

No. 25-246

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IN THE  
**Supreme Court of the United States**

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KENNETH JOHN JOUPPI,  
*Petitioner,*  
v.  
STATE OF ALASKA,  
*Respondent.*

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**On Writ of Certiorari to the  
Alaska Supreme Court**

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**BRIEF OF ALASKA LEGISLATIVE COUNCIL  
AS AMICUS CURIAE  
IN SUPPORT OF RESPONDENT**

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### **INTEREST OF *AMICUS CURIAE*<sup>1</sup>**

The Alaska Legislative Council is a bipartisan, constitutionally mandated permanent interim committee and service agency of the Alaska State Legislature. Comprised of the President of the Senate, the Speaker of the House of Representatives, and twelve other Senators and Representatives, the Council is vested with broad authority to support and carry out legislative functions, and between legislative sessions it has the authority to engage in litigation on behalf of the Alaska State Legislature.

The Alaska Legislative Council has a direct, institutional interest in this case because the decision below turns in significant part on the meaning and purpose of statutes enacted by the Alaska State Legislature, including the aircraft-forfeiture provision codified at AS 04.16.220(a)(3)(C). The Alaska Supreme Court cited “the harm . . . addressed in the legislative history of the forfeiture provision” when it evaluated the gravity of the offense underlying the forfeiture. Pet. App. 22a n.94. The Alaska Supreme Court’s excessive-fines analysis thus rests on its understanding of what the Alaska State Legislature intended when it enacted the local-option and forfeiture statutes at issue.

Because Petitioner asks this Court to revisit that analysis, this case requires the Court to consider not only federal constitutional doctrine under the Excessive Fines Clause, but also the historical context,

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<sup>1</sup> Pursuant to Rule 37.6, the Alaska Legislative Council affirms that no counsel for any party authored this brief in whole or in part, and no counsel or party other than *amicus* or its counsel made a monetary contribution intended to fund the preparation or submission of this brief.

purpose, and scope of a specific Alaska statutory scheme—the body of law the Legislative Council exists to steward. The Council submits this brief to assist the Court in properly understanding the legislative record as it bears on the question presented, including the history and context in which Alaska’s forfeiture statute was enacted and the extensive findings on which it is based.

### **INTRODUCTION AND SUMMARY OF ARGUMENT**

This Court has repeatedly recognized that “Alaska is different.” *Sturgeon v. Frost*, 587 U.S. 28, 32 (2019) (quoting *Sturgeon v. Frost*, 577 U.S. 424, 438 (2016)). This case vividly illustrates that principle. Petitioner Kenneth Jouppe, an air-taxi operator, was convicted of knowingly transporting beer by airplane from Fairbanks into Beaver, an Athabascan village with roughly 80 residents that voted to prohibit the importation of alcoholic beverages. Following Petitioner’s conviction, Alaska law required the forfeiture of the airplane he used to commit the offense. Petitioner asks this Court to hold that the forfeiture of his airplane was an unconstitutionally excessive fine. Resolving that question requires the Court to assess the gravity of Petitioner’s offense, which in turn requires understanding why the Alaska State Legislature mandated forfeiture of aircraft used to smuggle alcohol into dry villages in the first place.

The forfeiture provision at issue in this case was not an isolated or reflexive response to a single incident. It was the considered product of a stepwise, decades-long process of seeking to understand and address the harm that alcohol wrought on Alaska’s most remote villages. The detailed record before the Legislature was not limited to population-wide statistics, although

there were more than enough of those to identify a genuine crisis. The Legislature also heard individual stories: testimony, letters, and firsthand accounts from village residents, troopers, social workers, and public safety officers describing the often-tragic consequences that alcohol visited upon individuals and families. These stories reinforced that where a village lacks law enforcement to defuse a violent domestic dispute or to rescue a child from abuse, and the only road in or out is in the sky, even small quantities of alcohol can have devastating consequences.

The legislative judgment underlying Alaska's forfeiture provision was earned the hard way: village by village, tragedy by tragedy. The extensive record the Legislature developed while investigating the problem of alcohol in rural communities prompted it to act. The Legislature first enacted a law providing that villages could choose to prohibit the sale and/or importation of alcohol. To reinforce that "local option," the Legislature authorized, but did not mandate, forfeiture of aircraft and other vehicles used to smuggle alcohol into communities that elected to go dry. When that proved ineffective, the Legislature stepped in again, expanding villages' authority to keep alcohol out by permitting them to ban possession. And when aircraft operators persisted in transporting alcohol to villages they knew were dry, the Legislature responded by mandating the forfeiture of aircraft used to smuggle alcohol into dry villages.

This Court has made clear that "judgments about the appropriate punishment for an offense belong in the first instance to the legislature." *United States v. Bajakajian*, 524 U.S. 321, 336 (1998). Indeed, "constitutionally imposed uniformity" in punishments is "inimical to traditional notions of federalism."

