No. 25-246

In the Supreme Court of the United States

KENNETH J. JOUPPI, PETITIONER

v.

STATE OF ALASKA

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF ALASKA

BRIEF FOR PROFESSORS JESSICA ASBRIDGE, JULIA D. MAHONEY, AND SHELLEY ROSS SAXER AS AMICI CURIAE SUPPORTING PETITIONER

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TABLE OF CONTENTS

Page

Table of Contents—continued:

TABLE OF AUTHORITIES

Cases:

In the Supreme Court of the United States

No. 25-246

KENNETH J. JOUPPI, PETITIONER

v.

STATE OF ALASKA

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INTEREST OF THE AMICI CURIAE[1]

Professor Jessica Asbridge is Professor of Law at Baylor University Law School. Professor Julia D. Mahoney is the John S. Battle Professor and Hunton Andrews Kurth Professor at the University of Virginia School of Law. Professor Shelley Ross Saxer is the Laure Sudreau Endowed Professor of Law at Pepperdine

[1] No party or party's counsel authored any portion of this amicus brief. No party or party's counsel, and no person other than amici and their counsel, made any financial contribution to the preparation or submission of this brief.

Caruso School of Law.[2] All amici are law professors who study government power to take private property—in its various forms, including forfeitures, fines, takings, and exactions—and the restraints the federal Constitution imposes on that power. Their scholarly work includes extended treatment of the history, doctrine, and practical considerations relevant to this Court's consideration of the question presented.

Although amici have different perspectives on constitutional interpretation and on government power to take private property, they are filing this brief jointly to set out their shared view on the correct resolution of the question presented. Amici submit, briefly, that the original meaning of the Excessive Fines Clause, as further elucidated by tradition and precedent, requires an inquiry into the excessiveness of monetary penalties and forfeitures (both considered fines) that takes account of the culpability of the defendant's conduct. In carrying out that inquiry, it is the *defendant's* conduct that should matter, not the hypothetical most-egregious-imaginable conduct that might warrant a monetary penalty at the statutory maximum. Without meaningful judicial inquiry into whether a forfeiture is excessive, state and local governments will be free to employ their forfeiture regimes to raise revenue, treating as "merely coincidental" the relationship between the actual cost a crime imposes and the forfeited property the government collects. *Austin* v. *United States*, 509 U.S. 602, 622 n.14 (1993).

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[2] Institutional affiliations are included only for purposes of identification. Amici submit this brief on their own behalf.

SUMMARY OF ARGUMENT

I. Whether a forfeiture is unconstitutionally excessive turns on the defendant's own conduct, not on the hypothetical conduct that might warrant a penalty at the statutory maximum. The Excessive Fines Clause traces its lineage to Magna Carta's guarantee that a freeman would be amerced "after the manner of the fault," and "for a great fault after the greatness thereof." Amercements were measured against the offender's actual fault, not against the worst offense the sovereign could imagine. The relevant history of forfeiture confirms the point. Of the three forms of forfeiture known to English common law at the Founding, only statutory forfeiture took hold here in the United States. That narrow practice reached only objects used to violate the customs and revenue laws, constrained by "a deep belief in the impropriety of taking property from those who lacked real culpability." Shelley Ross Saxer, *Forfeiture Takings, Police Power, and Necessity Destruction*, 80 U. Mia. L. Rev. 147, 162 (2025) (quoting Kevin Arlyck, *The Founders' Forfeiture*, 119 Colum. L. Rev. 1449, 1452, 1503 (2019)). The sort of criminal in personam forfeiture that Alaska imposed here goes well beyond what was allowed at the time of the Founding, and it should not be permitted to abandon the tradition of considering individual culpability, too. The First Congress rejected *in personam* forfeiture as punishment for federal crimes, and Congress did not resurrect it until 1970. That history supplies the correct yardstick to answer the question presented.

