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 the State of Alaska

BRIEF OF PROFESSORS STEPHANIE H. DIDWANIA AND MATTHEW B. KUGLER AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

Amici are professors whose research and teaching cover criminal law, criminal procedure, empirical methods, and specifically, empirical analyses of asset forfeiture and public attitudes towards the criminal system.

Given a lack of rigorous empirical research into societal understandings of the fairness of asset forfeiture, amici designed and carried out several studies that measured public perceptions of asset forfeiture in the summer of 2025. This research culminated in an article, *Fairness and Excess in Asset Forfeiture*, which will be published later this year in the Washington University Law Review.[2]

Amici file this brief to urge the Court to reverse the Alaska Supreme Court, clarify that the Excessive Fines Clause is violated when a fine or forfeiture is disproportionate to the gravity of the specific property owner's wrongdoing, and hold that the State of Alaska violated Mr. Jouppi's Eighth Amendment rights when it conducted a forfeiture of his airplane after he was convicted of a misdemeanor bootlegging offense.

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[1] No counsel for either party authored this brief in whole or in part, and no person or entity, other than *amici* or their counsel, made a monetary contribution to its preparation or submission.

[2] *Fairness and Excess in Asset Forfeiture*, 104 Wash. U. L. Rev. (forthcoming 2026), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6869671.

the University of Chicago Law School and a Ph.D. in Managerial Economics and Strategy from Northwestern University. She has published empirical research in both law reviews and peer-reviewed law and economics journals.

Matthew B. Kugler is a Professor of Law at Northwestern Pritzker School of Law. He has written extensively on public attitudes towards policing. He teaches privacy law and intellectual property courses. Professor Kugler has a J.D. from the University of Chicago Law School and a Ph.D. in Psychology and Social Policy from Princeton University. He has published empirical research in both law reviews and peer-reviewed social science journals.

SUMMARY OF THE ARGUMENT

This Court has recognized that societal attitudes hold special relevance in interpreting the Eighth Amendment, as well as in related punitive contexts. Careful empirical research documenting how ordinary people view forfeitures is especially important in assessing forfeitures because, unlike in other punitive contexts, forfeiture decisions typically do not include a jury determination.

Amici submit this brief because three of their empirical findings are relevant to this case: (1) that the U.S. public exhibits wide variation in its views of forfeitures depending on the severity of the property owner's *particular conduct*; (2) that the public, consistent with this Court, naturally understands the excessiveness of a forfeiture to depend on the *proportionality* of the property value to the offense severity; and (3) that the public consistently views forfeitures as very excessive when the criminal conduct alleged to justify the forfeiture is *low in severity*.

Given these findings, amici urge this Court to hold that the Excessive Fines inquiry must center on the gravity of the specific defendant (or property owner's) wrongdoing rather than the abstract social harm sought to be prevented by the criminal offense justifying the forfeiture or fine. This Court should also hold that the State of Alaska violated Mr. Jouppi's Eighth Amendment rights when it conducted a forfeiture of his $95,000 airplane based on his conviction of misdemeanor bootlegging.

ARGUMENT

I. EMPIRICAL RESEARCH SHOWS THAT PEOPLE ASSESS THE EXCESSIVENESS OF A FORFEITURE BASED ON SPECIFIC DETAILS OF THE PROPERTY OWNER'S CONDUCT, NOT IN THE ABSTRACT.

In assessing Mr. Jouppi's Eighth Amendment claim, the Alaska Supreme Court weighed the value of the property being forfeited (an airplane worth $95,000) against the social harm the legislature sought to prevent when it enacted the criminal statute that Mr. Jouppi was convicted of violating. *Jouppi* v. *State*, 566 P.3d 943, 957 (Alaska 2025). Other courts, including this Court, have taken a different approach, focusing instead on the nature of the defendant's own criminal conduct in assessing excessiveness of a forfeiture or fine. *United States* v. *Bajakajian*, 524 U.S. 321, 337–39 (1998).