*Rummel v. Estelle*, 445 U.S. 263, 282 (1980). Here, the Alaska State Legislature enacted a calibrated response to a crisis unparalleled elsewhere. It recognized that the extraordinary isolation of rural Alaska villages, coupled with the complete dearth of public-safety infrastructure in many such communities, left residents uniquely vulnerable. And it tailored the punishment to the conduct at issue: knowingly using an aircraft to circumvent a community’s lawful choice to prohibit alcohol. That judgment readily satisfies constitutional scrutiny.

## ARGUMENT

### I. *Bajakajian* confirms that courts owe appropriate deference to legislative judgments concerning the gravity of criminal offenses and the sanctions necessary to address them.

This Court has made clear that the “touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality[.]” *Bajakajian*, 524 U.S. at 334; *see id.* at 334–35 (recognizing that proportionality between the “amount of the forfeiture” and the “gravity of the offense that it is designed to punish” is “central[]” to the excessiveness inquiry). Neither the text nor the history of the Excessive Fines Clause addresses “how disproportional to the gravity of an offense a fine must be in order to be deemed constitutionally excessive.” *Id.* at 336. But this Court deemed two considerations “particularly relevant” to that inquiry, including its recognition that “judgments about the appropriate punishment for an offense belong in the first instance to the legislature.” *Id.* The Court has relied on this principle in other cases interpreting the Eighth Amendment. *See Solem v. Helm*, 463 U.S. 277,

290 (1983) (explaining that courts “should grant substantial deference to the broad authority that legislatures necessarily possess in determining the types and limits of punishments for crimes”).

This Court has also recognized that federalism plays a role in determining whether a punishment is “grossly disproportionate” to an offense. In *Rummel v. Estelle*, 445 U.S. 263, the Court explained that even if a penal statute were “the most stringent found in the 50 States,” its severity “hardly would render [the defendant’s] punishment ‘grossly disproportionate’ to his offenses or to the punishment he would have received in the other States.” *Id.* at 281; *see id.* at 281–82 (collecting examples of severe punishments for crimes thought to be “particularly reprehensible” in various states). To the contrary, “[a]bsent a constitutionally imposed uniformity inimical to traditional notions of federalism, some State[s] will always bear the distinction of treating particular offenders more severely than any other State.” *Id.* at 282.

As the discussion below reveals, the Alaska State Legislature compiled an extensive record documenting the harms caused by alcohol in remote villages and the ways aircraft operators undermined local alcohol bans by continuing to transport alcohol into those communities. The solution it devised—mandatory forfeiture of aircraft used to transport alcohol into dry villages—should be afforded the “substantial deference” it is due. *Bajakajian*, 524 U.S. at 336 (quoting *Solem*, 463 U.S. at 290).

**II. The Alaska State Legislature acted in response to a documented public safety crisis of extraordinary severity.**

**A. The Legislature enacted its local-option and forfeiture statutes in 1980 in response to studies documenting the toll of alcoholism and alcohol-related crime, particularly in rural communities.**

Alaska villages have suffered, and fought back against, the harms wrought by alcohol since Alaska's territorial days.<sup>2</sup> In the 1960s, village leaders were informed that they did not have the authority to ban alcohol under state law. Laurie H. Otto, *A Search for Control: The Effect of Alcohol on Public Rights and Private Wrongs—Report to the Legislature Joint Special Committee on Local Option Laws* 20 (1986). Attempting to enact or enforce such a ban—even if a rural village believed that doing so was in its own best

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<sup>2</sup> Territorial liquor officers recorded the problem village-by-village. In 1930, an officer reported that in Beaver, Alaska, “[o]ne white man has been reported to make ‘moonshine’ whiskey and sell it to all that wish to buy it.” Stephen Conn, *No Need of Gold—Alcohol Control Laws and the Alaska Native Population: From the Russians Through the Early Years of Statehood*, Univ. of Alaska Anchorage, Sch. of Just. 105 (1986) (Letter from Special Officer H.E. Seneff to Governor George A. Parks (July 1, 1930)), [https://scholarworks.alaska.edu/cgi/viewcontent.cgi?params=/context/uaa\\_justice\\_books/article/1000/&path\\_info=8617.conn\\_moras.1986.no\\_need\\_of\\_gold](https://scholarworks.alaska.edu/cgi/viewcontent.cgi?params=/context/uaa_justice_books/article/1000/&path_info=8617.conn_moras.1986.no_need_of_gold). An officer described a supply route that began in Fairbanks and ended up in the villages. *See id.* at 107 (noting that at Chena Village “[t]he natives buy their whiskey in Fairbanks, and drink it at the village”). The same reports documented alcohol’s fatal consequences. In 1933, at Manley Hot Springs, “several people ... burned to death in their cabins, while others froze to death from drinking whiskey bought from these bootleggers.” *Id.* at 112.

