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 FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES AND THE NATIONAL ASSOCIATION OF MANUFACTURERS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

The Chamber of Commerce of the United States of America (Chamber) is the world's largest business organization. As the nation's leading advocate for business, the Chamber represents companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation's business community.

The National Association of Manufacturers (NAM) is the largest manufacturing association in the United States, representing small and large manufacturers in all fifty states and in every industrial sector. Manufacturing employs nearly 13 million people, contributes roughly \$3 trillion to the economy annually, has the largest economic impact of any major sector, and accounts for over half of all private-sector research and development in the nation, fostering the innovation that is vital for this economic ecosystem to thrive. The NAM is the voice of the manufacturing community and leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

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[1] No counsel for any party authored this brief in whole or in part and no entity or person, aside from *amici curiae*, their members, and their counsel, made any monetary contribution toward its preparation or submission. *See* Sup. Ct. R. 37.6.

Amici and their members have a substantial interest in the proper interpretation of the Excessive Fines Clause. Many businesses raise the Clause as a defense in government enforcement actions and *qui tam* lawsuits that seek substantial civil penalties. The decision below, however, construed the Clause in a manner that would weaken its protections in most civil penalties cases. Amici file this brief to both explain the Clause's importance to the business community and urge that decision's reversal.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Excessive Fines Clause limits the government's power to extract payments from private parties as punishment for their alleged wrongdoing. The Clause thus protects both criminal defendants like Kenneth Jouppi and the many businesses that face liability for exorbitant civil penalties. In this case, the Court should reaffirm *United States v. Bajakajian*, 524 U.S. 321 (1998), which correctly interprets the Clause to require rough proportionality between the extent of covered fines and the gravity of defendants' specific wrongdoing.

This holding would provide essential protection to the business community. "Ours is a world filled with more and more civil laws bearing more and more extravagant punishments." *Sessions v. Dimaya*, 584 U.S. 148, 184 (2018) (Gorsuch, J., concurring in part and concurring in the judgment). Wielding those laws, government officials increasingly target American businesses with civil penalties that far outstrip any harm caused by the businesses' conduct. Many of these suits arise under consumer-protection laws that allow assessing a sizable civil penalty for every distinct statutory violation. In the typical case, government officials attempt to classify each product sold or advertisement published as its own standalone violation. And for businesses that operate at national scale, those numbers add up quickly. By tallying thousands (if not millions) of purported violations, government officials can demand nine-, ten-, or even eleven-figure amounts of civil penalties, without the need to show any harm to the general public or drain on the public fisc.

These civil-penalty actions impose enormous costs on both individual businesses and the broader economy. Faced with the threat of crippling penalties, many businesses have no choice but to accept excessive settlements. The result both chills economic activity and harms ordinary Americans, who bear the brunt of increased prices, job losses, and a decreased supply of important goods and services.

The threat of excessive civil penalties also facilitates lawfare against disfavored businesses. A prime example is the wave of state-led efforts to sue energy companies for the lawful sale and promotion of fossil fuels. While those lawsuits have many problems on their merits, *see, e.g.*, Brief for the Chamber of Commerce, *Suncor Energy (U.S.A.) Inc. v. Cnty. Comm'rs of Boulder County*, No. 25-170 (U.S. May 21, 2026), one common flaw is seeking civil penalties that have no proportional relationship to the defendants' challenged conduct. Unfortunately, other examples of abusive civil-penalty lawsuits abound.

A proper application of the Excessive Fines Clause mitigates the risks posed by these abusive lawsuits. In *Bajakajian*, this Court held that penalties are unconstitutionally excessive when they are grossly disproportionate to a defendant's wrongdoing. *See* 524 U.S. at 336-37. Under that principle, states cannot sustain massive civil penalties against defendants by relying on the asserted gravity of hypothetical violations at a high level of generality. Rather, states must defend their penalty awards as roughly proportional to the gravity of a defendant's actual conduct and any harms it has caused. This is an important, federal-law check on a wide range of civil-penalty cases.

The decision below, however, bypassed that core constitutional check. As Petitioner explains, the Alaska Supreme Court sustained the forfeiture of his airplane by saddling him with the social ills of alcohol abuse writ large. *See, e.g.*, Pet. App. 24a (reasoning that the "illegal importation of even a six-pack of beer causes grave societal harm," including "increased crime; disorders, such as alcoholism; . . . and death"). If affirmed, that approach to the Excessive Fines Clause would allow sustaining massive civil penalties by tying defendants to any number of broad social problems, without regard to the seriousness of their own actual conduct and any associated harms. That outcome would contravene this Court's precedent, depart from our constitutional tradition, and increase businesses' exposure to abusive civil penalties.