II. Consistent with that tradition, amici propose a two-part inquiry into whether a forfeiture violates the Excessive Fines Clause. Qualitatively, courts should require a nexus between the property subject to forfeiture and the defendant's offending conduct. Quantitatively, courts should ask whether the value of the forfeited property is grossly disproportionate to the harm arising from the defendant's conduct. This Court referred to "gross disproportionality" in *Bajakajian* not because the constitutional protection is toothless, but in contradistinction to "strict proportionality," which the Court thought unworkable. *United States* v. *Bajakajian*, 524 U.S. 321, 336 (1998). The Court in *Bajakajian* measured the forfeiture there against the gravity of the offense actually committed and the $5,000 fine actually imposed. *Id.* at 339–340. Here, the Alaska Supreme Court did the opposite. It measured the $95,000 airplane against the $10,000 maximum fine the legislature had authorized—rather than the $3,000 fine the trier of fact thought appropriate after considering the statutory range. A statutory maximum is a poor proxy for culpability, because legislatures have every incentive to raise maximum penalties—especially financial ones—to increase their leverage and their coffers. Under the appropriate excessiveness standard grounded in history and tradition, forfeiture of Jouppi's $95,000 airplane for transporting a six-pack of beer is grossly disproportionate and thus unlawful.

III. Forfeitures and other fines warrant closer examination than other sanctions. Incarceration costs the government money; forfeiture makes it money, and "it makes sense to scrutinize governmental action more closely when the State stands to benefit." *Harmelin* v. *Michigan*, 501 U.S. 957, 978 n.9 (1991). The Court's decisions considering government exactions of private property supply a better framework than deference to hypothetical maximum fines: when the government conditions a benefit on the surrender of property, it must show a nexus and rough proportionality to the harm the private party caused. The same justifications carry over here, where the government stands to acquire the property and the political safeguards are weak.

IV. These concerns are not academic. Fine revenue now exceeds half of general revenue in dozens of American cities, local governments have foreclosed on homes over code-enforcement fines, and forfeiture proceeds can fuel off-the-books government spending outside the ordinary budget process. Affirming the decision below would tell governments that a forfeiture many times larger than the authorized fine passes muster so long as the legislature wrote the maximum fine high enough.

ARGUMENT

Amici submit this brief to make four basic points. *First*, history and tradition support assessing whether a forfeiture imposes an excessive punishment on the defendant by reference to the defendant's specific conduct rather than to the conduct that might warrant imposition of a statutory maximum penalty. *Second*, the inquiry should require that the forfeited property have a sufficient nexus with the defendant's crime—sufficient not just qualitatively (*i.e.*, the property had some kind of involvement) but quantitatively as well (*i.e.*, the property's value is not disproportionate to the actual harm arising from the defendant's criminal conduct). *Third*, closer examination is necessary because, since modern forfeiture has largely broken out of the common-law boundaries that contained it, the stream of revenue it provides to state and local governments has overcome any checks the political process could provide. *Fourth*, affirming the decision below would weaken the protections of the Excessive Fines Clause and embolden state and local governments to impose inequitable burdens through forfeitures and other fines.

I. HISTORY AND TRADITION SUPPORT AN INDIVIDUALIZED PROPORTIONALITY ANALYSIS THAT FOCUSES ON THE DEFENDANT'S SPECIFIC CONDUCT, NOT THE HYPOTHETICAL WORST-CASE OFFENDER

At common law, courts looked to a defendant's specific conduct to determine whether a fine was excessive relative to the defendant's conduct. See, *e.g.*, Pet. Br. 20–28; see also American Free Enterprise Chamber of Commerce Amicus Br. 5–10. That historic tradition of examining the guilty conduct is highly relevant—not just in its own right, but especially in light of present-day forfeiture's expansion far beyond its common-law antecedents.

As the Court has recognized, the "Excessive Fines Clause 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 . . . .'" *Timbs* v. *Indiana*, 586 U.S. 146, 151 (2019) (quoting § 20, 9 Hen. III, ch. 14, in 1 Eng. Stat. at Large 5 (1225)) (emphasis added). Thus, Magna Carta's excessive-fines bar imposed a test sustaining amercements that began with proportionality: the fine could not exceed an amount proportionate to the defendant's "fault." Amercements against earls and barons could be issued "only in proportion to the measure of the offense." *E.g.*, Beth A. Colgan, *Reviving the Excessive Fines Clause*, 102 Cal. L. Rev. 277, 321 n.223 (2014) (citing Magna Carta, chs. 21–22 (1215), reprinted in A.E. Dick Howard, Magna Carta: Text and Commentary (rev. ed. 1998), and explaining that it incorporated the same principle for clerks).[3]

Forfeitures have a distinct historical tradition, yet, like amercements, are also considered "punitive" and have been strictly limited in this country's tradition. *Austin* v. *United States*, 509 U.S. 602, 613 (1993). At the time the Eighth Amendment was ratified, English common law recognized three types of forfeitures: deodand, "forfeitures of estate," and statutory forfeiture.