interest—could subject village leaders to arrest. *Id.* at 20–21. At the same time, villages were denied access to preventative law enforcement that might have reduced the worst of the consequences related to alcohol overconsumption. Stephen Conn, *No Need of Gold—Alcohol Control Laws and the Alaska Native Population: From the Russians Through the Early Years of Statehood*, Univ. of Alaska Anchorage, Sch. of Just. 60 (1986); *see also* Governor’s Comm’n on the Admin. of Just., *Standards and Goals for Criminal Justice* 13 (1976) (observing that state law had “eliminated the authority and responsibility of traditional Native units of government such as village councils to act in criminal justice matters,” leaving “most communities of rural Alaska without the protection of any form of criminal justice service”).

In 1972, Alaska adopted the Uniform Alcoholism and Intoxication Treatment Act, which decriminalized public drunkenness in favor of treatment. *See Peter v. State*, 531 P.2d 1263, 1271 (Alaska 1975). That approach was workable in cities with detoxification and other treatment facilities. *See* Governor’s Comm’n on the Admin. of Just., *supra*, at 2. But in rural Alaska villages, an incapacitated person without services and nowhere to go “would quickly freeze to death.” Otto, *supra*, at 23 (quoting Kim L. Moeller, *Alcohol Abuse and the Police in Rural Alaska: the North Slope Borough and City of Barrow Experience* (2d ed. Jan. 1979)). Recognizing the unique realities of life in remote villages, a 1976 report recommended that “village life must be governed by village law and custom as much as possible,” including with respect to the regulation of alcohol. Governor’s Comm’n on the Admin. of Just., *supra*, at 14.

The Alaska State Legislature took up that charge. The Legislature recognized that most remote villages had no organized municipal government and thus had no practical way to restrict or prohibit alcohol within their own communities. The Legislature also understood that the needs and preferences of individual communities varied, and that imposing a blanket prohibition from Juneau would have failed to account for those differences. *See id.* (setting a goal that “in rural Alaska there will be local decision making authority in each village in such basic areas as . . . alcohol control”). So in 1980, the Legislature considered a bill (SB 239) that gave “established village[s]” the option to regulate alcohol—what became known as a “local option.” S.B. 239, 11th Leg., 1st Reg. Sess. (Alaska 1979); SLA 1980, ch. 131, § 3.<sup>3</sup> The bill’s sponsor told the Senate Judiciary Committee that the provision was meant to provide villages with greater autonomy to “dry[] out,” if that is what the village elected to do. Minutes, S. Judiciary Comm., at 1–2 (Jan. 31, 1980), [https://www.akleg.gov/library/Subject%20folders/Breweries-Distilleries/AS%2004.11.170/CH%20131%20SLA%201980/SB%20239%20\(1980\)%20minutes/01-31-1980%20SJUD%20minutes.pdf](https://www.akleg.gov/library/Subject%20folders/Breweries-Distilleries/AS%2004.11.170/CH%20131%20SLA%201980/SB%20239%20(1980)%20minutes/01-31-1980%20SJUD%20minutes.pdf); *see also* Letter from Sen. Bill Ray to Sen. Robert Ziegler, at 4 (Feb. 12, 1980), *available in* House Judiciary Committee Bill File for SB 239 (1980), <https://www.akleg.gov/library/Subject%20folders/Breweries-Distilleries/AS%2004.11.170/CH%20131%20SLA%201980/SB%20239>

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<sup>3</sup> The 1980 bill defined “established village” as the five-mile area around “a post office station” in an “unincorporated area” with 25 or more permanent residents. AS 04.21.080(8) (1980). Today, an “established village” means a community of 25 or more permanent residents in “an area that does not contain any part of an incorporated city or another established village.” AS 04.21.080(15).

[%20\(1980\)%20bill%20files/SB%20239%20\(1980\)%20SJUD%20files.pdf](#) (explaining that “Local Option is a cornerstone in any democratic society and should be recognized as the ‘people’s right’ to have some regulation within their respective areas”).<sup>4</sup>

The Legislature passed SB 239 by wide margins in both the House and Senate. 1980 Alaska House Journal 2121–22; 1980 Alaska Senate Journal 1658. The new law allowed a “municipality” or an “established village” to hold a referendum and choose among graduated options to limit alcohol. AS 04.11.502(a)–(b) (1980). A community could prohibit sale entirely, AS 04.11.490 (1980); prohibit sale except by specifically licensed community establishments, AS 04.11.492 (1980), or holders of selected license types, AS 04.11.500 (1980); or prohibit both the sale and importation of alcoholic beverages, AS 04.11.496 (1980). The choice was entrusted to local voters via referendum elections. *See Harrison v. State*, 687 P.2d 332, 336 (Alaska Ct. App. 1984).