For those reasons, this Court should reverse the decision below and hold that the Excessive Fines Clause requires at least rough proportionality between the extent of a covered fine and the nature of a defendant's specific wrongdoing.

ARGUMENT

I. THE EXCESSIVE FINES CLAUSE PROVIDES ESSENTIAL PROTECTION AGAINST EXORBITANT CIVIL PENALTIES.

The Excessive Fines Clause limits the government's "power to extract payments, whether in cash or in kind, as punishment for some offense." *Timbs v. Indiana*, 586 U.S. 146, 151 (2019) (citation omitted). This protection "cuts across the division between the civil and the criminal law," reaching all fines that are at least partially punitive. *Austin v. United States*, 509 U.S. 602, 610 (1993).

In that respect, the Excessive Fines Clause applies not only to all criminal fines and forfeitures, but also to virtually all civil penalties. After all, "the notion of nonpunitive penalties is a contradiction in terms." *Toth v. United States*, 143 S. Ct. 552, 553 (2023) (Gorsuch, J., dissenting from denial of certiorari) (citation omitted). And while the Federal Government has suggested that the Clause reaches only "fines connected with crimes," *Pung v. Isabella County*, 146 S. Ct. 1964, 1973 n.5 (2026), that suggestion departs from both the Clause's original meaning and this Court's longstanding precedent. The Excessive Fines Clause thus protects businesses from exorbitant civil penalties, serving as an important check on abusive government enforcement actions.

A. The Excessive Fines Clause Applies to Civil Penalties.

1. The Eighth Amendment states that "[e]xcessive bail shall not be required, nor excessive fines imposed[.]" U.S. Const. amend. VIII. Unlike other provisions of the Bill of Rights, the Amendment does not limit its protections to "criminal case[s]" or "criminal prosecutions." U.S. Const. amend. V, VI. Instead, the Amendment was designed to "limit the government's power to punish" "across the division between the civil and the criminal law." *Austin*, 509 U.S. at 609-10. Indeed, when the Constitution was ratified, "the word 'fine' was understood to mean a payment to a sovereign as punishment for some offense." *Browning–Ferris Indus. of Vermont, Inc. v. Kelco Disposal*, 492 U.S. 257, 265 (1989); *see, e.g.*, S. Johnson, *A Dictionary of the English Language* (7th ed. 1785) (unpaginated) (defining a "fine" as a "pecuniary punishment" or "penalty").

For those reasons, this Court held in *Austin* that the Excessive Fines Clause applies to all civil fines that "serv[e] in part to punish." 509 U.S. at 610. That category includes virtually all civil penalties. By their nature, civil penalties seek not only to "extract compensation or restore the status quo," but also to "punish culpable individuals." *Tull v. United States*, 481 U.S. 412, 422 (1987); *see also SEC v. Jarkesy*, 603 U.S. 109, 125 (2024) (holding that civil penalties under the federal securities laws are "designed to punish and deter, not to compensate"). And at a minimum, civil penalties have a punitive character when they are "grossly disproportional" to defendants' wrongdoing, as required for any viable excessive fines defense. *Bajakajian*, 524 U.S. at 337.

2. The history of the Excessive Fines Clause confirms its application to civil penalties. The Clause "traces its venerable lineage back to at least 1215," when the Magna Carta limited the King's authority to demand amercements—*i.e.*, fines or monetary payments—from his subjects. *Timbs*, 586 U.S. at 151. These amercements were often used to punish conduct that did not constitute a crime. *See* C. Massey, *The Excessive Fines Clause and Punitive Damages: Some Lessons from History*, 40 VAND. L. REV. 1233, 1251-53 (1987); *see also Browning–Ferris*, 492 U.S. at 287-88 (O'Connor, J., concurring in part and dissenting in part). Even so, the Magna Carta provided that all amercements must relate to "some genuine harm to the Crown" and "be proportioned to the wrong." *Browning–Ferris*, 492 U.S. at 271 (citation omitted). Thus, from its inception, the rule against excessive monetary punishments reached what we today call civil penalties.