Amici's research shows that popular understandings of excessiveness contradict the Alaska Supreme Court's approach and support the *Bajakajian* approach. Ordinary people's attitudes towards forfeiture strongly depend on the property owner's specific criminal behavior rather than the general nature of their crime.

In their research on public perceptions of asset forfeiture, amici conducted three studies, each with a representative sample of U.S. adults. Didwania & Kugler, *supra*. In each study, participants were presented with a series of short vignettes describing hypothetical asset forfeitures.[3] The vignettes varied certain characteristics of the property being forfeited and the underlying criminal offense, while keeping the rest of the vignettes the same or as similar as possible. This methodological strategy allowed amici to identify which characteristics—if any—affected the public's views of asset forfeiture, and to measure the extent of those differences.

In each study, participants rated each asset forfeiture vignette on a four-point fairness scale ranging from Very Fair to Very Unfair. Study 2, which is most relevant to this case, also asked participants to rate each forfeiture on a three-point excessiveness scale: Not At All Excessive, Somewhat Excessive, and Very Excessive.[4]

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[3] Amici took several steps to make sure the differences in responses were not due to extraneous factors. For example, the survey presented the vignettes in a random order to each participant to avoid order effects. The vignettes also only used names that are commonly perceived as male and white to avoid having differing imputed race or gender cause variation in results.

[4] Participants' fairness ratings were very highly correlated with their excessiveness ratings, suggesting that ordinary people view excessiveness and fairness comparably. In the interest of space, the excessiveness results are the focus of this brief. The fairness results, however, are qualitatively identical.

Study 2 provided participants with six vignettes. The vignettes varied the severity of the underlying offense between two options (selling $385 worth of cocaine versus selling $20,000 worth of cocaine) and the value and nature of the asset being forfeited between three options (a $4,000 car, a $42,000 car, and a $200,000 house). The survey design presented all six severity-property value combinations to participants, randomized for each participant.[5]

For example, the low-value car, high-severity offense scenario read:

> Michael was dealing a large amount of illegal drugs out of his car. Agents estimated the total amount sold was worth $20,000. This is a high severity crime and would normally receive a severe sentence. The police seized the car, which was worth $4,000. It was otherwise legal for Michael to possess the car.

Didwania & Kugler, *supra*, at *67. The house, low-severity scenario was worded the same way but changed the property type, property value, and severity of the offense:

> Mark was dealing a small amount of illegal drugs out of his house. Agents estimated the total amount sold was worth about $385. This is a low severity crime and would normally receive a light sentence. The police seized the house, which was worth $200,000. It was otherwise legal for Mark to possess the house.

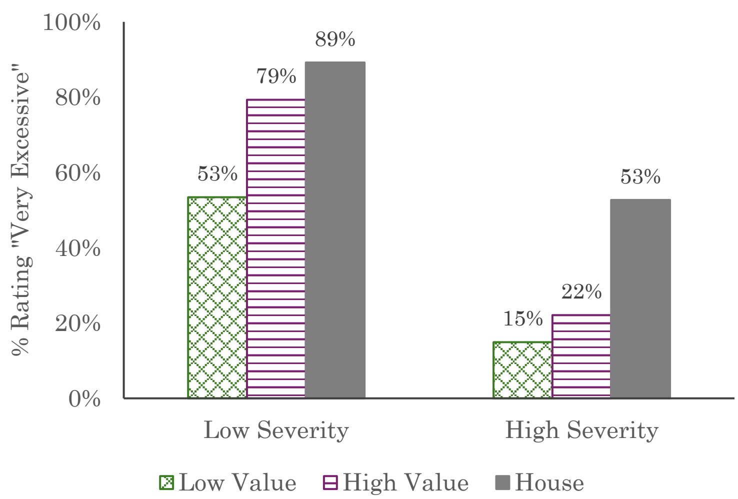
[5] *See* Appendix, *infra*, for text of all vignettes in Study 2. *See* Didwania & Kugler, *supra*, at *66–68 for complete text of all vignettes included in all three studies.