**B. The “local option” law included a forfeiture provision meant to give teeth to the local-option statute.**

When it enacted the local-option law, the Legislature had before it a detailed record of the harms wrought by alcoholism and alcohol-related violence, particularly in rural Alaska. The Governor’s Commission on the Administration of Justice had identified alcohol as the State’s first-priority criminal justice problem. *See* Governor’s Comm’n on the Admin. of Just., *supra*, at 1 (“A significant cause of crime in Alaska appears to

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<sup>4</sup> In this brief, citations containing URLs refer to the pagination on the PDF to which the URL links.

be the excessive and unregulated consumption of alcohol.”). The same report cataloged a series of distressing statistics: One out of every ten Alaskans was an alcoholic; 86% of rural residents believed most crimes were alcohol-related; and the percentage of alcohol-related crime was much higher in rural areas than in urban areas. *Id.* During implementation of the Alcoholism and Intoxication Treatment Act, the Legislature also consulted another report indicating that the death rate in Alaska due to alcoholism rose 153% from 1959 to 1975. Analysis of Alcohol Problems Project, *Working Papers: Descriptive Analysis of the Impact of Alcoholism and Alcohol Abuse in Alaska, 1975*, vol. V, at 14 (1977). By 1975, Alaska’s death rate due to alcoholism had skyrocketed to more than four times the national average. *Id.*

The Legislature also reviewed evidence of alcohol’s profound consequences on rural communities. The Alaska Judicial Council found that in rural Alaska, 77.9% of violent felonies and 55.6% of property crimes were committed under the influence of alcohol. Nicholas Maroules & Teresa J. White, *Alaska Felony Sentences: 1976–1979*, Alaska Judicial Council 67 (Nov. 1980). The National Council on Alcoholism linked alcohol to 64% of all criminal homicides, 34% of all forcible rape cases, and 41% of aggravated assault cases. All told, alcohol-related crime consumed just over 30% of the state’s total expenditures on the criminal justice system. *Abraham v. State*, 585 P.2d 526, 532 n.19 (Alaska 1978) (citing Executive Summary of Alcohol Misuse and Alcoholism in Alaska, National Council on Alcoholism). The State’s Interdepartmental Coordinating Committee on Alcoholism reported that 10 of Alaska’s 31 fire deaths in 1975 had been positively identified as alcohol-related. Interdepartmental Coordinating Comm. (Alcoholism) Report to the Governor,

at 12, *available in* Sen. Spec. Comm. on Alcoholism File (Jan. 5, 1978), <https://www.akleg.gov/pdf/billfiles/Committee%20Bill%20Files/Special%20Committees/SCOMM%206%20Senate%20Special%20Comm%20on%20Alcoholism%201977-78/SCOMM%206-1%20Alcoholism%20Comm%20Report%201-5-1978.pdf>. The same year, the Coast Guard judged 30 of the 47 boating deaths with known causes to be related to alcohol. *Id.* Social workers identified alcohol dependence in 45% of the child-neglect cases they reported. *Id.* at 2-1.

Individual stories loomed behind each of these statistics. One was the subject of a case heard before the Alaska Supreme Court just two years before SB 239 became law. In that case, the defendant “beat his wife to death” in a “drunken rage” near Bethel, Alaska. *Abraham*, 585 P.2d at 527. The court decried this “all too prevalent situation” that courts “see on a daily basis when [they] sentence criminal offenders for alcohol-related crimes.” *Id.* at 533.

Faced with this record of tragedy, the Legislature authorized creation of a Title 4 Code Revision Commission to redraft the state’s alcohol-control statutes. *See* AS 24.20.075 (1979). The Commission subsequently reported to the Legislature that “[o]f all the concerns presented to the commission in the course of its research, none have been more forcefully and intensely presented than concern for finding methods to control alcohol abuse in rural areas of the state, particularly through control of bootlegging.” Code Revision Comm’n, Supplement to Commission Transmittal Statement and Tentative Draft of April 18, 1979 on Title 4—Alcoholic Beverages, at 20, *available in* House Judiciary Committee Bill File for SB 239 (1980), <https://www.akleg.gov/library/Subject%20folders/Breweries-Distilleries/AS%2004.11.170/CH>

%20131%20SLA%201980/SB%20239%20(1980)%20bill%20files/SB%20239%20(1980)%20HJUD%20files.pdf. One of the “main control techniques” the Commission advanced to address bootlegging was the “confiscation of vehicles used for bootlegging purposes.” *Id.*