The English opposition to excessive fines only grew in the years before the Glorious Revolution. Opposition arose to the Court of the Star Chamber, which "imposed heavy fines on the king's enemies in disregard of" the Magna Carta. *Timbs*, 586 U.S. at 162 (Thomas, J., concurring in the judgment) (citation omitted). Although "[t]he statute abolishing the Star Chamber in 1641 specifically prohibited any court thereafter from levying excessive fines," "in the 1670s and early 1680s," English courts resumed imposing hefty fines, *id.* (citation omitted and alterations adopted), with their use "bec[oming] even more excessive and partisan," *Browning–Ferris*, 492 U.S. at 267. The Stuart kings' fines aimed to both raise revenue "in the absence of parliamentary grants" and "ruin[] . . . the critics of the crown." *Timbs*, 586 U.S. at 161-62 (Thomas, J., concurring in the judgment). In response to those fines, the English Bill of Rights "reaffirmed Magna Carta's guarantee by providing that 'excessive Bail ought not to be required, nor excessive Fines imposed; nor cruel and unusual Punishments inflicted.'" *Id.* at 152 (majority op.) (quoting 1 Wm. & Mary, ch. 2, § 10, in 3 Eng. Stat. at Large 441 (1689)). And while an early draft of that provision referred expressly to criminal cases, the absence of that phrase in the final version made clear that excessive fines were prohibited in "all cases." *Austin*, 509 U.S. at 609 (citation omitted).

The "familiar language" in the English Bill of Rights "was adopted almost verbatim, first in the Virginia Declaration of Rights, then in the Eighth Amendment." *Timbs*, 586 U.S. at 152. The Founding generation "agreed that the prohibition on excessive fines was a well-established and fundamental right of citizenship." *Id.* at 166 (Thomas, J., concurring in the judgment). And this Court has recognized that the "[p]rotection against excessive punitive economic sanctions" is both "fundamental" and "deeply rooted in this Nation's history and tradition." *Id.* at 154. All this would mean little, however, "if the government could evade constitutional scrutiny . . . by the simple expedient of fixing a 'civil' label on the [excessive] fines it imposes." *Toth*, 143 S. Ct. at 553 (Gorsuch, J., dissenting from denial of certiorari).

3. For all those reasons, at least seven federal courts of appeals have applied the Excessive Fines Clause to civil fines and penalties. *See Myrie v. Comm'r, N.J. Dep't of Corr.*, 267 F.3d 251, 262 (3d Cir. 2001); *United States ex rel. Bunk v. Gosselin World Wide Moving, N.V.*, 741 F.3d 390, 408-09 (4th Cir. 2013); *WCI, Inc. v. Ohio Dep't of Pub. Safety*, 774 F. App'x 959, 966-67 (6th Cir. 2019); *Towers v. City of Chicago*, 173 F.3d 619, 623-25 (7th Cir. 1999); *United States v. Aleff*, 772 F.3d 508, 512 (8th Cir. 2014); *United States v. Mackby*, 261 F.3d 821, 830 (9th Cir. 2001); *United States v. Schwarzbaum*, 127 F.4th 259, 274 (11th Cir. 2025). *But see United States v. Toth*, 33 F.4th 1, 19 (1st Cir. 2022), cert. denied, 143 S. Ct. 552 (2023); *Nat'l Infusion Ctr. Ass'n v. Kennedy*, 2026 WL 2517285, at *10-11 (5th Cir. Aug. 26, 2026). Many state supreme courts agree that the Clause applies to civil penalties. *See, e.g.*, *People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.*, 124 P.3d 408, 421 (Cal. 2005).

There is no reason to disturb that prevailing view. This Court already has rejected an effort to limit the Excessive Fines Clause to "criminal punishments." *Austin*, 509 U.S. at 607, 610. And although the Federal Government would now restrict the Clause to fines "connected with crimes," *Pung*, 146 S. Ct. at 1973 n.5, its main argument misreads *Bajakajian*. In particular, the Government has invoked *Bajakajian*'s holding that the Excessive Fines Clause did not apply to early customs statutes, which authorized civil *in rem* forfeiture or "monetary 'forfeitures' proportioned to the value of the goods involved." 524 U.S. at 341; *see* Brief for the United States at 30-31, *Pung v. Isabella County*, No. 25-95 (Dec. 8, 2025). But that holding rested entirely on the ground that the early forfeiture remedies were not "punishment" and instead "sought to vindicate [an] underlying property right in customs duties." 524 U.S. at 340-42. By contrast, civil penalties are inherently punitive. *See supra* at 7; *see also Bajakajian*, 524 U.S. at 331 n.6 (recognizing that "modern statutory forfeiture" that "blur[s] the traditional distinction between civil *in rem* and criminal *in personam* forfeiture" may likewise be punitive).

The Government's position also has a practical problem: It would allow a modern-day Star Chamber to impose excessive monetary penalties, so long as it attaches them to conduct that violates civil statutes (with a lower burden of proof), but not criminal statutes. That is not the law. Instead, the Excessive Fines Clause applies to all penalties, criminal or civil. Its protections thus extend to the many businesses that face civil claims for substantial civil penalties.