[3] Under Magna Carta's second criterion, *salvo contenemento* ("saving to him his contenement"), courts would lessen the fine where it was important for preserving a defendant's "ability to maintain a livelihood." Colgan, *supra*, at 320–321. The question of the fine-paying defendant's means and ability to pay is outside the question presented here, though it could become relevant in future cases.

Shelley Ross Saxer, *Forfeiture Takings, Police Power, and Necessity Destruction*, 80 U. Mia. L. Rev. 147, 161–162 (2025). Deodand forfeiture, through which "the value of an inanimate object . . . causing the accidental death of a King's subject was forfeited to the Crown," has never been recognized in the United States. *Id.* at 162 (citations omitted). Nor have "forfeitures of estate," through which the "convicted felon forfeited his chattels to the Crown and his lands escheated to his lord; the convicted traitor forfeited all of his property, real and personal, to the Crown." *Austin*, 509 U.S. at 611–612 (citation omitted); 4 William Blackstone, Commentaries *381 (1769).

Rather, only statutory forfeitures took hold, as a narrow category: statutory forfeiture reached objects used to violate the customs and revenue laws, and it was understood as punishment constrained by "a deep belief in the impropriety of taking property from those who lacked real culpability." Saxer, *supra*, at 162 (quoting Kevin Arlyck, *The Founders' Forfeiture*, 119 Colum. L. Rev. 1449, 1452, 1503 (2019)). And regardless of whether statutory forfeitures proceed *in rem* or *in personam*, both types of forfeitures nevertheless were seen as "impos[ing] punishment." *Austin*, 509 U.S. at 613 (citing *Peisch* v. *Ware*, 8 U.S. (4 Cranch) 347 (1808)).

Amercements and forfeitures supply the relevant "historical tradition" against which to evaluate Alaska's forfeiture here, which proceeded against petitioner (*in personam*) rather than against the airplane itself (*in rem*). *E.g.*, *United States* v. *Bajakajian*, 524 U.S. 321, 332 (1998). As Professor Saxer has explained, "[c]riminal forfeiture serves as additional punishment after the owner of property is guilty of a crime under *in personam* jurisdiction." Saxer, *supra*, at 217. By contrast, "[a] civil forfeiture proceeding is brought *in rem* against the property, which is considered guilty, so it is irrelevant whether the property owner is guilty, and no criminal charges or convictions are required." *Ibid.* The forfeiture of Jouppi's plane proceeded as a criminal *in personam* action, just as the criminal forfeiture of currency in *Bajakajian* did, and it, just like the forfeiture in that case, was intended as punishment. "The forfeiture in this case does not bear any of the hallmarks of traditional civil *in rem* forfeitures"; it "serves no remedial purpose [and] is designed to punish the offender." *Bajakajian*, 524 U.S. at 331–332. That is so "even if [the seized property] is an instrumentality of the crime" and the government could have proceeded against the property "in a civil *in rem* proceeding" as an alternative. Saxer, *supra*, at 226.

Criminal *in personam* forfeitures are at most a narrow aspect of our history. In England during "the Middle Ages and at common law," those type of criminal forfeiture sanctions were "part of the punishment imposed for felonies and treason." *Bajakajian*, 524 U.S. at 332 (citing W. McKechnie, *Magna Carta* 337–339 (2d ed. 1958), and 2 F. Pollock & F. Maitland, *The History of English Law* 460–466 (2d ed. 1909)); see also *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 416 U.S. 663, 682 (1974); Leonard W. Levy, *A License to Steal: The Forfeiture of Property* 24–34 (1996). But those traditions were not featured as part of federal criminal law at the dawn of the United States: "The First Congress explicitly rejected *in personam* forfeitures as punishments for federal crimes," and "[i]t was only in 1970 that Congress resurrected the English common law of punitive forfeiture to combat organized crime and major drug trafficking." *Bajakajian*, 524 U.S. at 332 n.7. In fact, "it was not until 1992 that Congress provided for the criminal forfeiture of currency." *Ibid.*

Thus, as Justice Thomas has observed, punitive forfeitures are a "narrow historical" practice in this country. *Leonard* v. *Texas*, 580 U.S. 1178, 1179 (2017) (Thomas, J., statement respecting the denial of certiorari). For the first two hundred years of our constitutional history, that remained the case. Yet modern practice has not stayed in that narrow lane. As this brief will discuss, the expansion of forfeiture does not justify discarding the common-law principle that a fine is excessive if it is disproportionate to the offender's conduct. If anything, state and local forfeiture power creates a set of incentives that call for retaining that proportionality principle.