That is the approach the Legislature adopted in its code revision. Specifically, the new law authorized the forfeiture of “aircraft, vehicles, or vessels used to transport, or facilitate the transportation of . . . alcoholic beverages imported into a municipality or established village in violation of AS 04.11.496.” AS 04.16.220(a)(3)(C) (1980). A court could order forfeiture “upon conviction” or in an *in rem* proceeding. AS 04.16.220(d) (1980). An owner who “was not a party to the violation and had no actual knowledge” of the illegal use was entitled to remission. AS 04.16.220(e) (1980). By authorizing the forfeiture of vehicles used to transport the substance that the governor of Alaska called “that most abused drug of all,” Alaska Senate & House Joint Journal Supplement, State of the State by Governor Jay S. Hammond, at 7 (Jan. 15, 1980), <https://www.akleg.gov/library/State%20of%20State%20and%20Budget%20Addresses/1980-01-15%20State%20of%20State.pdf>, the Legislature sought to eliminate the pathways by which alcohol entered villages that had decided to prohibit its sale and/or importation.<sup>5</sup>

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<sup>5</sup> Incidentally, the Alaska Supreme Court articulated a similar view regarding alcohol’s dangerousness. *See Ravin v. State*, 537 P.2d 494, 506 (Alaska 1975) (describing marijuana as “far more innocuous in terms of physiological and social damage than alcohol or tobacco”); *State v. Erickson*, 574 P.2d 1, 22 (Alaska 1978) (upholding a prohibition on cocaine possession while observing that cocaine was “probably less dangerous than alcohol, barbiturates or amphetamines”).

In the end, the forfeiture provision passed as part of the same package as the local-option law. The vote was nearly unanimous. *See* 1980 Alaska Senate Journal 1658 (passing the Senate on a vote of 18 yeas to 0 nays); 1980 Alaska House Journal 2121–22 (passing the House on a vote of 30 yeas to 1 nay).

**III. After alcohol continued to devastate rural Alaska, the Legislature expanded local control and investigated the role of aircraft in transporting alcohol to remote villages.**

The 1980 local-option law represented a significant transfer of authority from the state to local villages. But by the mid-1980s, it was becoming clear that the reforms had not fully achieved their purposes. Alcohol was still finding its way into dry communities. And once alcohol reached these communities, it continued to wreak the same tragic consequences that had catalyzed the 1980 code revisions in the first place.

**A. In 1986, the Legislature authorized villages to ban alcohol possession.**

Three years after the enactment of the 1980 local-option and vehicle-forfeiture laws, the Legislature authorized a study of the local-option law. The resulting report described alcohol as “the most significant public health problem in rural Alaska.” Thomas D. Lonner & J. Kenneth Duff, *Village Alcohol Control and the Local Option Law: A Report to the Alaska State Legislature*, Univ. of Alaska Anchorage, Ctr. for Alcohol & Addiction Stud., at I-1 (June 24, 1983) (“Lonner Report”). It found that banning both sale and importation was “by far the most popular choice, given village desires to severely limit, if not prohibit, access to alcohol.” *Id.* at I-14; *id.* at I-14–15

(explaining that if it were “possible for village law to totally prohibit the manufacture or possession of alcohol,” “many villages would choose to do so” (emphasis omitted)). By addressing only sale and importation—not possession—the 1980 laws had failed to offer local villages the full suite of tools that could be used to combat alcohol-related violence and disease. *See id.* at III-5 (noting that villages “correctly see the local option law as having been written specifically for them, [but] they do not understand why the law did not provide them with the tools necessary to accomplish their objectives” of making villages completely dry (emphasis omitted)).

Accordingly, in 1985, the Legislature convened a Joint Special Committee on Local Option Laws to investigate how best to address the ongoing alcohol problem in rural Alaska. The Committee conducted public hearings throughout the state, eliciting hours and hours of testimony. Letter from Att’y Gen. Harold M. Brown to Rep. John Binkley, at 2–3 (Mar. 28, 1986), *available in* House Community & Regional Affairs Committee Bill File for HB 700 (1986), [https://www.akleg.gov/library/AS%2004.11/CH%2080%20SLA%201986/HB%20700%20\(1986\)%20bill%20files/H CRA14%20HB%20700.pdf](https://www.akleg.gov/library/AS%2004.11/CH%2080%20SLA%201986/HB%20700%20(1986)%20bill%20files/H CRA14%20HB%20700.pdf). Native groups addressed the problem directly. In 1985, the Alaska Federation of Natives (AFN)—the largest statewide Native organization in Alaska—resolved that “it is virtually impossible to enforce a ban on the importation of alcohol, due to the difficulty of proving who the person was that actually brought the alcohol into the dry village.” Alaska Fed’n of Natives Annual Convention, Resolution No. 85-48, at 49–50, *available in* House Community & Regional Affairs Committee Bill File for HB 700 (1986), [https://www.akleg.gov/library/AS%2004.11/CH%2080%20SLA%201986/HB%20700%20\(1986\)%20bill%20files/H CRA14%20HB%20700.pdf](https://www.akleg.gov/library/AS%2004.11/CH%2080%20SLA%201986/HB%20700%20(1986)%20bill%20files/H CRA14%20HB%20700.pdf).

