposed to modify the judgment in respect to the amount of the fine." *Id.*; see also *State* v. *Mercer*, 32 Iowa 405, 406, 408–409 (1871) (upholding a fine against a defendant who created the "Winterset Social Club" in a "crafty and bold attempt" to sidestep liquor laws); cf. *State* v. *Huff*, 40 N.W. 720, 722–723 (Iowa 1888) (explaining that a judge looking outside the facts in evidence at the trial in relation to the "number and amount of [illicit liquor] sales" when imposing punishment may provide the defendant grounds for "an application to reduce the punishment as excessive").

One particularly relevant form of evidence that could either aggravate or mitigate was whether a liquor-law defendant committed a single or multiple violations. For example, the Iowa Supreme Court upheld a fine because the record showed that the defendant engaged in "a large number of sales of beer," behavior that, by his own admission, he repeated over a course of years. *State v. Maloney*, 44 N.W. 693, 693 (Iowa 1890); see also *State* v. *Four Jugs of Intoxicating Liquor*, 2 A. 586, 593 (Vt. 1886) (upholding a fine, reasoning that "[i]f [the defendant] has subjected himself to a severe penalty, it is simply because he has committed a *great many* [liquor] offenses"), aff'd on other grounds, *O'Neil* v. *Vermont*, 144 U.S. 323, 331–332 (1892); *Little*, 42 Iowa at 56–57 (upholding a fine because illegal sale of liquor at a drug store "was no small part of defendant's business").

That focus on a specific offense rather than abstract policy concerns applied well beyond liquor offenses. For all manner of offenses, courts attended to the underlying factual record to properly assess proportionality. See *Stone* v. *State*, 42 Ind. 418, 419–420 (1873) (relying on victim and witness testimony regarding what occurred during an assault); *Swinney* v. *State*, 22 Ark. 215, 216 (1860) (same); *Powers* v. *People*, 42 Ill. App. 427, 429–

430, 433 (1891) (considering "uncontradicted testimony" regarding the defendant's attempts to shoot the victim).

Courts also considered mitigating and aggravating evidence, including evidence of scienter, motivation, and the number of offenses committed. For example:

- *State ex rel. Garvey* v. *Whitaker*, 19 So. 457, 533 (La. 1896), held that separate fines for 72 distinct crimes—destruction of plants and other items in public squares—were excessive because each "offense follow[ed] after the other immediately and consecutively" and effectively constituted a single offense.

- *State* v. *Belvel*, 56 N.W. 545, 549 (Iowa 1893), upheld a fine after "examin[ing] the entire record with care" and determining that "[t]he libel was grossly offensive, and, … without any provocation which can justly be urged in mitigation of the punishment."

- *State* v. *Roseman*, 12 S.E. 1039, 1040 (N.C. 1891), upheld a fine imposed on a jailer for beating an inmate with a horsewhip in response to the inmate singing, because the inmate "was in prison and helpless."

- *Vallery* v. *State*, 60 N.W. 347, 348–349 (Neb. 1894), upheld a fine for libel where "the vile and abusive language used" showed the defendant "was actuated by malice."

- *McCain* v. *State*, 57 Ga. 390, 391 (1876), upheld a fine for maintaining a lewd house because "[t]he facts show a very bad case; the lewdness approximated as near to open and notorious defiance of decency as well as law, as any case of the kind could well be open and defiant."

- *State* v. *Blennerhassett*, 1 Miss. 7, 17–18 (1818), upheld a fine because "the offence was highly atrocious and aggravated" given that "[t]he circumstances attending the assault, and the weapons used, [left] no doubt of the intention of the defendants."

- *Young* v. *State*, 19 S.W. 431, 432 (Tex. Crim. App. 1892), upheld a fine as "severe, but deserved" based on details of the defendant's "lascivious touch[ing]" of a sleeping woman "without the slightest provocation."

- *Powers*, 42 Ill. App. at 429-30, 433, upheld a fine for assault with a deadly weapon with intent to inflict bodily injury given evidence "as to plainly indicate that the appellant was possessed of fierce and malevolent passions to which, on that occasion, he gave full reign in reckless disregard of human life."

