No. 25-246

In the Supreme Court of the United States

KENNETH J. JOUPPI,

Petitioner,

v.

ALASKA,

Respondent.

On Writ of Certiorari to the Supreme Court of Alaska

BRIEF OF THE INSTITUTE FOR FREE SPEECH AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

Benjamin Gruenstein
Counsel of Record
Thomas H. Lee
Jonathon R. La Chapelle
GRUENSTEIN LAW PLLC
1185 Avenue of the Americas
New York, NY 10036
(212) 379-4910
bgruenstein@gruensteinlaw.com

Dated: September 10, 2026

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes and Regulations

Other Authorities

INTEREST OF *AMICUS CURIAE*[1]

The Institute for Free Speech (the "Institute") is a nonpartisan, nonprofit organization dedicated to protecting the First Amendment rights of speech, assembly, petition, and press. Along with scholarly and educational work, the Institute represents individuals and organizations in courts across the country and regularly files amicus briefs in cases raising important First Amendment questions.

As discussed below, the Excessive Fines Clause was born in part of efforts to suppress speech. The prohibition on excessive fines traces to the English Bill of Rights of 1689, adopted in response to the Crown's practice of imposing outsized fines to punish and silence its political and religious critics. This Court has since recognized that excessive fines can be a weapon to retaliate against and chill the speech of political adversaries. The Clause has thus served, from its origins, as a check against the government's use of monetary penalties to suppress disfavored expression.

That safeguard is of continuing concern to the Institute and those it represents. Federal and state campaign-finance laws routinely authorize civil penalties calculated on a per-violation basis, allowing enforcement authorities to aggregate individual reporting or disclosure infractions into penalties reaching hundreds of thousands, or millions, of dollars. Penalties of that magnitude, often bearing no

[1] Pursuant to Rule 37.6, *amicus curiae* states that no counsel for a party authored this brief in whole or in part, and no person other than *amicus*, its members, or its counsel made a monetary contribution intended to fund the preparation or submission of this brief.

relation to any concrete harm, threaten to deter the very political speech the First Amendment was designed to protect. The Excessive Fines Clause supplies an essential constraint on such government power, ensuring that fines imposed for participation in the political process remain proportional to the offense rather than a tool to chill protected speech.

The standard the Court adopts in this case for assessing whether a fine is constitutionally excessive will likely affect pending campaign-finance litigation. The Washington Supreme Court has recently upheld campaign-finance penalties in the tens of millions of dollars for reporting and recordkeeping failures, even though these penalties are untethered to any harm the violations actually caused. How this Court frames the excessiveness inquiry will determine whether penalties of this scale can withstand Eighth Amendment scrutiny going forward.

SUMMARY OF ARGUMENT

The Excessive Fines Clause was conceived in response to a particular abuse: the use of monetary penalties against political and religious dissenters. The 1689 English Declaration of Rights condemned excessive fines after the Stuart courts had used them against the Crown's political critics, against printers and pamphleteers, and against those who worshipped outside the established church. The Framers, who had watched royal governors and courts use seditious-libel fines to silence colonial printers, wrote the same protections into the Eighth Amendment. And when the Fourteenth Amendment made the guarantee applicable to the States, Congress legislated to abolish state laws and municipal ordinances that used fines to control the speech, worship, and assembly of newly freed Black persons. *See* Part I, *infra*.

The Excessive Fines Clause must continue to serve as a robust check on penalties generally, and on those imposed for participation in political life specifically. Recent cases arising from Washington state's enforcement of its campaign-finance disclosure laws resulting in staggering penalties show why. In one, decided by the Washington Supreme Court, regulators imposed nearly $25 million in penalties on Meta Platforms, Inc., for disclosure failures related to political advertising. Meta's violations consisted of omitting some required details from records it otherwise made public, even as it made publicly available the identities of the ad purchasers on its platforms and the cost of the advertising.

The Washington Supreme Court upheld that penalty against an Excessive Fines Clause challenge, as it had earlier upheld an $18 million penalty against a trade association that had concealed its members' contributions under the same law. The court undertook the same kind of analysis that the Alaska Supreme Court applied in this case. Rather than ask what harm the violations actually caused, the court measured the penalties against the purposes of the statute. The chilling effect of such enforcement was marked: rather than carry the Act's recordkeeping burden under threat of penalties on this scale, Meta and other technology companies stopped selling political advertising in Washington altogether. *See* Part II, *infra*.