B. Government Officials Increasingly Seek Civil Penalties that Bear No Relation to Defendants' Wrongdoing.

Across the country, legislatures have enacted "more and more civil laws [authorizing] more and more extravagant punishments." *Sessions*, 584 U.S. at 184 (Gorsuch, J., concurring in part and concurring in the judgment). These developments underscore the importance of the Excessive Fines Clause as a shield against excessive civil penalties.

1. Today, many civil-penalty actions arise under federal and state statutes that authorize penalties on a "per day" or "per violation" basis. For example, the Consumer Financial Protection Act allows imposing penalties up to $1,000,000 per day, depending on the defendant's degree of culpability. *See* 12 U.S.C. § 5565(c); 12 C.F.R. § 1083.1. Similarly, the False Claims Act requires imposing a civil penalty of "not less than $5,000," adjusted for inflation, for each statutory violation. 31 U.S.C. § 3729(a)(1). These sizable penalties are available regardless of whether the plaintiff can prove significant damages. *See id.*

A wide array of similar statutes exists at the state level. Indeed, most state consumer protection statutes proscribe "unfair" or "deceptive" conduct, with civil penalties for *any* statutory violation. *See* U.S. Chamber Inst. for Legal Reform, *Unfair Practices or Unfair Enforcement?* at 3, 23 (Oct. 2016). Under the California Unfair Competition Law, California can impose a civil penalty of up to $2,500 per violation. Cal. Bus. & Prof. Code § 17206. New York can fine businesses up to $5,000 per violation. N.Y. Gen. Bus. Law § 350-d(a). The District of Columbia can likewise fine $5,000 per violation. D.C. Code § 28-3909(b)(1). And the consumer protection laws in both Maryland and Texas allow civil penalties of up to $10,000 per violation. Md. Code Ann., Com. Law § 13-410(a); Tex. Bus. & Com. Code Ann. § 17.47(c)(1).

Under those statutes, government officials typically seek "'per violation' civil penalties based on every prescription filled, letter sent, product sold, or advertisement published or aired [within] the statute of limitations." *Unfair Practices*, *supra*, at 24. Some states reject even the statute of limitations and attempt to reach back years before private litigants could. *See, e.g.*, *Connecticut v. Sandoz, Inc.*, 2025 WL 3043397, at *29 (D. Conn. Oct. 31, 2025); *District of Columbia v. Owens-Corning Fiberglas Corp.*, 572 A.2d 394, 406 (D.C. 1989).

The numbers add up quickly. For example, in *State ex rel. Wilson v. Ortho-McNeil-Janssen Pharmaceuticals, Inc.*, 777 S.E.2d 176 (S.C. 2015), a South Carolina jury found that the labeling of an anti-psychotic medicine violated the state's unfair trade practice statute. That labeling "likely had little impact" on the physicians who actually prescribed the medicine. *Id.* at 204. But even so, the trial court imposed a $327 *million* civil penalty, based on its finding that the defendant had committed 553,055 separate statutory violations. *Id.* at 183, 203. To reach those numbers, the trial court found a discrete violation for both (i) every communication with a physician about the medicine and (ii) every distribution of a sample box of the medicine. *See id.* at 203. The South Carolina Supreme Court affirmed that method of counting violations, but exercised its discretion to reduce the defendant's penalty to $124 million. *See id.* at 205.

That is hardly the only example of massive civil penalties in a "per violation" case. In *California v. Johnson & Johnson*, 292 Cal. Rptr. 3d 424 (Ct. App. 2022), California courts imposed a $302 million civil penalty on a medical device company by finding a "separate violation" for every purportedly deceptive communication about that device, regardless of whether the communications reached their intended audience. *Id.* at 461, 469, 471 n.18. And in *United States ex rel. D'Anna v. Capstone Medical Resources, LLC*, 2025 WL 967162 (N.D. Ala. Mar. 31, 2025), a federal district court imposed a $417 million civil penalty in a False Claims Act case despite the court having calculated only around $2 million in actual damages. *Id.* at *1; *see also id.* at *1-2 (finding no infringement of the Excessive Fines Clause).

In short, even seemingly modest individual penalties can add up to staggering sums that are entirely disproportionate to defendants' allegedly wrongful conduct. For example, if a small mistake on a product label can lead to a $5,000-per-violation occurrence, and the business printed the offending label on a hundred thousand packages of its product, then that one error might be a $500 million penalty even before the state tries to treble it or seek other punitive damages. Absent a serious evaluation of whether that total penalty amount is proportionate to the gravity of a small labeling error, the Excessive Fines Clause will have no restraining effect on the imposition of exorbitant civil penalties.