II. THE INQUIRY MOST CONSISTENT WITH THE ORIGINAL MEANING OF THE EXCESSIVE FINES CLAUSE WOULD REQUIRE COURTS TO EVALUATE NOT MERELY THE EXISTENCE OF A QUALITATIVE NEXUS CONCERNING THE PROPERTY SUBJECT TO FORFEITURE, BUT ALSO THE QUANTITATIVE RELATIONSHIP BETWEEN THE PROPERTY AND THE DEFENDANT'S CONDUCT

Consistent with historical tradition, amici propose a framework for assessing whether an *in personam* criminal forfeiture violates the Excessive Fines Clause. That framework has two components. First, a qualitative connection: courts should require a nexus between the property subject to forfeiture and the offense. Second, a quantitative consideration: courts should evaluate whether the value of the property subject to forfeiture is grossly disproportionate to the harm of the defendant's criminal conduct.

A. Along The Qualitative Axis, Courts Should Require A Nexus Between The Property Subject To Forfeiture And The Defendant's Offense

As a threshold inquiry, courts should determine whether there is a logical nexus between the property subject to forfeiture and the defendant's criminal conduct.

"If the government wants to keep the property after the conviction becomes final, it needs some justification." *Frein* v. *Pennsylvania State Police*, 47 F.4th 247, 253 (3d Cir. 2022). Even if the government has "prove[n] the owner's guilt at trial," *ibid.*, the question is still whether the conviction justifies the seizure.

Such an inquiry is not ordinarily too complex and courts may draw upon precedents from both criminal and civil forfeiture contexts. In an "instrumentality" case that involves property actually used to commit a crime, the nexus may be easy to identify once the crime itself is proved. In other cases, however, especially those involving the alleged "proceeds" of crime—or, as the government frequently asserts, "proceeds of proceeds"—this requirement may invalidate a forfeiture without the need to assess culpability or disproportion. Where the government's theory of liability is sufficiently diffuse, for example, an enforcement authority aggressively seeking to maximize forfeiture recovery may well assert that a defendant's entire ordinary business revenues are "proceeds" or commingled with them. This first step in the analysis thus is an important constraint.

B. Along The Quantitative Axis, Courts Should Require That A Forfeiture Not Be Grossly Disproportionate To The Defendant's Offense

1. The Court Selected The "Grossly Disproportionate" Standard As An Alternative To A Perceived Unworkable "Strict Proportionality" Standard

The starting point from this Court's cases should not be misunderstood to require extreme deference that leaves the constitutional protection toothless. The Court's references to "grossly disproportionate" fines require real scrutiny.

In *Bajakajian*, the Court framed the "constitutional question" that it sought to "address" as "just how proportional to a criminal offense a fine must be." 524 U.S. at 335. The Court said that "the text of the Excessive Fines Clause does not answer it," "[n]or does its history," nor did a variety of other sources. *Ibid.* In "deriving a constitutional excessiveness standard," the Court found two considerations relevant: first, "that judgments about the appropriate punishment for an offense belong in the first instance to the legislature," and second, "that any judicial determination regarding the gravity of a particular criminal offense will be inherently imprecise." *Bajakajian*, 524 U.S. at 336.

With these considerations in mind, the Court expressly rejected a test "requiring strict proportionality between the amount of a punitive forfeiture and the gravity of a criminal offense." *Bajakajian*, 524 U.S. at 336. The Court then explained that "therefore," because it rejected "strict proportionality," it elected to "adopt the standard of gross disproportionality articulated in our Cruel and Unusual Punishments Clause precedents." *Ibid.*

In other words, the Court saw two proportionality measures—"strict proportionality" and "gross disproportionality"—and used the latter because the former was not workable. But "gross disproportion" is not a null set. *Bajakajian* confirms that point: the Court ruled that the full forfeiture of $357,144 violated the Excessive Fines Clause because it was grossly disproportionate to Bajakajian's criminal offense. 524 U.S. at 339–340. That "crime was solely a reporting offense" without meaningful harm; "[i]t was permissible to transport the currency out of the country so long as he reported it." *Id.* at 337. The Court noted additional considerations that further bolstered its conclusion, among them that "under the Sentencing Guidelines, the maximum sentence that could have been imposed on respondent was six months, while the maximum fine was $5,000." *Id.* at 338.