Id. Participants were asked, "Given the facts of the crime, is taking the car/house?" and given the three-point excessiveness scale on which to rate the vignette. Figure 1 plots the percentage of participants who answered that a forfeiture was "very excessive"—the highest possible rating available to them. The six columns in the figure represent the six forfeiture scenarios described above.

Figure 1 shows that participants exhibit wide-ranging views on asset forfeitures depending on the nature of the property owner's conduct and the type and value of property being forfeited. Although the nature of the criminal activity (selling cocaine) was unchanged across all scenarios in the study, participants' views of excessiveness dramatically varied depending on the quantity of cocaine sold and the value of the property being forfeited.

Predictably, participants were least sympathetic to the house, low-severity forfeiture (involving Mark, above). Eighty-nine percent of participants rated that forfeiture as very excessive. Predictably, too, participants were most sympathetic to the low-value car, high-severity forfeiture (involving Michael, above). Just fifteen percent of participants rated that forfeiture as very excessive. In other words, by changing the facts of the vignette, but not the underlying crime, people's views of forfeitures spanned nearly unanimous agreement that the forfeiture was very excessive to nearly unanimous that it was not.

Figure 1. Excessiveness Perceptions by Property Value and Offense Severity[6]



To see the effect of specific offense conduct on excessiveness views, one can compare the columns in the left (low-severity) cluster with the matching columns in the right (high-severity) cluster. The left-side columns are taller; this demonstrates that participants view forfeitures as more excessive when the property owner's criminal behavior is less serious. This finding is true for each of the three property types: participants view a forfeiture as more excessive when the underlying crime is low in severity (left side) than when the underlying crime is high in severity (right side). The figure illustrates that these differences are stark. They are also highly statistically significant at conventional levels.[7]

Put simply, significantly more survey respondents rate a forfeiture as very excessive when the underlying crime was low-severity than when it was high-severity, even when the nature of the crime and the type of forfeited property were unchanged. For example, while 53 percent of respondents think it is very excessive to forfeit an inexpensive car when the underlying crime is selling a small amount of cocaine, only 15 percent of respondents think it is very excessive if the underlying crime is selling a large amount of cocaine. Similarly, 79 percent of respondents think it is very excessive to forfeit an expensive car when the underlying crime is low in severity, while only 22 percent think it is very excessive when the underlying crime is high in severity. Finally, the pattern is the same for the forfeiture of a house: 89 percent think it is very excessive relative to a low-severity drug-trafficking crime, but just 53 percent think so when considered relative to a high-severity drug trafficking crime.

Overall, participants appear to intuitively apply the same proportionality principle that this Court has explained is the heart of the excessiveness inquiry.

Public attitudes thus demonstrate a common-sense understanding of excessiveness that contradicts the approach taken by the Alaska Supreme Court in this case. To justify its holding that the forfeiture of the aircraft worth $95,000 was not unconstitutionally excessive when compared to Mr. Jouppi's crime, that court relied on the fact that Alaska's bootlegging offense was designed to address many important social and individual harms of alcohol, including "increased

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[6] This figure appears as Figure 2.D in the article. Didwania & Kugler, *supra*, at *32. Amici added a y-axis label that does not appear in Figure 2.D to improve readability.

[7] *See* Didwania & Kugler, *supra*, at *35, n. 130 (reporting that the main effect of severity on perceived excessiveness produced a p-value < 0.001, and the same was true at every level of property value).

crime; disorders, such as alcoholism; conditions, such as fetal alcohol spectrum disorder; and death." *Jouppi*, 566 P.3d at 957.

But the same can be said of the vignettes in the study. Drug trafficking is a crime that has many indirect and pernicious effects on individuals and society at large. This Court has called drug trafficking "one of the greatest problems affecting the health and welfare of our population." *Nat'l Treasury Emps. Union* v. *Von Raab*, 489 U.S. 656, 668 (1989). It has recognized that *all* the harms identified by the Alaska Supreme Court also apply in the context of illegal drugs. Drug use leads to increased crime. *Harmelin* v. *Michigan*, 501 U.S. 957, 1002–03 (1991) (Kennedy, J., concurring); *Dep't of Hous. & Urban Dev.* v. *Rucker*, 535 U.S. 125, 134 (2002). Drug use leads to disorders, such as drug addiction. *Robinson* v. *California*, 370 U.S. 660, 667 (1962); *id.* at 669–70 (Douglas, J., concurring). Drug use is harmful to young life and can be contracted in utero. *Robinson*, 370 U.S. at 667, n. 9; *id.* at 670 (Douglas, J., concurring). And, devastatingly, drug use can cause death. *Burrage* v. *United States*, 571 U.S. 204, 206 (2014).