- *De Beukelaer* v. *People*, 25 Ill. App. 460, 462–465 (1888), struck down a fine and jail term as disproportionate to a charge of contempt of court where a woman hired a surgeon to remove an identifying birthmark on a child during a custody dispute because her acts were "impelled … by her great fear of being separated from the object of her affection."

- *Miller* v. *People*, 10 Ill. App. 400, 410 (1882) (per curiam), struck down $200 contempt fines for removing papers from a clerk's office because "while [defendants] acted improperly … they did so without evil motive or design."

As these cases demonstrate, early American courts carefully examined aggravating and mitigating circumstances—including scienter, motivation, malice, and the number of offenses—to calibrate proportionality between the offense and the fine.

Importantly, the exact nature of the harm—who was harmed, in what manner, and to what extent, rather than generalized harm for all such offenses—formed a central part of early American as-applied analyses. For instance:

- *State* v. *Reid*, 11 S.E. 315, 316 (N.C. 1890), noted that in committing an assault with a deadly weapon "the defendant owed it to a kind providence, which was not on the side of his guilty intent, that the wound was not fatal."

- *Stone*, 42 Ind. at 419–420, rejected, in an excessiveness analysis, an argument that no harm had been committed during an attempted rape, based on testimony that the victim's screams could be heard "seventy or eighty yards from the house."

- *Chandler* v. *Commonwealth*, 64 Ky. (1 Bush.) 41, 42 (1866), held that a fine was not excessive where the defendant "stamped [the victim] with his feet greatly to her injury."

- *Swinney*, 22 Ark. at 216, upheld a fine "[i]n view of the relentless ferocity" used by the defendant when whipping "a very small boy …

'unmercifully,' his back and arms being so severely bruised as to endanger his life."

- *Teague* v. *State*, 4 Tex. App. 147, 149–150 (1878), upheld a fine because "the evidence show[ed] an unprovoked and violent attack" resulting in serious injury.

Across these cases, courts consistently assessed the specific harm caused by the specific defendant. For financial crimes, courts focused on the victim's monetary losses and the defendant's ill-gotten gains. See *Hathcock* v. *State*, 13 S.E. 959, 961 (Ga. 1891) (considering the monetary value obtained through the defendant's fraud). For example, in striking down a fine as excessive, the Virginia Supreme Court stated: "No man can doubt, but that a fine … imposed on an officer who has committed no fault, for the benefit of a creditor who has sustained no injury, is superlatively excessive, unconstitutional, oppressive, and against conscience." *Bullock* v. *Goodall*, 7 Va. (3 Call) 44, 49–50 (1801).

In fact, in cases where the record provided on appeal did not contain case-specific evidence, early American appellate courts found themselves unable to evaluate as-applied challenges. The South Carolina Supreme Court, for example, explained that judicial discretion to impose a fine "is to be measured by the circumstances of each particular case" and so, in light of the record's inadequacy in that case, it had "no means of ascertaining whether such discretion has been properly exercised." *State* v. *Sheppard*, 32 S.E. 146, 147–148 (S.C. 1899). Other courts agreed; to assert an as-applied challenge to an excessive fine, the defendant had to place sufficient case-specific details in the record to enable appellate review. See *Blydenburgh* v. *Miles*, 39 Conn. 484, 497 (1872) (upholding a daily fine for allowing industrial pollutants to escape into a harbor because whether the fine was "excessive or not must depend materially upon the circumstances and the nature of the act for which it is imposed," whereas the record failed to include information regarding "the business carried on by these defendants"). Without such a record, a court could only engage in a facial assessment. See *Wingfield* v. *Commonwealth*, 1 Ky. Op. 585, 585–586 (Ky. Ct. App. 1867) (noting it was limited to a facial assessment of "the constitutionality of the act" because "the history of the trial is not preserved and presented in a bill of exceptions").

In short, when assessing as-applied challenges that a fine was unconstitutionally excessive, early American courts focused their analyses on the specifics of the underlying case, rather than broad policy concerns. The Alaska Supreme Court's departure from this practice is addressed below.