2. The "Grossly Disproportionate" Inquiry Must Be Made With Reference To The Defendant's Actual Criminal Offense Rather Than With Reference To A Hypothetical Worst-Case Offender's Conduct Contemplated By The Legislature

Courts must undertake the quantitative inquiry by comparing the value of the property subject to forfeiture to the magnitude of the defendant's criminal offense. History and the Court's precedent all support tethering this inquiry to the defendant's conduct rather than some hypothetical worst-case scenario.

The Court's precedent supports tethering the inquiry to the defendant's *actual* criminal offense. In *Bajakajian*, the Court's holding was *not* that $357,144 was grossly disproportionate to a hypothetical fine. The federal statute in question allowed for imposition of *both* a fine—up to $5,000, which is what the district court imposed—*and* the forfeiture of the currency. 524 U.S. at 339–340. As Professor Asbridge has noted, "forfeitures differ from fines, as the dollar amount is dependent on the value of the property seized, as opposed to any range set by statute." Jessica L. Asbridge, *Fines, Forfeitures, and Federalism*, 111 Va. L. Rev. 67, 136 (2025). And, in any event, the Court did not set forth a principle that an *imposed* fine serves as a clear stand in for the magnitude of harm. Rather, the Court explained that the total forfeiture "would be grossly disproportional to the gravity of his offense," because "[i]t is larger than the $5,000 fine imposed by the District Court by many orders of magnitude, and it bears no articulable correlation to any injury suffered by the Government." *Bajakajian*, 524 U.S. at 339–340.

To be sure, some courts have instead considered the value of the forfeited property against the hypothetical worst-case fine that could have been imposed on a defendant for defendant's conduct. See, *e.g.*, Asbridge, *supra*, at 136 (citing, *inter alia*, *State* v. *Timbs*, 169 N.E.3d 361, 376 (Ind. 2021)). But use of the maximum fine contravenes this Court's direction that courts undertake the gross disproportionality inquiry regarding "the gravity of *the offense* that it is designed to punish." *Bajakajian*, 524 U.S. at 334 (emphasis added).

Employing the maximum fine invites courts to always measure the forfeited property against the worst possible type of conduct that a criminal penalty scheme contemplated. Any statutory maximum penalty is a dubious proxy for culpability, because of the legislative incentive to raise the maximum penalty to increase the government's leverage over defendants. See, *e.g.*, William J. Stuntz, The Collapse of American Criminal Justice 262–263 (2011). And as discussed further below, when the penalty is a financial one, governments have powerful incentives to raise the maximum to heighten their own recovery—whether after trial or in a negotiated outcome.

For all of these reasons, the legislature can set the maximum fine however it wants—knowing that individual courts likely will not impose the maximum fine or forfeiture penalty very often. And as a case in point, the trial court in Jouppi's case imposed a far lower fine than that which was permitted: not of $10,000 but instead one of $3,000, "with $1,500 suspended ($1,500 to pay)." Pet. App. 5a, 34a.

3. A Required Forfeiture Of A $95,000 Plane Is Grossly Disproportionate To The Offense Of Transporting A Six-pack Of Beer

By any formulation, the required forfeiture of a $95,000 plane is grossly disproportionate to the harm arising from Jouppi's conduct that the trial court found was his knowing transport of a six-pack of beer.

Here, the Alaska Supreme Court erred by using the "maximum fine that could have been imposed" when evaluating the proportionality of the forfeiture of Jouppi's plane: "In this case, the value of Jouppi's airplane is only 9.5 times the maximum fine that could have been imposed." Pet. App. 23a. The court reasoned that the "proportionality between the value of the forfeiture and the maximum fine demonstrates that Jouppi's culpability is in line with the legislature's assessment of the culpability of other violators of the statute." *Ibid.*

But the Alaska Supreme Court was wrong on two counts. First, as explained above, the inquiry must run, not against a hypothetical worst-case fine, but against the defendant's actual conduct. And to the extent that *a* fine was an appropriate approximation of criminal harm, the court needed to measure the $95,000 value of the plane against the *imposed* fine determined to be appropriate by the trier of fact (*i.e.*, $3,000) rather than a hypothetical worst-case scenario fine that a legislature may set but that courts may never actually impose (*i.e.*, $10,000).