ARGUMENT

I. The constitutional prohibition of excessive fines is a longstanding and essential shield against government suppression of political speech and religious worship.

The excessive-fines bar is the most deeply rooted of the three prohibitions inscribed in the Eighth Amendment and extended as against the states. It grew out of a need to protect the people from government using outsized fines to single out, deter, and punish persons and groups who engage in disfavored political speech or religious worship.

A. The Excessive Fines Clause is rooted in English constitutional history and tradition protecting against arbitrary imposition of fines for political speech and religious worship.

As Justice Ginsburg recognized in *Timbs v. Indiana*, our constitutional prohibition of excessive fines "traces its venerable lineage back to at least 1215, when Magna Carta guaranteed that '[a] Free-man shall not be amerced for a small fault, but after the manner of the fault; and for a great fault after the greatness thereof, saving to him his contenement.'" 586 U.S. 146, 151 (2019) (citation omitted). And as Justice Thomas further explained, Magna Carta itself expanded on the Charter of Liberties that King Henry I issued a century earlier in 1101: "[i]f any of my barons or men shall have committed an offence he shall not give security to the extent of forfeiture of his money, as he did in the time of my father, or of my brother, but according to the measure of the offence so shall he pay . . . ." *Timbs*, 586 U.S. at 160 (Thomas, J., concurring in the judgment) (citation omitted). Magna Carta constrained not only the Crown's power to set the magnitude of fines but also its power to impose such fines unilaterally and arbitrarily. Thus, to impose fines (then called "amercements") upon a "freeman," the Crown had to obtain the oaths of "the honest men of the neighborhood," and upon an earl or baron, the assent of "their peers." Magna Carta, chs. 20 & 21 (1215), in A. Howard, *Magna Carta: Text & Commentary* 42 (rev. ed. 1998).

Large fines were a key battleground in the constitutional conflict between absolutist-minded Stuart kings and their political and religious critics. Although Magna Carta put assessment of fines in the hands of an alleged offender's neighbors (if a freeman) or peers (if a noble), royal judges acted on their own, and arbitrarily, in levying outsized fines on the king's perceived enemies. Before its abolition in 1641, the Court of Star Chamber used fines as the Crown's principal weapon against allegedly seditious publications. *See, e.g.*, Proceedings against Bastwick, Burton & Prynne, 3 How. St. Tr. 711, 725 (Star Chamber 1637) (fines of £5,000 each for "writing and publishing seditious, schismatical and libellous Books against the Hierarchy"). When the task of exacting fines migrated to King's Bench, its judges continued to deploy them against religious dissenters. *Browning-Ferris Indus. of Vt. v. Kelco Disposal, Inc.*, 492 U.S. 257, 267 (1989). Thus, in 1680, a House of Commons committee, upon surveying all fines levied by the judges of King's Bench since 1677, found that the court "hath acted arbitrarily, illegally, and partially; favouring Papists, and Persons popishly affected; and excessively oppressing his Majesty's Protestant Subjects." 9 Journals of the House of

Commons 691–92 (Dec. 23, 1680). Subsequently, Commons prepared articles of impeachment against Chief Justice William Scroggs of King's Bench charging him with having "most notoriously departed from all Rules of Justice and Equality, in the Imposition of Fines upon Persons convicted of Misdemeanors" without "any Regard to the Nature of the Offences, or the Ability of the Persons." *Id.* at 698. The 346-year-old language of imposing fines for misdemeanors without "any Regard to the Nature of the Offences" closely tracks the question presented in this case of assessing a fine "purely in the abstract" without considering the "gravity of the specific defendant's wrongdoing." Brief for Petitioner at i (Question Presented), *Jouppi v. Alaska*, No. 25-246 (U.S. Sept. 3, 2026).