Of course, many defendants choose to settle rather than risk receiving such a judgment. The threat of "per violation" penalties lies behind many eye-popping settlements in state enforcement actions. *See, e.g.*, M. Scarcella & J. Godoy, *Meta To Pay $1.4 Billion To Settle Texas Facial Recognition Data Lawsuit*, REUTERS (July 31, 2024) (describing a $1.4 billion settlement in a data privacy case); Compl. ¶¶ 79, 91, 102, *Texas v. Meta Platforms, Inc.*, No. 22-0121 (Tex. Dist. Ct. Feb. 14, 2022) (complaint seeking up to $25,000 per statutory violation). But that possibility of settlement merely highlights the risk of abuse and the hydraulic pressure exerted on companies by these punitive statutory-damages schemes.

2. Recognizing this leverage, some state and local governments have brought civil-penalty actions against politically disfavored businesses. Often, these lawsuits aim to accomplish political goals far removed from any harm to consumers or the public fisc.

A prime example is the series of state and local lawsuits concerning climate change. For example, the District of Columbia has sued four major energy companies on the theory that their speech about fossil fuels, the environment, and their corporate values violates the city's consumer-protection law. *See District of Columbia v. Exxon Mobil Corp.*, 2025 WL 1309618, at *1 (D.C. Super. Ct. Apr. 21, 2025). According to the District, these companies broke the law by engaging in "climate change denialism," by "portraying greenhouse gas emissions as deriving from numerous sources in addition to fossil fuels," and by "fail[ing] to adequately disclose the known risks of burning fossil fuels." *Id.* at *2, *3. For this, the District seeks civil penalties under a statute that, as discussed above, allows up to $5,000 per violation. *Id.* at *1; *see also id.* at *17 (denying a motion to dismiss the District's complaint); *supra* at 11.

That lawsuit is far from the only broadside against the fossil fuel industry. At least five states have brought similar lawsuits seeking civil penalties for statements or actions that depart from their preferred views on energy policy.[2] Each of those lawsuits proceeds in state court under a consumer protection law that allows "per violation" penalties.[3]

Nor are energy companies the only targets of political penalty actions. For example, the City of San Francisco sued major food companies, whose products sit on the "pantry shelves of nearly every household in America," for allegedly contributing to the "public health crisis" of obesity. Compl. ¶¶ 8, 11, *California v. The Kraft Heinz Co.*, No. CGC25631189 (Cal. Dec. 2, 2025). Similarly, the City of Denver has alleged that major cigarette manufacturers committed a deceptive trade practice by failing to disclose the environmental effects of improperly discarding cigarette filters. *See* Compl. ¶ 316, *City of Denver v. Philip Morris USA Inc.*, 2026-cv-32869 (Denver Dist. Ct. Aug. 7, 2026).

Indeed, "many of today's lawsuits brought by states over major public policy matters are either partially or primarily grounded in theories of deception or unfairness codified under state [consumer-protection statutes]." U.S. Chamber Inst. for Legal Reform, *French Fries to Fossil Fuels: The Misplaced Reliance on Unfair and Deceptive Practices Laws to Pursue*

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[2] *Connecticut v. Exxon Mobil Corp.*, 83 F.4th 122, 129-30 (2d Cir. 2023); *Maine v. BP P.L.C.*, 2025 WL 2753978, at *1-2 (D. Me. Sept. 29, 2025); *Massachusetts v. Exxon Mobil Corp.*, 187 N.E.3d 393, 394-95 (Mass. 2022); *Minnesota v. Am. Petroleum Inst.*, 2025 WL 562630, at *4 (Minn. Dist. Ct. Feb. 14, 2025); *Vermont v. Exxon Mobil Corp.*, 2024 WL 5189025, at *1-3 (Vt. Super. Dec. 11, 2024).

[3] Conn. Gen. Stat. Ann. § 42-110*o*(b) ($5,000 per violation); Me. Rev. Stat. Ann. tit. 5, § 212 ($5,000 per violation); Mass. Gen. Laws Ann. ch. 93A, § 4 ($5,000 per violation); Minn. Stat. Ann. § 8.31(3) ($25,000 per violation); Vt. Stat. Ann. tit. 9, § 2458(b)(1) ($10,000 per violation).

Policy Agendas at 24 (Aug. 2023); *see also id.* at 24-28 (collecting cases).