But even if the inquiry *were* made against the worst-case scenario fine, the 9.5 multiple reflects a grossly disproportionate penalty relative to the state's maximum available fine of $10,000. As Professor Asbridge has observed, "forfeitures involving property exceeding the statutory maximum fine are often found unconstitutional." Asbridge, *supra*, at 136. For instance, in *State* v. *Timbs*, on remand from this Court, the Indiana

Supreme Court held a vehicle forfeiture unconstitutional "because, among other factors, the value of the property to be forfeited 'was three-and-a-half times the maximum fine for the underlying offense.'" *Id.* at 136 n.402 (quoting 169 N.E.3d 361, 376 (Ind. 2021)). Other cases "apply[ing] *Bajakajian*'s proportionality test" have reached similar conclusions—*e.g.*, that a full forfeiture of a $28,000 truck would be excessive where the maximum fine was $10,000. *State* v. *Boyd*, 618 N.W.2d 251, 256 (Wis. Ct. App. 2000).

The temptation to use the maximum fine as a referent is understandable given courts' desire to avoid subjectivity, but ultimately, a maximum fine is not an appropriate yardstick to measure the culpability associated with an offense. Legislatures do not calibrate maximum fines that way, especially in regimes that use criminal forfeiture in parallel. Courts should not treat maximum fines as embodying legislative judgments that legislatures do not make, and even if they do, a forfeiture that is twice the maximum fine is grossly disproportional as is the forfeiture in this case that is 9.5 times the maximum fine.

III. COURTS SHOULD EMPLOY A MORE ROBUST INQUIRY INTO THE EXCESSIVENESS OF STATE AND LOCAL FINE AND FORFEITURE SCHEMES

When considering Excessive Fines Clause claims against state and local governments, courts have reason to more closely examine these fine and forfeiture punishments than other types of criminal sanctions. In particular, there can be perverse incentives stemming from state and local governments' fiscal interests that are not present when courts evaluate the legality of a carceral sentence. Unlike incarceration, which costs the government money, fines and forfeitures implicate government self-interest and a heightened risk of overreaching and of singling out individuals to bear public burdens. Asbridge, *supra*, at 70. Accordingly, as Justice Scalia observed in *Harmelin* v. *Michigan*, "fines are a source of revenue," and as the Court has "recognized in the context of other constitutional provisions, it makes sense to scrutinize governmental action more closely when the State stands to benefit." 501 U.S. 957, 978 n.9 (1991).

For that reason, the Court's doctrine for considering governmental exactions of private property may supply a useful framework—more useful than unthinking deference to maximum fines. The Takings Clause and the Excessive Fines Clause are cousins in a sense: neither forbids the government from acting (*i.e.*, taking or imposing a fine) and each instead sets a limit on how far the government may go. See Asbridge, *supra*, at 96–97. The Court's exactions standard demands "some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development," *Dolan* v. *City of Tigard*, 512 U.S. 374, 391 (1994). When a government conditions a land use approval on the surrender of property, the Court requires a "nexus" and "rough proportionality" between the government's demand and the public harm arising from the land use applicant's proposal. *Koontz* v. *St. Johns River Water Management District*, 570 U.S. 595, 605–606 (2013) (citing *Nollan* v. *California Coastal Commission*, 483 U.S. 825, 837 (1987), and *Dolan*, 512 U.S. at 391). Notably, the Court has recently confirmed that generally applicable, legislatively prescribed conditions are not categorically exempt from ordinary takings rules, see *Sheetz* v. *County of El Dorado*, 601 U.S. 267, 276 (2024). That is particularly relevant when considering forfeitures, because unlike fines that have dollar limits "set by statute," the financial harm of a forfeiture "is dependent on the value of the property seized." Asbridge, *supra*, at 136.