6)%20bill%20files/HCRA14%20HB%20700.pdf. AFN therefore asked the Legislature to “amend the Local Option Law . . . to allow communities to ban the possession of alcoholic beverages within the community after holding a local option election.” *Id.*

In March 1986, the Committee prepared a report summarizing the testimony and concerns from the 18 villages it had visited. The report did not pull punches. It concluded that “[t]he severity of Alaska’s problems with alcohol cannot be overemphasized[] or exaggerated. Alcohol-induced tragedies have become a reality of daily life across the entire state, and have repeatedly forced Alaskans to recognize the fragility and vulnerability of human existence. Every possible tool must be available for use in combatting the threat posed by alcohol.” Otto, *supra*, at 109. The Committee’s report further observed that “[t]he level of dangerous alcohol-related behavior is directly tied to the level of alcohol consumption, and the level of alcohol consumption is directly tied to both the cost and availability of alcohol.” *Id.* at 106. And it concluded that “[t]he policy decision to ban possession of alcohol is one that must be made by local government. If local authorities are precluded from making such a decision, self-government efforts are undermined, respect for the state legal system is lost, and the public welfare is damaged.” *Id.* at 107–08.

Again, the Legislature took action, amending its local-option law to allow villages to ban alcohol possession. H.B. 700, 14th Leg., 2d Reg. Sess. (Alaska 1986); SLA 1986, ch. 80, §§ 5–8. The legislative findings supporting the new law tracked the record created by the Joint Special Committee on Local Option Laws. The Legislature found that alcohol’s dangers “are particularly acute in rural areas of the

state because the communities are small, isolated, without adequate law enforcement, without adequate health care facilities, and populated by people who are closely related and interdependent.” It observed that “in communities that have chosen to ban the sale and importation of alcohol, most drinking takes place in private homes.” SLA 1986, ch. 80, § 1(6)–(7). And it concluded that rural communities simply could not afford the high economic cost of alcohol abuse. SLA 1986, ch. 80, § 1(8).<sup>6</sup>

**B. The Legislature learned that in spite of the local option, alcohol continued to reach dry villages by air.**

Authorizing villages to ban possession enabled them to address alcohol-related harms after alcohol had already entered the community. But the Legislature also heard testimony about the means through which alcohol was arriving in the villages, including via small airplanes connecting rural Alaska to regional hubs.

For example, the Legislature reviewed an account from Sleetmute, a village that had already voted to ban alcohol importation and sale. Paul Longpré, the village’s only Village Public Safety Officer, called the importation-and-sale ban “[a] law that cannot be enforced most of the time.” Letter from Paul J. Longpré to Joint Special Commission on Local Option Laws, at 3 (Dec. 6, 1985), *available in* Joint Committee

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<sup>6</sup> The Attorney General underscored the gap the Legislature’s amendment filled. Under a ban on importation alone, “if you can get it to your house . . . you are literally home free. If possession is prohibited then it may very well lead to less importation and less manufacturing, which has always been a legitimate goal.” Letter from Att’y Gen. Harold M. Brown to Rep. John Binkley, *supra*, at 4.

on Local Option Laws Written Testimony, <https://www.akleg.gov/pdf/billfiles/Committee%20Bill%20Files/Special%20Committees/SCOMM%2052%20Jt%20Local%20Option%20Laws%201985-1986/JLOL14%20Written%20Testimony%20&%20Documents%20Submitted.pdf>.<sup>7</sup> He explained that alcohol was smuggled into the villages by way of larger towns, “stowed away beneath groceries, personal baggage, hidden on a person or mailed in mixed with groceries shipped into the community by friend or relative.” *Id.* (emphasis omitted). And “whenever alcohol is imported into the village, the whole village goes on an alcohol binge.” *Id.* at 3; *see also* Testimony of Christie Stender to Joint Special Commission on Local Option Laws, at 8–9 (Nome, Dec. 11, 1985), <https://www.akleg.gov/pdf/billfiles/Committee%20Bill%20Files/Special%20Committees/SCOMM%2052%20Jt%20Local%20Option%20Laws%201985-1986/JLOL14%20Nome%20Local%20Option%20Hearing.pdf> (describing similar village-wide intoxication in a different community, and explaining, “I tell that story, because it was just so evident how just one person can [a]ffect so many people around”). If violence ensued, law-enforcement backup was about 90 miles away by air. Letter from Paul J. Longpré to Joint Special Commission on Local Option Laws, *supra*, at 3. Put simply, the village of Sleetmute had

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<sup>7</sup> “Many off-road communities that have neither local municipal certified police nor a local trooper post receive some local law enforcement services from Village Police Officers (VPOs)[.]” *Alaska Inter-Tribal Council v. State*, 110 P.3d 947, 951 (Alaska 2005). Village Public Safety Officers are not certified by the Alaska Police Standards Council and “may only serve in ‘a community with a population of less than 1,000 individuals.’” *Id.* (citing 13 Alaska Admin. Code 96.900(12) (2002)).

done what it could to stop alcohol at its borders. But the alcohol kept flowing by airplane.