The English king and his judges nonetheless continued to impose "even more excessive and partisan" fines on the Crown's critics, culminating in Article 10 of the English Declaration of Rights of 1689. L. Schwoerer, *The Declaration of Rights*, 1689, at 91 (1981), quoted in *Browning-Ferris*, 492 U.S. at 267. As Justice Thomas recounted in his *Timbs* concurrence, "[f]or speaking against the Duke of York, the sheriff of London was fined £100,000 in 1682"—an astonishing amount corresponding to "well over $10 million in present-day dollars." 586 U.S. at 162–63. In 1684, Chief Justice George Jeffreys of King's Bench fined Sir Samuel Barnardiston £10,000 for sedition when he wrote private letters stating that "the papists and high tories are quite down in the mouth." Trial of Sir Samuel Barnardiston, 9 How. St. Tr. 1333, 1335 (K.B. 1684). Despite being a direct object of Barnardiston's alleged sedition, Jeffreys tried the case himself and directed a guilty verdict. In 1689, after the Glorious Revolution ended the reign of James II of the Stuarts, the House of Lords overturned the fine as "exorbitant and excessive." 14 Journals of the House of Lords 210 (May 14, 1689). That same year, the Convention Parliament presented William and Mary with the Declaration of Rights, later enacted as the Bill of Rights, which provided that "excessive Baile ought not to be required nor excessive Fines imposed nor cruell and unusuall Punishments inflicted." Bill of Rights 1689, 1 Wm. & Mary, ch. 2, § 10, in 3 Eng. Stat. at Large 440, 441 (1689).

B. The Eighth and Fourteenth Amendments protect against government imposition of excessive fines to control political speech and religious worship.

The Excessive Fines Clause of the Eighth Amendment was "taken verbatim from the English Bill of Rights of 1689," *United States v. Bajakajian*, 524 U.S. 321, 335 (1998). As Justice Story concluded in 1833, it was "an admonition to all departments of the national government" against the excesses that occurred during "the arbitrary reigns of some of the Stuarts," including "excessive bail" demanded of "persons, who were odious to the court, and its favourites" and "[e]normous fines and amercements." 3 J. Story, *Commentaries on the Constitution of the United States* § 1896 (1833). This Court held unanimously in *Timbs* that the Clause applies to the States by virtue of the Fourteenth Amendment, and recognized the role exorbitant fines can play "to retaliate against or chill the speech of political enemies, as the Stuarts' critics learned several centuries ago." 586 U.S. at 150, 153–54.

At the time the Fourteenth Amendment was framed, the paradigm excessive fine in this country was a fine on a Black man for preaching or attending a meeting. Southern legislatures and municipalities used fines to constrain what freed Black citizens could preach, publish, and assemble to discuss, and Congress framed the Fourteenth Amendment against that record. This Court in *Timbs* recognized that the odious Black Codes carried "draconian fines," and when "newly freed slaves were unable to pay imposed fines, States often demanded involuntary labor instead," effectively restoring indentured servitude. *Timbs*, 586 U.S. at 153. But the Codes used large fines not only to coerce forced labor but also to chill political speech and assembly and religious worship.

Mississippi's penal act of November 29, 1865, is the best example of such excessive fines. Section 2 of the act made it a misdemeanor for "any freedman, free negro, or mulatto" to engage in "seditious speeches, insulting gestures, language, or acts," or to "exercis[e] the function of a minister of the Gospel without a license from some regularly organized church," and set the penalty at a fine of "not less than ten dollars, and not more than one hundred dollars." 1865 Miss. Laws p. 165, § 2, reprinted in 1 *Documentary History of Reconstruction* 290 (Walter L. Fleming ed., 1906). An offender could also "be imprisoned at the discretion of the court, not exceeding thirty days." *Id.* This scheme of imposing large fines for worshipping outside the state-licensed church was reminiscent of the methods the Star Chamber had deployed to quell political and religious dissent. However, while in Stuart England, a critic of the Crown who could not pay was imprisoned (like Barnardiston), a freed Black person who could not pay his fine for "seditious speech" or preaching could "be hired out by the sheriff or other officer, at public outcry, to any white person who will pay said fine and all costs." *Id.* § 5.