Not only are these facts about illegal drugs well-known to this Court, but any U.S. resident who has completed elementary school has been warned of the myriad harms of illegal drug use, which have long been the subject of public education campaigns. Despite this widespread common knowledge of the harms of illegal drugs, amici's empirical findings show that the public overwhelmingly disapproves of asset forfeitures when a property owner's specific drug offense is low in severity.

This key finding—that public attitudes towards forfeiture depend on the property owner's own behavior rather than the general nature of their crime—reflects this Court's and Congress's longstanding view that punishment must be individualized to the offender and their specific offense conduct. This Court has repeatedly explained that the law affixes punishment to the specific contours of a defendant's particular crime, a rule that can be traced to common law. See *Alleyne* v. *United States*, 570 U.S. 99, 109 (2013); *Apprendi* v. *New Jersey*, 530 U.S. 466, 478–81 (2000).

This Court has also explained that punishment can account for certain, specific characteristics of the defendant, writing "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 human failings." *Pepper* v. *United States*, 562 U.S. 476, 487 (2011) (quoting *Koon* v. *United States*, 518 U.S. 81, 113 (1996)); see also 18 U.S.C. § 3553(a) (directing that a sentencing court "shall consider . . . the nature and circumstances of the offense and the history and characteristics of the defendant"). Finally, the structure of the United States Sentencing Guidelines also reflect this individualized approach, emphasizing that a defendant's Guidelines range is determined based on their relevant offense conduct. See U.S. Sent'g Comm'n, *Guidelines Manual* § 1B1.3 (2025).

These findings are also consistent with the history of the Excessive Fines Clause. As Professor Kevin Arlyck has shown, in the Founding Era, early Treasury secretaries routinely remitted forfeited items to property owners in order to "mitigate[] harsh results" including "in cases with dubious claims of innocence." Kevin Arlyck, *The Founders' Forfeiture*, 119 Colum. L. Rev. 1449, 1455, 1496–98, 1507 (2019). Professor

Arlyck shows that these early Secretaries tailored remissions based on the severity and culpability of the property owner, sometimes tailoring the amount of property remitted based on the Secretary's view of the offense. *Id.* at 1497–98. Professor Beth A. Colgan similarly shows that early courts considered as-applied challenges to forfeitures by scrutinizing the particular facts of the criminal offense justifying the forfeiture. Brief of Professor Beth A. Colgan as *Amicus Curiae* in Support of Petitioner at 10–20, *Jouppi* v. *Alaska*, No. 25-246 (2025). Amici's findings suggest that contemporary public attitudes reflect the same instinctual understanding of excessiveness that has pervaded forfeiture law and practice for centuries.

II. PUBLIC ATTITUDES ARE RELEVANT TO UNDERSTANDING WHAT IT MEANS FOR A FINE TO BE EXCESSIVE.

This Court has long recognized that societal attitudes play a critical role in interpreting the Eighth Amendment. A plurality of this Court crystallized this notion in *Trop* v. *Dulles*, 356 U.S. 86 (1958) (plurality opinion), explaining, "The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." 356 U.S. at 101.

Since *Trop* was decided, this Court has found information about public attitudes to be useful in interpreting the Excessive Fines Clause's neighbor, the Cruel and Unusual Punishment Clause. For example, this Court considered public polling data relevant in holding that the Clause prohibits the execution of intellectually disabled people. *Atkins* v. *Virginia*, 536 U.S. 304, 316 n.21 (2002).