The Court's key justifications for the heightened review required for exactions carry over to the forfeiture context. The government has an incentive to overreach when it stands to acquire property from a private party, and the ordinary political safeguards are weakest when a burden falls on an individual (*i.e.*, the land use applicant or defendant) rather than on the public at large. See Asbridge, *supra*, at 107–113.

Consider a case in Florida that presented a real "prospect of [a resident] losing his home over the failure to mow his lawn" in compliance with a local law. Asbridge, *supra*, at 75. In 2018, the City of Dunedin, Florida, found James Ficken in violation of a city ordinance prohibiting grass exceeding ten inches, and imposed a $500-per-day fine, which totaled $28,500 plus interest. *Ficken* v. *City of Dunedin*, No. 21-11773, 2022 WL 2734429, at *1 (11th Cir. July 14, 2022). As Professor Saxer has explained, the Eleventh Circuit applied the "strong presumption of constitutionality" to allow a total fine of $28,500 plus interest arising from multiple failures by the property owner to mow the lawn, which led to home foreclosure. Saxer, *supra*, at 177 n.185 (quoting *Ficken*, 2022 WL 2734429, at *4).

Forfeiture of property, too, can lead to perverse incentives by state and local government and call for a more robust inquiry when individuals challenge state and local forfeitures under the Excessive Fines Clause. As David B. Smith has explained, forfeiture funds can become "off-the-books slush funds through which law enforcement agencies can self-finance, exempted from democratic controls." David B. Smith, *Prosecution and Defense of Forfeiture Cases* ¶ 1.01 (rev. May 2026) (quoting E. Norman & A. Sanders, *Forfeiting*

Accountability: Georgia Law Enforcement's Hidden Civil Forfeiture Funds 1 (2011)). The political process is a far less robust safeguard where the public coffers are topped up with funds seized from opportune targets—and the voters bear less of the cost of government as a result. That is why meaningful review under the Excessive Fines Clause is necessary.

IV. AFFIRMING THE JUDGMENT OF THE ALASKA SUPREME COURT WOULD WEAKEN THE MEANING OF THE EXCESSIVE FINES CLAUSE AND EMBOLDEN STATE AND LOCAL GOVERNMENTS TO IMPOSE INEQUITABLE BURDENS

Affirming the judgment of the Alaska Supreme Court would weaken the meaning of the Excessive Fines Clause and embolden state and local governments to expand their schemes to generate revenue from fines and forfeiture. These concerns are not merely academic and span egregious conduct at various levels of state and local government. At the county level, for instance, Nassau County imposed approximately $4.8 million in civil penalties on the owner of Roosevelt Field Mall for failing for two consecutive years to submit financial information required by county law. *Retail Property Trust* v. *Nassau County Department of Assessment*, No. 25-907, 2026 WL 2263300, at *1 (2d Cir. Aug. 6, 2026). In Florida, cities have brought in millions in revenue through aggressive foreclosure actions against homes in which owners could not pay code enforcement fines. Asbridge, *supra*, at 71 (citing Ben Wieder, Shirsho Dasgupta & Sheridan Wall, *Families Lose Homes After Florida Cities Turbocharge Code Enforcement Foreclosures*, Miami Herald (Sept. 2, 2024, 12:43 PM), tinyurl.com/FloridaCodeEnforcement). A recent report observed that fine revenue now even exceeds 50% of general revenue in *dozens* of American cities. See Vittorio Nastasi, *Report: Fine Revenue*

Exceeds 50% of General Revenue in 42 Cities Across the Country, Reason Foundation (June 25, 2026), tinyurl.com/FineRevenueReport. And, as Professor Saxer has observed in the civil forfeiture context, "law enforcement agencies" have "become more dependent on revenue from civil forfeitures" and "the 'strong financial incentives to pursue forfeitures' affect the manner by which they handle these practices." Saxer, *supra*, at 180 (quoting *Culley* v. *Marshall*, 601 U.S. 377, 396 (2024) (Gorsuch, J., concurring)).

Amici are concerned that, absent clearer guidance from the Court about the constraints imposed by the Excessive Fines Clause, state and local governments will expand their use of excessive fines and forfeitures as an unfair means of unloading the costs of public services onto a small minority—possibly a nonvoting one. In setting the standard under the Excessive Fines Clause, this Court should keep governments' incentives in mind.

CONCLUSION

The judgment of the Supreme Court of Alaska should be reversed.

Respectfully submitted.

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SEPTEMBER 2026