Another Mississippi law, enacted on November 24, 1865, exacted exorbitant fines any time free Black persons and their White allies exercised the First Amendment right of assembly. It deemed as "vagrants" all Black persons "found unlawfully assembling themselves together either in the day or night time," together with "all white persons so assembling" with them or "usually associating" with them "on terms of equality," and fined the Black offender up to fifty dollars and the White offender up to two hundred dollars. 1865 Miss. Laws p. 90, § 2, reprinted in 1 *Documentary History of Reconstruction* 283–85 (Walter L. Fleming ed., 1906). This Court cited that provision in *Timbs* for the conversion of unpaid fines into forced labor, 586 U.S. at 152–53, but the statute also imposed ruinous fines on Black and White persons for assembling together as equals.

Southern municipal governments passed similar ordinances levying large fines on political speech and free worship. A police jury ordinance in St. Landry Parish, Louisiana, prohibited "public meetings or congregations" of Black persons after sunset and permitted daytime meetings only "by the special permission in writing of the captain of patrol," except for "the usual church services, conducted by white ministers and priests." Each violation of that section resulted in a five-dollar fine. S. Exec. Doc. No. 2, 39th Cong., 1st Sess. 93–94 (1865). The ordinance also levied a ten-dollar fine against a Black person who dared "to preach, exhort, or otherwise declaim to congregations of colored people, without a special permission in writing from the president of the police jury." *Id.* The Louisiana towns of Opelousas and

Franklin imposed the same ten-dollar fines for preaching without the mayor's permission. *Id.* at 92–93 (Opelousas, ordained July 3, 1865); *Id.* at 95–96 (Franklin, dated July 28, 1865). Together these provisions imposed mandatory government licenses on the pulpit and the meeting hall and fined anyone who spoke without the license, also reminiscent of Stuart England.

The Thirty-Ninth Congress, which proposed and debated the Fourteenth Amendment, had direct knowledge of these ordinances imposing excessive fines on the exercise of First Amendment rights. Debating the Freedmen's Bureau bill on January 30, 1866, Representative Thomas Dawes Eliot of Massachusetts condemned the legal restrictions imposed on freedmen in the southern States "as repugnant to our sense of honor and justice as ever any arrangements under the old slave codes could have been," and read the entire Opelousas ordinance into the record. Cong. Globe, 39th Cong., 1st Sess. 516–17 (1866). Those pages sit between the passages this Court cited in *Timbs* regarding excessive fines. *See* 586 U.S. at 153 (citing Cong. Globe 443, 1123–24).

The same instrument of large fines that governments levied arbitrarily and ordinary persons could not pay was turned against Chinese residents in the West a few years later. San Francisco required city supervisors' consent to operate a laundry in a wooden building, withheld consent to some two hundred Chinese laundrymen and one Irish launderwoman while permitting roughly eighty others to continue business as usual, and enforced the requirement by a ten-dollar fine that became a jail term when the laundry operator failed to pay. *Yick Wo v. Hopkins*, 118 U.S. 356, 357–59 (1886). This Court held the ordinance unconstitutional as administered, in language that speaks directly to how arbitrary fines must be reviewed under the Eighth Amendment: a law "fair on its face and impartial in appearance" is still forbidden if "applied and administered by public authority with an evil eye and an unequal hand." *Id.* at 373–74. In 1879, sitting as Circuit Justice, Justice Field had invalidated another San Francisco ordinance under which the Qing-era long-hair queue of a Chinese male prisoner—jailed because he could not pay a ten-dollar fine for lacking five hundred cubic feet of living space—was cut, rejecting the measure's seeming neutrality as against its blatant purpose to target Chinese male laborers. *Ho Ah Kow v. Nunan*, 12 F. Cas. 252, 253–54 (C.C.D. Cal. 1879) (No. 6,546). *See also* Denny Chin & Thomas H. Lee, *Asian Americans and the Law* 127–41 (2025).

That these challenges proceeded under the Equal Protection Clause is itself instructive: the Excessive Fines Clause did not then run against the States as it does now under *Timbs*. *See* 586 U.S. at 150, 154–55. Arbitrary and vindictive government power that once had to be attacked sideways through formal but unequal application falls squarely within the Excessive Fines Clause this Court has since incorporated.

II. Recent cases imposing disproportionate penalties for campaign-finance disclosure violations demonstrate the need for a robust excessiveness analysis to protect political speech.