This Court has hinted—but not decided—that societal attitudes play the same role in assessing whether a fine violates the Excessive Fines Clause by analytically connecting the interpretation of the Excessive Fines and Cruel and Unusual Punishment Clauses. *Browning-Ferris Indus. of Vt.* v. *Kelco Disposal, Inc.*, 492 U.S. 257, 264 n.4 (1989). As this Court has explained, while the question of *when* the Eighth Amendment applies must turn on the Amendment's original meaning, once applied, the question of the Amendment's *scope* "has not relied on history to the same extent." *Id.* (quoting *Trop*, 356 U.S. at 101).

In its analogous evaluation of punitive damages—which, like forfeiture, concerns the proper ratio of wrongdoing to punishment—this Court has also found evidence of public attitudes to be relevant. Like the Excessive Fines Clause, the Due Process Clause requires that punitive damages not be disproportionate to the gravity of the defendant's conduct. *TXO Prod. Corp.* v. *All. Res. Corp.*, 509 U.S. 443, 454 (1993). This Court has explained that, in this context, proportionality is supposed to reflect the public's common sense of justice. *Exxon Shipping Co.* v. *Baker*, 554 U.S. 471, 503 (2008). For that reason, this Court has referenced contemporary attitudes and values in cases regarding punitive damage limitations. For instance, this Court in *Exxon* stated: "[t]he common sense of justice would surely bar penalties that reasonable people would think excessive for the harm caused in the circumstances." *Id.*

III. EMPIRICAL EVIDENCE SHOWS THAT THE FORFEITURE AT ISSUE IN THIS CASE WAS UNCONSTITUTIONALLY EXCESSIVE.

Amici urge this Court to reach the merits of Mr. Jouppi's Eighth Amendment claim and hold that the forfeiture of his airplane was "grossly disproportional to the gravity of [Mr. Jouppi's] offense," and therefore violates the Excessive Fines Clause. *Bajakajian*, 524 U.S. at 334. In this case, this Court need not guess how the public would view this forfeiture. Amici's research shows that societal understandings would unquestionably view this forfeiture as very excessive.

In Study 2, the scenario closest to the facts of this case involved a low-severity crime and a high-value asset: forfeiting a $40,000 car because a person sold $385 worth of drugs. These numbers are based on the facts of *Timbs* v. *Indiana*, 586 U.S. 146 (2018), in which the state of Indiana attempted to justify its forfeiture of Tyson Timbs' $42,000 Land Rover based on his crime of selling $385 worth of methamphetamine to undercover officers. On remand, the Indiana Supreme Court ruled that the forfeiture was unconstitutionally excessive. *State* v. *Timbs*, 169 N.E.3d. 361, 377 (Ind. 2021).

Amici find that public attitudes align with the outcome of *Timbs* outcome and suggest even more strongly that the forfeiture in this case was unconstitutionally excessive. In amici's study, 79 percent of participants assigned the forfeiture based on the *Timbs* facts the maximally excessive option presented to them ("Very Excessive"). Ninety-six percent rated the forfeiture as at least somewhat excessive.[8]

It is very likely that an even larger share of participants would view the forfeiture in this case as very excessive because it is both lower in offense severity and higher in dollar-value forfeited than the *Timbs*-based hypothetical.

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[8] *See* Figure 1, *supra*.

First, the crime in study 2—drug trafficking—is significantly *more severe* than the crime of which Mr. Jouppi was convicted. Selling $385 worth of cocaine is a felony; Mr. Jouppi was convicted of a misdemeanor. Nearly $400 worth of cocaine is around 3 or 4 ounces—enough to seriously harm a person; the contraband at issue in Mr. Jouppi's case was a six-pack of Budweiser beer, worth roughly $10.[9] The character in the vignette intentionally sold illegal drugs; Mr. Jouppi merely transported a controlled substance and maintained that he was unaware of any alcohol on the plane.

Second, the forfeited asset in the study was worth less than half the value of Mr. Jouppi's airplane. Amici's study asked participants about a forfeiture of a $40,000 car; Mr, Jouppi lost his $95,000 airplane.