Residents of villages across Alaska described a similar pattern. In Togiak, a resident testified that one of the few actions that could address the problem was “stop[ping] planes or any kind of transportation that brings in alcohol.” Testimony of Billy Blue to Joint Special Commission on Local Option Laws, at 20 (Togiak, Nov. 25, 1985), <https://www.akleg.gov/pdf/billfiles/Committee%20Bill%20Files/Special%20Committees/SCOMM%2052%20Jt%20Local%20Option%20Laws%201985-1986/JLOL14%20Togiak%20Local%20Option%20Hearing.pdf>. A Selawik resident explained that some aircraft operators were more respectful of local-option laws than others. Some would search passengers’ bags. Others would not. *See* Testimony of Rena Ballot to Joint Special Commission on Local Option Laws, at 23 (Selawik, Dec. 12, 1985), <https://www.akleg.gov/pdf/billfiles/Committee%20Bill%20Files/Special%20Committees/SCOMM%2052%20Jt%20Local%20Option%20Laws%201985-1986/JLOL14%20Selawik%20Local%20Option%20Hearing.pdf> (testifying that this system is “not very [e]ffective”). In Fort Yukon, the Joint Commission heard testimony urging that “if you want an option, local option, you’ve got to put teeth into it. And it’s not doing it right now.” Testimony of Jonathon Solomon to Joint Special Commission on Local Option Laws, at 11 (Fort Yukon, Dec. 18, 1985), <https://www.akleg.gov/pdf/billfiles/Committee%20Bill%20Files/Special%20Committees/SCOMM%2052%20Jt%20Local%20Option%20Laws%201985-1986/JLOL14%20Fort%20Yukon%20Local%20Option%20Hearing.pdf>.

The 1983 Lonner Report confirmed the same was true across the state. Rather than eliminating alcohol

from dry villages, the local-option law appeared to have spawned creative new methods of alcohol smuggling. *See* Lonner Report, *supra*, at XII-14 (reporting “a greater increase in ‘casual’ bootlegging and ‘suitcase’ importation than in organized bootlegging”); Testimony of Adolph Lewis to Joint Special Commission on Local Option Laws, at 21 (Akiachak, Nov. 18, 1985), <https://www.akleg.gov/pdf/billfiles/Committee%20Bill%20Files/Special%20Committees/SCOMM%2052%20Jt%20Local%20Option%20Laws%201985-1986/JLOL14%20Akiachak%20Local%20Option%20Hearing.pdf> (explaining that “the problem is planes shipping alcohol to the village”).

Put simply, the record before the Legislature demonstrated that carriers and pilots were key players in determining the success or failure of a village’s decision to exercise its local option. *See* Lonner Report, *supra*, at VII-1 (observing that commercial carriers were among those “most likely to challenge the authority of the [local-option] law and the procedures which implement it”). Aircraft were the primary route by which alcohol was entering many local-option villages, and air carriers provided the State a point of leverage over that avenue of distribution. *See id.* at VIII-28 (explaining that the local-option law “not only authorizes, but compels, [air carriers] to restrict the alcohol-importation actions of passengers and the contents of cargo”).

**IV. In 2004, the Alaska State Legislature mandated aircraft forfeiture upon conviction for violating the local-option law.**

**A. Mandatory aircraft forfeiture began as a separate bill, HB 65, and was later added to the Governor’s crime bill.**

By 2004, aircraft forfeiture had been part of Alaska’s local-option framework for 24 years, but the decision whether to order forfeiture was left to the sentencing court’s discretion. At the beginning of his term as governor, Frank Murkowski put bootlegging by air carriers at the center of his criminal-justice agenda. *See* Alaska Senate & House Joint Journal Supplement, State of the State by Governor Frank Murkowski, at 16–17 (Jan. 23, 2003), <https://www.akleg.gov/library/State%20of%20State%20and%20Budget%20Addresses/2003-01-23%20State%20of%20State%20&%20Budget.pdf> (proclaiming that “[b]ootleggers of prohibited substances into rural communities are on notice that we will prosecute to the full extent of the law,” and explaining that if they brought “liquor into a dry village, [they] could forfeit [their] airplane or snowmachine” and could “expect jail sentences and heavy fines”).