Governments continue to exact the sort of large and arbitrary fines that in effect suppress political speech in a way similar to that which inspired the

Excessive Fines Clause and its ancient English antecedents. High-profile cases in point are two enforcement actions brought by Washington's Attorney General under the State's campaign-finance law (the Fair Campaign Practices Act or FCPA) which resulted in multimillion-dollar civil penalties for recordkeeping, reporting, and disclosure infractions. The Washington Supreme Court upheld both exorbitant fines without "any Regard to the Nature of the Offences" as King's Bench did during the Stuart era and "purely in the abstract" without considering the "gravity of the specific defendant's wrongdoing" as Alaska's highest court has done here. If this Court applies the same analysis in this case, it will weaken the deeply rooted protections of political speech that the Excessive Fines Clause has enforced in our constitutional history and tradition.

1. The first Washington case involved an attempt by the Grocery Manufacturers Association (Association or GMA), a national trade association of food and beverage companies, to mask the specific members who donated money to defeat a Washington referendum (Initiative 522) requiring disclosure of genetically modified organisms in packaged foods. The Association's opposition to a prior California referendum to require GMO labels had sparked a public backlash against disclosed donors which the GMA sought to avoid.

Consequently, the GMA contributed about $11 million of the $14 million it raised to oppose GMO labeling to "No on 522," a committee that led opposition to Initiative 522. However, the GMA did not register as a political committee with the State's Public Disclosure Commission (Commission or PDC) until it was sued, 224 days after the FCPA required it do so. Nor did the Association file reports with the PDC until after the Washington Attorney General sued. In court, the State asked for a base penalty of $14.62 million corresponding to the amount it alleged the GMA had raised, trebled for intentional concealment for a total of $43.86 million. The GMA argued that it should be fined no more than $622,800 based on a per-day/per-violation calculation of its delay in registering with the Commission (224 days) and the number of missing reports (47). *State v. Grocery Mfrs. Ass'n*, 502 P.3d 806, 809 (Wash. 2022) (*GMA II*).

The trial court granted summary judgment to the State on liability. After a bench trial on penalties, the court imposed a base penalty of $6 million and trebled that figure to $18 million—at the time the largest campaign-finance penalty ever assessed in the State. *State v. Grocery Mfrs. Ass'n*, 461 P.3d 334, 341 (Wash. 2020) (*GMA I*); *GMA II*, 502 P.3d at 825 & n.21 (dissenting opinion). The court arrived at $6 million under an FCPA provision authorizing "a civil penalty equivalent to the amount not reported as required," former Wash. Rev. Code § 42.17A.750(1)(f) (current version at Wash. Rev. Code § 29B.60.010(1)(g)), rather than under the Act's per-day/per-violation maximum of $10,000, *id.* § 42.17A.750(1)(c). It then trebled the figure, as the Act permits where "the violation is found to have been intentional." *Id.* § 42.17A.780.

The case ultimately reached the Washington Supreme Court, which rejected GMA's argument that this penalty violated the Excessive Fines Clause. *GMA II*, 502 P.3d at 816. In a 5-4 decision, the court held that the $18 million penalty was not grossly disproportionate to the offense, which it characterized in abstract terms. GMA's conduct, it said, "struck at the core of open and transparent elections." *Id.* at 813. The court looked to the Act's "declaration of policy" to conclude that GMA's offense "was grave and the extent was broad." *Id.* at 823 (dissenting opinion). It did not ask what the failure to timely register and report had concretely cost the electorate. Four justices dissented on precisely this point: "[a] reporting offense is a reporting offense," and the harm such an offense causes is "depriving the government, and in this case the people, of information." *Id.* at 825 (dissenting opinion).

2. After *GMA*, the same court decided *State v. Meta Platforms*, also involving FCPA reporting and recordkeeping violations, on similar reasoning. 590 P.3d 1099 (Wash. 2026).

In 2018, the PDC adopted a regulation "to specify that digital communication platforms that host political advertisements count as 'commercial advertisers'" that must maintain records of political advertisements in a file open for public inspection. *Id.* at 1126 (dissenting opinion). As a result, "Meta announced that beginning December 28, 2018, it would no longer accept advertisements 'that relate to Washington's state or local elected officials, candidates, elections or ballot initiatives.'" *Id.* at 1127 (dissenting opinion).