Finally, the mathematical ratio of the value of contraband on Mr. Jouppi's airplane relative to the value of the airplane strongly suggests the forfeiture was extremely excessive. In this case, the forfeited property was likely worth around 1,000 to 10,000 times the value of the contraband in Mr. Jouppi's airplane.[10] These ratios dwarf the forfeiture ratios that the public tolerates by several orders of magnitude.

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[9] Mr. Jouppi's passengers also brought three cases of beer in boxes that Mr. Jouppi loaded into the cargo compartment of his plane. There was mixed testimony at his trial as to whether these boxes were opened. Mr. Jouppi denied knowledge of any of the beer on the plane, and the trial court entered a general verdict that did not indicate how much beer Mr. Jouppi was found to have knowingly attempted to transport. But even if Mr. Jouppi were aware of the three cases of beer, the total contraband value would be around $100—still well under the contraband value in the low-severity hypothetical.

[10] The lower court valued the plane at $95,000. As described above, a six-pack of beer costs around $10, which would be a 9,500

Specifically, amici find that a majority of the public views a forfeiture as at least somewhat excessive when the forfeited property is roughly equal in value to the contraband, and *very* excessive when the forfeited property is nine times more valuable (or more) than the contraband. Didwania & Kugler, *supra*, at *55. Comfortingly, these ratios are very similar in magnitude to punitive damages ratios this Court has considered reasonable under the Due Process clause. See *State Farm Mut. Auto Ins.* v. *Campbell*, 538 U.S. 408, 425 (2003) (disapproving of punitive damages awards that "exceed[] a single digit ratio between punitive and compensatory damages, to a significant degree" and favorably citing a case with a ratio of four).

Figure 2 depicts how amici calculated excessiveness ratios. As described above, Study 2 included six vignettes, each with a different ratio of property value to contraband value. For example, in the low-value car, high-severity offense scenario quoted above, the ratio was 0.2 because the low-value car was worth $4,000 and the amount of cocaine was worth $20,000, and $4,000 divided by $20,000 equals 0.2. In other words, that scenario involved a forfeiture of property worth just twenty percent of the contraband involved in the crime. In contrast, the house, low-severity scenario had a ratio of roughly 519 because the house was worth $200,000 and the amount of cocaine was worth $385 and $200,000 divided by $385 is approximately 519. In other words, that scenario involved a forfeiture of property worth 519 times the value of contraband involved in the crime.

Figure 2 plots the ratios defined by the six vignettes in Study 2. For each ratio, Figure 2 reports the

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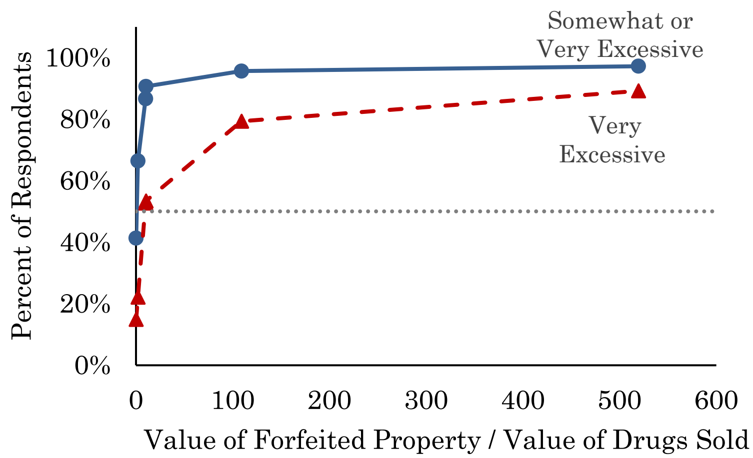
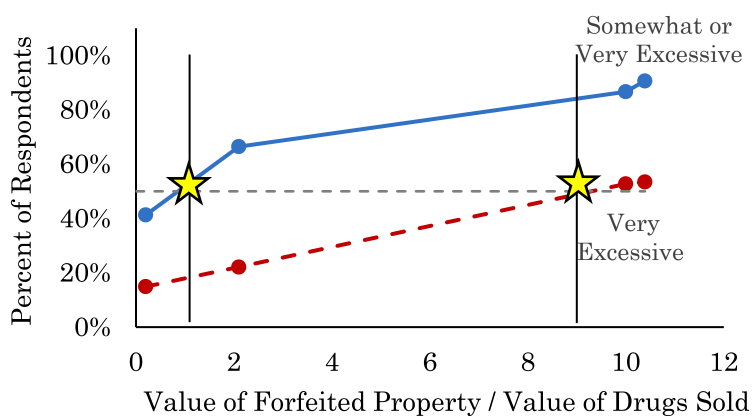
ratio. Three cases and a six-pack of beer cost around $100, which would be a 950 ratio.