III. The Alaska Supreme Court Departed from Early American Excessiveness Analyses and the Modern Doctrine.

Petitioner made an as-applied challenge to his fine. In assessing whether the forfeiture of Petitioner's plane was disproportionate to his offense and therefore excessive, however the Alaska Supreme Court's approach was reminiscent of early American *facial* challenges. As detailed below, that resulted in a gross overstatement of Petitioner's culpability for the harm caused by the offense, if any, which in turn led the court to discount evidence in mitigation.[4]

The lower court's most egregious departure stems from its analysis of the offense's harm. The court discussed the broad and generalized problem of "[a]lcohol abuse in rural Alaska," noting that it "leads to increased crime; disorders such as alcoholism; conditions, such as fetal alcohol spectrum disorder; and death, imposing substantial costs on public health and the administration of justice." Pet. App. 24a. In other words, the court took the collective implications of all alcohol abuse in all of rural Alaska and imputed them to Petitioner. In so doing, the opinion incorrectly used an analytical framework that a nineteenth-century court would have used in the context of a *facial* challenge—looking at food supply and employment in the Maine lobstering cases, for

---

[4] In addition to the problems detailed here, lower courts have struggled with how to interpret *Bajakajian*'s consideration of the statutorily available punishments for the offense, and the smaller maximum penalties applicable to the respondent when calculated under the U.S. Sentencing Guidelines. 524 U.S. 338–339 & n.14. The *Bajakajian* Court appears to have understood the various penalties to be relative to the gravity of the offense because the penalty ranges suggested Congressional intent to allow for different sentences based on a defendant's relative culpability. *Id.*; compare *Powers*, 42 Ill. App. at 433 (noting the range of fines and jail in the statute, which allowed the court "to adjust the punishment according to the circumstances of each particular case"). *Bajakajian* also emphasized that a guideline permitting a forfeiture if mandated by statute "cannot override the constitutional requirement of proportionality review." 524 U.S. at 339 n.14. Some lower courts, including the Alaska Supreme Court, however, seem to have taken this discussion to require a comparison of how many multiples higher a forfeiture is compared to maximum available fines. Pet. App. 16a–27a & n.89. Clarity on this issue, along with the individualized nature of excessiveness review in as-applied cases, would be useful.

example—instead of facts regarding the defendant's individual culpability for the actual offense. The latter was the historical approach to *as-applied* challenges like Petitioner's.

Not only did the lower court's misdirected harm analysis break from history and tradition, it also failed to adhere to more recent guidance from this Court in *Bajakajian*. The respondent in *Bajakajian* violated federal law by failing to declare that he was carrying more than $10,000 in currency on a flight. 524 U.S. at 324–325. *Bajakajian*'s dissenters argued that forfeiture of the full amount to be transported—$357,144—was not excessive. The dissent emphasized the difficulty in enforcing the anti-smuggling law, given how easily items could be secreted in luggage. *Id.* at 351–352 (Kennedy, J., dissenting). And it highlighted the underlying statute's importance; "[t]he drug trade, money laundering, and tax evasion all depend in part on smuggled and unreported cash," and "tax evaders were using cash exports to dodge hundreds of millions of dollars in taxes owed to the Government." *Id.*

The Alaska Supreme Court's approach thus tracks the *Bajakajian* dissent. It eschewed the specific harm, if any, caused by Petitioner, focusing instead on the broad public policy implications of alcohol abuse in rural Alaska.

The *Bajakajian* majority rejected the dissent's aggregation of potential harms committed by all possible defendants in measuring offense seriousness. Instead, the majority conducted an individualized harm analysis, considering both who was harmed when the respondent failed to report currency he intended to transport overseas (only the government) and how significant the harm was ("relatively minor" and involving "no loss to the public fisc"). 524 U.S. at 339.

Furthermore, that mistaken focus on public policy concerns infected the remainder of the lower court's proportionality analysis. To its credit, the court presented a description of the underlying case facts and testimony from which the trial court had determined the forfeiture of Petitioner's plane would be grossly disproportionate. Pet. App. 3a–7a. It also noted that Petitioner knew of (or was at least willfully blind to) his passenger's intent to transport a six-pack of beer on the plane. Pet. App. 20a.