Despite Meta's ban, a few such ads managed to run. Between 2019 and 2021, three members of the public had made twelve requests of Meta for political-advertising records. *Id.* at 1105. The FCPA requires every commercial advertiser that has accepted or provided political advertising to "maintain current books of account and related materials," keep them "open for public inspection" during the campaign and for no less than five years after the election, and furnish copies to the PDC on request. Former Wash. Rev. Code § 42.17A.345(1)–(2). The Commission's rule applies the same obligation to digital platforms and specifies the particulars they must retain and produce. Wash. Admin. Code § 390-18-050(3), (4), (6)–(7).

Meta maintains a public "Ad Library" from which it drew its responses to meet the Act's recordkeeping and reporting requirements. Meta's responses, however, omitted certain particulars the Commission's rule requires—among them the precise cost and method of payment for each advertisement and data on the audience targeted and reached. *Meta*, 590 P.3d at 1127 (dissenting opinion). The Washington Attorney General sued in 2020.

The state trial court entered judgment for the State and found the violations willful. It counted 822 violations, one for each advertisement covered by the requests, and applied the Act's maximum of "ten thousand dollars for each violation." Former Wash. Rev. Code § 42.17A.750(1)(c). Trebled, the result was a penalty of $24.66 million, and roughly $35 million with legal fees and costs due to the State. *Meta*, 590 P.3d at 1105, 1114.

The court of appeals affirmed, and on June 18, 2026, the Washington Supreme Court allowed the judgment to stand, although no opinion commanded a majority. On the excessive-fines question the justices divided 6-3. Six held that a penalty of roughly $35 million (including legal fees and costs) was not excessive. *Id.* at 1118. The lead opinion acknowledged that Meta "did not outright hide the identity of political contributors," as GMA had, but reasoned that its failures "similarly defy the FCPA's strong goal of promoting transparency," and that "[r]educing the penalty would undercut the disclosure law's clearly worded intent to enhance penalties for violators." *Id.*

Three justices would have held the penalty unconstitutional. These dissenters decried that the lead opinion characterized the harm "in the most generic terms possible," and "generic considerations of harm" are "largely unhelpful" because "all crimes have a negative impact in some general way to society." *Id.* at 1141 (dissenting opinion). The focus instead, according to the dissent, should be on "the actual harm caused by Meta's violations," and here "that actual harm is minimal." *Id.* Meta's violations "consisted of failing to disclose some required information, not withholding or concealing all information": Meta "did not withhold identities of ad purchasers or information about the cost of the ads," but "published that information (with the cost represented as a range) on its Ad Library, available to the public," and "only three people were deprived of requested information." *Id.* at 1140–41. Meta's failure "to disclose some, but not all, of the required information about political advertisements, even 822 times," the dissent concluded, "is grossly disproportionate to the $35 million penalty"—"the State's—and country's—largest campaign finance penalty ever," exceeding the previously largest GMA fine. *Id.* at 1141.

3. The enforcement actions resulting in disproportionate fines for campaign-finance recordkeeping, disclosure, and reporting obligations have already chilled political speech in the state—Meta stopped running political ads there in 2018 and other platforms have done the same. Pet. for Review at 1, *State v. Meta Platforms, Inc.*, No. 103748-1 (Wash. filed Jan. 2, 2025). Only a robust

interpretation of the Excessive Fines Clause focused on actual harm will prevent arbitrary and excessive enforcement. This conclusion is consistent both with the test laid out in *Bajakajian* and the deeply rooted constitutional protection of political speech at the heart of the Excessive Fines Clause.

CONCLUSION

For the foregoing reasons, the judgment of the Supreme Court of Alaska should be reversed and the case remanded for further proceedings.

Respectfully submitted,

BENJAMIN GRUENSTEIN
Counsel of Record
THOMAS H. LEE
JONATHON R. LA CHAPELLE
GRUENSTEIN LAW PLLC
1185 Avenue of the Americas
New York, NY 10036
(212) 379-4910
bgruenstein@gruensteinlaw.com

Counsel for Amicus Curiae

September 10, 2026