3. These political civil-penalty actions rely on the availability of excessive fines. In a traditional tort suit, the extent of the plaintiff's recovery depends on his ability to prove actual damages by a preponderance of the evidence. Thus, to recover significant damages in a climate change tort case, a plaintiff would need to prove that an energy company's conduct caused a measurable, real-world harm.

Many civil-penalty actions, however, purport to bypass that requirement. States and municipalities now claim the authority to recover significant civil penalties simply by proving a large number of statutory violations under "per violation" statutes. Under many of those statutes, "[a] violation of the law occurs even if the business did not intend to deceive the public, consumers were not misled, and there was no actual loss." *Unfair Practices*, *supra*, at 23. And upon tallying a large number of violations, state trial courts have broad discretion to set the value of *each penalty* between $0 and the statutory cap. *Supra* at 11. Plaintiffs can thus threaten massive civil penalties against politically disfavored businesses, regardless of their ability to prove actual damages.

This dynamic incentivizes states and municipalities to bring additional lawsuits on matters of public concern, with the goal of either (i) imposing crippling penalties on disfavored businesses and/or (ii) filling their respective treasuries. Indeed, absent the prospect of disproportionate penalties, states and municipalities presumably would devote more of their resources to cases involving provable harms to the public. *See Timbs*, 586 U.S. at 154 (noting that "state and local governments nationwide increasingly depend heavily on fines and fees as a source of general revenue").

C. The New Wave of Civil-Penalty Actions Harms Economic Growth and the Political Process.

Absent a check on disproportionate penalties, these actions will continue to impose significant costs on both the nation's economy and our political process.

To start, the risk of excessive civil penalties chills economic activity, discouraging investment in areas that could trigger major enforcement actions. *French Fries to Fossil Fuels*, *supra* at 2. In addition, the imposition of such penalties can cause businesses to close, causing job losses and a downturn in the economy. *See id.* at 2, 45. It also can harm consumers "by requiring an excessive increase in prices [and] an excessive diversion of resources to prevention activities." M. Block, *Optimal Penalties, Criminal Law and the Control of Corporate Behavior*, 71 B.U. L. REV. 395, 402 (1991); *see also* J. Cooper & J. Shepherd, *State UDAP Laws: An Economic & Empirical Analysis*, 81 ANTITRUST L.J. 947, 974 (2017).

At the same time, there is no guarantee that plaintiffs will use any recovered penalties to benefit the public. "[S]ome AGs have allocated money from [consumer protection] settlements and judgments to outside organizations or causes that have little or no connection to the litigation or to addressing the type of conduct that spurred the lawsuit." C. Silverman & J. Wilson, *State Attorney General Enforcement of*

Unfair or Deceptive Acts and Practices Laws: Emerging Concerns and Solutions, 65 U. KAN. L. REV. 209, 251 (2016). Many states and municipalities have also retained private plaintiffs' attorneys to litigate their civil-penalty actions. *Id.* at 217-18. And because those attorneys work on contingency, they will receive a sizable share of any excessive fine—a distribution with little upside to the regulated public. *See id.*

Additional problems arise when states and municipalities seek excessive fines from politically disfavored businesses. "Exorbitant tolls undermine other constitutional liberties." *Timbs*, 586 U.S. at 153. In particular, such fines can be used "to retaliate against or chill the speech of political enemies, as the Stuarts' critics learned several centuries ago." *Id.* at 153-54. Indeed, that chill is an objective of many civil-penalty suits that address matters of public concern. Consider the D.C. climate suit, in which the city's Attorney General promised to "end [the defendants'] disinformation campaigns," K. Racine, Office of the D.C. Attorney General, *Prepared Remarks: Exxon Mobil/BP/Chevron/Shell Lawsuit* (June 25, 2020), *available at* https://tinyurl.com/ywdsxm35, and requested "injunctive relief" to alter the content of their speech, *District of Columbia*, 2025 WL 1309618, at *1.

This use of civil-penalty actions harms the country's political process. The Constitution creates a careful scheme for resolving matters of public concern, dividing authority between three branches at the federal level while reserving many powers to the states. This system ensures that important issues are resolved by citizens' elected representatives, subject to constitutional limits. The new wave of civil-penalty actions, however, allows state and municipal officials to seek through the courts what they could not accomplish through the ballot box, due to either a lack of intrastate political power or the existence of a federal constitutional obstacle. That effort circumvents the basic structure of American governance. And it is only possible due to the threat of disproportionate civil penalties.

II. THIS COURT SHOULD REAFFIRM THAT COVERED FINES MUST BE PROPORTIONAL TO INDIVIDUAL DEFENDANTS' WRONGDOING.

These considerations underscore the need to reaffirm the central holding of *Bajakajian*—namely, that the Excessive Fines Clause requires proportionality between covered fines and the gravity of individual defendants' wrongdoing.