Turning to the nature of the crime, however, the court discounted key mitigating evidence—that Petitioner was "convicted of only one instance of alcohol importation" and the relatively small quantity of alcohol at issue—"because of the harm that a single instance of aircraft-facilitated alcohol importation has on rural communities." Pet. App. 19a, 26a. Put another way, the court apparently thought that due to the broad societal implications of alcohol abuse in Alaska's rural communities, someone who willfully transported a six-pack of beer one time would be equally culpable to a bootlegger who brought planeloads of alcohol into dry communities over and over again. That cannot be correct.

The lower court's discounting of the fact that Petitioner was not "part of a larger pattern of criminal activity," is similarly problematic. *Bajakajian* emphasized this point, reasoning that while the respondent had violated the law, he "does not fit into the class of persons for whom the statute was principally designed: He is not a money launderer, a drug trafficker, or a tax evader." *Bajakajian*, 524 U.S. at 338. In other words, *Bajakajian* recognized that a range of behaviors, some more serious than others, might violate the same statute.

A similar sentiment can be observed in a nineteenth-century case upholding a fine imposed for illegal liquor sales because the defendant not only possessed alcohol, but also ran an illegal saloon and therefore "belong[ed] to a class of violators of the criminal law who, according to the current history of this state, are in certain counties defying the law, and resisting its enforcement by mobs, violence, and murder." *State* v. *Fertig*, 30 N.W. 633, 633–634 (Iowa 1886). In contrast, the Alaska Supreme Court decided that any person who transported alcohol via plane—no matter the mens rea, quantity of alcohol, or any other detail of the offense—must be treated identically simply because lawmakers mandated forfeiture. Pet. App. 20a–22a. This not only renders the class-of-persons consideration a nullity; it leaves the legislature as the last word on constitutionality, rather than the courts.

IV. The Failure to Require Individualized Analyses Risks Eviscerating the Excessive Fines Clause's Role as a "Constant Shield."

This Court has repeatedly emphasized that financial sanctions—including forfeitures—generate a unique risk among punishments. Specifically, fines' inherent capacity to generate revenue creates perverse incentives for the government to impose punishment "in a measure out of accord with the penal goals of retribution and deterrence." *Harmelin*, 501 U.S. at 979, n.9 (opinion of Scalia, J.). The Excessive Fines Clause serves as a "constant shield," protecting against that risk coming to fruition. *Timbs*, 586 U.S. at 153–154. Allowing courts to consider aggregated harms resulting from all potential offenses by all possible defendants in the excessiveness inquiry risks weakening or even abrogating that shield.

The gross disproportionality test weighs the severity of the punishment against the seriousness of the offense. *Bajakajian*, 524 U.S. at 336–337. As detailed above, offense seriousness has traditionally been measured by considering the defendant's culpability for a specific offense—the actual harm caused, the defendant's scienter, number of offenses, whether the offense related to other criminal activity, and so on. Adding to that the generalized societal ills that gave rise to a penal statute unfairly tips the scales toward the government *in every excessiveness challenge*, regardless of the defendant's actual culpability. The greater the offense's seriousness the more likely that even exorbitant financial sanctions—and the revenues the government reaps—will pass constitutional muster. In other words, it quite literally tips the scales in favor of excessive fines.

The Court has good reason for concern in this area. Financial sanctions are ubiquitous for all manner of offenses. In addition to fines and an ever-increasing array of administrative fees, over time, "federal and state forfeiture statutes" have come to "reach virtually any type of property that might be used in the conduct of a criminal enterprise." *Calero-Toledo* v. *Pearson Yacht Leasing*, 416 U.S. 663, 683 (1974); see also *Sessions* v. *Dimaya*, 584 U.S. 148, 184–185 (2018) (Gorsuch, J., concurring in part and in judgment) (noting the expansive use of civil fines, forfeitures, and other forms of financial punishment). Transparency and reporting difficulties make exact dollar figures impossible to ascertain. But researchers know that financial sanctions revenue is, at a minimum, a multi-billion dollar industry each and every year. Beth A. Colgan, *Revenue, Race, and the Potential Unintended Consequences of Traffic Enforcement Reform*, 101 N.C. L. Rev. 889, 920 (2023). In turn, these sanctions' revenue-generating capacity unavoidably gives rise to opportunities for abuse and the distortion of crime policy.