percentage of people who view the forfeiture as at least somewhat excessive (blue solid line) and very excessive (red dashed line). The top panel plots all six scenarios. The bottom panel zooms in on just the four leftmost points, which involve the smallest ratios, to improve readability. (Readers will notice the *x*-axis in Panel A goes up to 600, while the *x*-axis in Panel B goes up to 12.) Gray dotted horizontal reference line indicates the point at which 50 percent of participants view the forfeiture as somewhat or very excessive. Yellow stars mark where each line crosses the 50 percent line.

Figure 2. Excessiveness Attitudes and Property Value : Crime Severity Ratio[11]



A. Full Sample



B. Truncated Sample

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[11] This figure appears as Figure 5 in the article. Didwania & Kugler, *supra* at *54. Amici slightly moved the labels to improve readability.

The ratio involved in Mr. Jouppi's case—somewhere between roughly 1,000 and 10,000, as described above—would be off amici's chart; it is that extreme.

For the reasons described above, amici therefore have no doubt that a vast majority of the public would view the forfeiture of Mr. Jouppi's airplane as unconstitutionally excessive. Given the starkness of this finding, amici urge this Court to reach the merits of Mr. Jouppi's claim, reverse the Alaska Supreme Court, and hold that the forfeiture violated Mr. Jouppi's Eighth Amendment rights.

CONCLUSION

For the foregoing reasons, the Court should reverse the decision of the Alaska Supreme Court.

Respectfully submitted,

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September 10, 2026

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APPENDIX

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TEXT OF VIGNETTES IN STUDY 2[12]

Low value car, high severity offense. Michael was dealing a large amount of illegal drugs out of his car. Agents estimated the total amount sold was worth about $20,000. This is a high severity crime and would normally receive a severe sentence. The police seized the car, which was worth $4,000. It was otherwise legal for Michael to possess the car.

High value car, high severity offense. Thomas was dealing a large amount of illegal drugs out of his car. Agents estimated the total amount sold was worth about $20,000. This is a high severity crime and would normally receive a severe sentence. The police seized the car, which was worth $42,000. It was otherwise legal for Thomas to possess the car.

House, high severity offense. Richard was dealing a large amount of illegal drugs out of his house. Agents estimated the total amount sold was worth about $20,000. This is a high severity crime and would normally receive a severe sentence. The police seized the house, which was worth $200,000. It was otherwise legal for Richard to possess the house.

Low value car, low severity offense. John was dealing a small amount of illegal drugs out of his car. Agents estimated the total amount sold was worth about $385. This is a low severity crime and would normally receive a light sentence. The police seized the car, which was worth $4,000. It was otherwise legal for John to possess the car.

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[12] Didwania & Kugler, *supra*, at *67.

High value car, low severity offense. James was dealing a small amount of illegal drugs out of his car. Agents estimated the total amount sold was worth about $385. This is a low severity crime and would normally receive a light sentence. The police seized the car, which was worth $42,000. It was otherwise legal for James to possess the car.

House, low severity offense. Mark was dealing a small amount of illegal drugs out of his house. Agents estimated the total amount sold was worth about $385. This is a low severity crime and would normally receive a light sentence. The police seized the house, which was worth $200,000. It was otherwise legal for Mark to possess the house.