1. *Bajakajian* resolves the question presented in this case. The defendant in *Bajakajian* committed a customs offense by failing to declare roughly $350,000 in cash at a port of exit. 524 U.S. at 324-25. The Federal Government argued that the entire $350,000 was subject to criminal forfeiture. *Id.* at 325-26. This Court held that this forfeiture would violate the Excessive Fines Clause on the ground that it would be "grossly disproportional" to the specific facts of the defendant's conduct. *Id.* at 337-38.

Indeed, this Court rested its decision on several factors that were particular to the defendant's conduct, rather than applicable to all violators of the relevant customs law. These included (i) that the $350,000 was "the proceeds of legal activity and was to be used to repay a lawful debt," (ii) that the failure to report that cash was "unrelated to any other illegal activities," and (iii) that the defendant caused the Government only "minimal" harm. *Id.* at 337-39. The Court also compared the defendant's "culpability relative to other potential violators of the reporting provision." *Id.* at 339 n.14. And on that point, the Court weighed in the defendant's favor that he "[did] not fit into the class of persons for whom the statute was principally designed," such as "tax evaders, drug kingpins, or money launderers." *Id.* at 337-38 & 339 n.14.

The dissent in *Bajakajian* would have taken a different approach, focused on whether the defendant committed the *kind of offense* that warrants severe penalties. To the dissenters, the "crime of smuggling or failing to report cash is more serious than the Court [was] willing to acknowledge." *Id.* at 351 (Kennedy, J., dissenting). That is because the "drug trade, money laundering, and tax evasion all depend in part on smuggled and unreported cash." *Id.* And insofar as the defendant in *Bajakajian* "disprove[d] any link to [those] other crimes," the dissent emphasized that "money laundering is difficult to prove; for if the money launderers have done their job, the money appears to be clean." *Id.* at 351-52. For those reasons, the dissent would have resolved the case on a categorical ground: the forfeiture of "*all* [] unreported currency is sustainable *whenever* a willful violation is proved." *Id.* at 352 (emphasis added).

Bajakajian's reliance on the specific facts of the defendant's conduct requires reversing the decision below. As Petitioner explains, the Alaska Supreme Court understood the Excessive Fines Clause to require proportionality at a high level of generality. *See* Pet. Br. at 37-41. Most notably, the court reasoned that Petitioner's transportation of a small amount of beer caused "grave societal harm," on the ground that "[a]lcohol abuse in rural Alaska 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. With that observation, the Alaska Supreme Court did not focus its analysis on the specific harms caused by Petitioner's conduct. ("[A] six-pack of beer," standing alone, has few real-world effects. *Id.*) Instead, the court focused on the harms associated with alcohol smuggling more broadly, and attributed those social ills to Petitioner. *See id.* In that way, the Alaska Supreme Court followed the approach of *Bajakajian*'s dissent, rather than the opinion of the Court.

2. The decision below also contravenes the history of the Excessive Fines Clause. *See* Pet. Br. at 20-32. In its English origins, the rule against excessive fines required proportioning penalties "to the *particular* circumstances of the offence and the offender." 4 W. Blackstone, *Commentaries on the Laws of England* 373 (1871) (emphasis added). Indeed, Blackstone remarked that English law had long considered a defendant's ability to pay—a consideration that is inherently defendant-specific. *See id.* at 372 (noting the principle that "no man shall have a larger amercement imposed upon him, than his circumstances or personal estate will bear").

Across the Atlantic, the Founding generation similarly placed great importance on "the specific facts of the offense and the characteristics of the offender." B. Colgan, *Reviving the Excessive Fines Clause*, 102 CAL. L. REV. 277, 324 (2014). Indeed, while the Founding era saw few cases under the Excessive Fines Clause, criminal penalties were typically tied to "the degree of harm caused, the defendant's level of involvement and *mens rea*, the defendant's actions after the crime, and other individual characteristics bearing on culpability." *Id.* Many early statutes reflected this defendant-specific focus. *E.g.*, 1784 Mass. Acts 175 (setting punishments "according to the aggravation of the offence"); 1779 Vt. Acts & Resolves 35 (providing that courts "may impose such Fine as the Aggravation of the Offence, in their Judgment deserves, not exceeding Fifteen Pounds"); Act of Aug. 26, 1722, ch. 255, 3 Statutes at Large of Pennsylvania 300 (1896) (directing that all fines be set "according to the quality of the offense"); *see also* Colgan, *supra*, at 325 & n.245 (collecting other examples). This history confirms that *Bajakajian* was correct to focus on the specific nature of a defendant's conduct.