Across Administrations, the executive branch has itself acknowledged—and struggled with—the perverse incentives forfeiture revenues create. In 1990, the Attorney General issued a bulletin urging prosecutors to "significantly increase production [of forfeitures] to reach our budget target." *United States* v. *James Daniel Good Real Prop.*, 510 U.S. 43, 56, n.2 (1993). A quarter century later, a different Administration's Department of Justice documented similar distortions at the state and local level, finding that the City of Ferguson's Finance Director and Chief of Police exchanged emails regarding the need to increase ticketing to make up for an anticipated sales tax shortfall. See U.S. Dep't of Just. Civ. R. Div., Investigation of the Ferguson Police Department 10 (2015). These examples, spanning decades and levels of government, illustrate the enduring risk that financial sanctions will be deployed "in a measure out of accord with the penal goals of retribution and deterrence." *Harmelin*, 501 U.S. at 979, n.9.

In fact, substantial and growing evidence suggests that the revenue-generating capacity of financial sanctions distorts crime policy by affecting who is policed, what penal statutes are and are not enforced, and the nature of enforcement itself. Colgan, *Revenue*, 920–41 (collecting studies and investigative reports). Lawmakers and law enforcement actors may come to see these revenues as important budgeting tools, particularly during economic downturns and when enforcement can be targeted at unpopular or vulnerable communities. *Id.*; see also *Leonard* v. *Texas*, 137 S. Ct. 847, 848 (2017) (Thomas, J., statement respecting denial of cert.) (explaining that civil forfeiture practices "frequently target the poor and other groups least able to defend their interests" leading to "egregious and well-chronicled abuses"). Investigative journalists have identified these precise issues in several jurisdictions. See William Ramsey, *What's in the TAKEN Civil Forfeiture Investigation: Table of Contents*, Greenville News (Jan. 27, 2019)[5] (documenting the financial incentives of law enforcement's forfeiture practice in South Carolina and disproportionate use of the practice against low-income communities and communities of color); *Banking on Crime*, Al.com (2022)[6] (same, in an investigative series into the use of traffic ticketing in Alabama); Elliot Ramos, *Chicago Police Impounded 250,000 Vehicles Since 2010. Here's why City Hall's Rethinking That*, WBEZ Chi. (July 13, 2020)[7] (reporting on Chicago's mayor and city budget director's push to increase traffic ticket enforcement to make up for revenue losses caused by the 2008 housing market collapse). This is not to say that any given Alaska lawmaker or law enforcement officer was motivated, in whole or even in part, by revenue generation goals. Individual actors may well be motivated by a genuine concern over the public health and safety goals that inform crime policy. Colgan, *Revenue*, 921–922. But these risks,

[5] Available at https://perma.cc/5Y9J-G889 (last visited Aug. 31, 2026).

[6] Available at https://www.al.com/bankingoncrime/ (last visited Aug. 31, 2026).

[7] Available at https://perma.cc/8LZV-S9HL (last visited Sept. 4, 2026).

which date back over a millennium to the abuses of the English Crown, remain with us today. And with those risks comes the need for the protection offered first by Magna Carta, then the English Bill of Rights, and today by the Excessive Fines Clause.

CONCLUSION

This Court should reverse and hold that as-applied challenges to financial sanctions under the Eighth Amendment, like Petitioner's here, require courts to conduct an individualized inquiry into a defendant's actual culpability in the context of the specific criminal behavior that gave rise to the financial sanction.

September 10, 2026.

Respectfully submitted,

H. HUNTER BRUTON
Counsel of Record
JOHN L. GIBBONS
SMITH, ANDERSON, BLOUNT,
DORSETT, MITCHELL &
JERNIGAN, LLP
150 Fayetteville Street
Suite 2300
Raleigh, NC 27601
hbruton@smithlaw.com
jgibbons@smithlaw.com
(919) 821-1220

Counsel for Amicus Curiae