3. Moreover, a contrary approach to the Excessive Fines Clause would render it a nullity in most cases, including virtually all civil-penalty cases.

In general, the government may impose punishments pursuant only to lawfully enacted statutes. Thus, to prevail on an excessive fines defense, a defendant must show that a punishment authorized by statute is nonetheless disproportionate to the gravity of his offense. As *Bajakajian* illustrates, a defendant can clear this bar by showing that his specific conduct is much less culpable than other acts prohibited by the same statute. *See supra* at 19-20.

No defendant could clear that bar, however, if the Excessive Fines Clause required assessing each offense at a high level of generality. In particular, if the Clause required measuring punishments against the *kind of conduct* that a statute prohibits, the only way to prevail on an excessive fines defense would be to impugn the authorizing statute itself. A defendant would need to say that a punishment authorized by a statute is disproportionate to the general activity that the statute prohibits and the societal problems it seeks to forestall. Such an argument would have failed in *Bajakajian*, where the government could have pointed to the general evil of money laundering and the need to stop serious criminals from smuggling ill-gotten cash. *See supra* at 20. And similar arguments are available under most penalty statutes.

Consider the state consumer-protection statutes that impose civil penalties on a "per violation" basis. *See supra* at 11-14. Those statutes apply to a wide range of conduct, from minor labeling errors to willful consumer fraud. Under the Alaska Supreme Court's approach, a defendant could only challenge the excessiveness of a "per violation" penalty by showing that the penalty is disproportionate to that full range of activity. For example, a court could sustain an exorbitant penalty in a consumer-deception case by tying the defendant to the high costs of consumer deception as a general matter—or by reasoning that significant penalties are appropriate for at least some consumer-deception violations—without regard to the nature of the specific defendant's wrongdoing. This would make excessive fines challenges to "per violation" penalties all but unwinnable.

The contrast between two False Claims Act cases illustrates the point. On one hand, the federal district court in *D'Anna* imposed a $417 million civil penalty for False Claims Act violations that caused just $2 million in actual damages. 2025 WL 967162, at *1. To sustain this penalty under the Excessive Fines Clause, the court reasoned that "excessiveness is determined in relation to the characteristics of the offense," without regard to "the characteristics of the offender." *Id.* at *2 n.5 (quoting *United States v. 817 N.E. 29th Drive*, 175 F.3d 1304, 1311 (11th Cir. 1999)). On that premise, the court upheld the nine-figure penalty amount solely because (i) violating the False Claims Act is a serious offense and (ii) Congress set a $5,000 penalty for each statutory violation. *Id.* at *2. The court did not compare the total penalty amount to the gravity of the defendant's specific wrongdoing. *See id.* Nor did the court weigh the defendant's "culpability relative to other potential violators" of the False Claims Act. *Bajakajian*, 524 U.S. at 339 n.14. To the contrary, the court appears to have deemed those offender-specific facts irrelevant to the excessive fines analysis. *See* 2025 WL 967162, at *2 & n.5.

That reasoning and outcome are worlds away from the Eighth Circuit's decision in *Grant ex rel. United States v. Zorn*, 107 F.4th 782 (8th Cir. 2024) (Gruender, J.). In that case, the district court imposed a civil penalty of roughly $7.7 million but actual damages of just under $90,000. *Id.* at 791. The Eighth Circuit held that the civil penalties were excessive, in part because the defendants "caused a relatively small amount [] of only economic loss and did not endanger the health or safety of others." *Id.* at 799-800. Indeed, while the relator accused the defendants of "destroying medical records, contriving false diagnoses, and declining to consider treatment alternatives," the Eighth Circuit found no evidence for the accusations and declined to rely on "speculated harm." *Id.* at 799. Ultimately, the Eighth Circuit held that the Excessive Fines Clause required "limit[ing] the punitive sanction to a single-digit multiplier of compensatory damages." *Id.* at 800.

The difference between *D'Anna* and *Grant* confirms the importance of assessing proportionality based on the conduct of individual defendants, rather than at any higher level of generality. In particular, it illustrates that the Excessive Fines Clause does meaningful work in civil-penalty cases only when courts can weigh the total amount of a penalty against the gravity of specific defendants' wrongdoing. This Court should thus reverse the decision below—which failed to perform this analysis—and ensure that the Excessive Fines Clause remains a shield against exorbitant fines, including exorbitant civil penalties.

CONCLUSION

The judgment of the Alaska Supreme Court should be reversed.

Respectfully submitted,

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