Within days, a bill was introduced to carry out the Governor’s admonition. As originally introduced, House Bill 65 (HB 65) directed that “[u]pon conviction of a person for a violation of AS 04.11.499, the state shall seek forfeiture of an aircraft, vehicle, or vessel used to transport or facilitate the transportation of alcoholic beverages imported into a municipality or established village in violation of AS 04.11.499.” HB 65, 23rd Leg., 1st Reg. Sess. (Alaska 2003). Support for the new measure was immediate. *See, e.g.*, Letter from Kristofer Gee to Rep. Bob Lynn, at 11 (Mar. 3, 2003),

*available in* House Transportation Committee Bill Files for HB 65 (2003), <https://www.akleg.gov/pdf/billfiles/Committee%20Bill%20Files/2003-2004%20-%2023rd%20Legislature/HTRA/HTRA23%20HB%2065.pdf> (“I beli[e]ve that this bill would be a very powerful law because the village that I live in is a dry village. But people still bring in alcohol. If they begin to lose their vehicles, maybe they will begin to stop drinking.”).

On April 4, Governor Murkowski introduced his own comprehensive crime bill in both chambers, known as Senate Bill 170 (SB 170). He also publicly “endorsed GOP bills before the Legislature this session to threaten bootleggers with forfeiture,” including HB 65. Mike Chambers, *Governor takes ‘tough on crime’ position*, Juneau Empire (Apr. 4, 2003). As introduced, Governor Murkowski’s bill did not address alcohol or forfeiture. SB 170, 23rd Leg., 1st Reg. Sess. (Alaska 2003).

Meanwhile, HB 65 moved forward on its own. On April 23, the bill’s sponsor prepared a committee substitute making forfeiture of any vehicle, including an aircraft, mandatory upon conviction for a bootlegging offense, subject to remission to innocent parties. Committee Substitute for HB 65 (CSHB 65), 23rd Leg., 1st Reg. Sess. (Alaska 2003), § 5, at 5–7, *available in* House Transportation Committee Bill Files for HB 65 (2003), <https://www.akleg.gov/pdf/billfiles/Committee%20Bill%20Files/2003-2004%20-%2023rd%20Legislature/HTRA/HTRA23%20HB%2065.pdf>; *see also* Sectional Analysis CSHB 65 (Apr. 30, 2003), at 13, *available in* House Transportation Committee Bill Files for HB 65 (2003), <https://www.akleg.gov/pdf/billfiles/Committee%20Bill%20Files/2003-2004%20-%2023rd%20Legislature/HTRA/HTRA23%20HB%2065.pdf> (explaining that the substitute bill “would require the forfeiture of aircraft subject to forfeiture

for violation of certain provisions of AS 04, subject to remission”). The bill’s sponsor explained that “[b]ootleg importation of alcoholic beverages into dry villages is a continuing problem not sufficiently remediated in law. Current law allows the option to confiscate a vehicle used in a bootleg act. The proposed legislation would make vehicle confiscation a mandatory act after due process of law.” Sponsor Statement for HB 65, at 3, *available in* House Transportation Committee Bill Files for HB 65 (2003), <https://www.akleg.gov/pdf/billfiles/Committee%20Bill%20Files/2003-2004%20-%2023rd%20Legislature/HTRA/HTRA23%20HB%2065.pdf>; *see also* Minutes, H. Transp. Comm., CSHB 65, at 10 (May 6, 2003), <https://www.akleg.gov/PDF/23/M/HTRA2003-05-061502.PDF> (“Our Alaska villages have a right to determine if they are dry or if they are wet in so far as [importation] of alcoholic beverages are concerned. For those villages that have opted to be dry, bootleg [importation] of alcoholic beverages in the dry villages has been a continuing problem for a number of years. This situation flouts the law and denigrates the authority of the village officials. This legislation mandates, after due process of law, vehicle confiscation of vehicle used in bootleg operations.”).<sup>8</sup>

On March 5, 2004, the Senate Judiciary Committee adopted a new committee substitute for SB 170, which added a package of bootlegging provisions to the Governor’s crime bill. Committee Substitute for SB 170 (CSSB 170), 23rd Leg., 2nd Reg. Sess. (Alaska

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<sup>8</sup> The Alaska Public Defender Agency took no position on the measure except to note that the proposed committee substitute “was an improvement upon HB 65” and provided “consideration for the due process of law . . . regarding mandatory forfeiture.” Minutes, H. Transp. Comm., CSHB 65, *supra*, at 11.

2004), §§ 1–11, <https://www.akleg.gov/PDF/23/Bills/SB0170B.PDF>; *see also* Minutes, S. Judiciary Comm., SB 170, at 3 (Mar. 10, 2004), <https://www.akleg.gov/PDF/23/M/SJUD2004-03-100805.PDF>. Section 11 of that substitute contained, word for word, the mandatory aircraft-forfeiture language from the committee substitute for HB 65. *Compare* CSHB 65, § 5 (2003), *with* CSSB 170, § 11 (2004).

Testimony before the House and Senate committees underscored the provision’s goal of effectuating the will of local communities. Minutes, S. Judiciary Comm., SB 170, at 7–8 (Mar. 10, 2004) (deputy attorney general testifying that “[m]any communities have banned or limited the use of alcohol,” and “[t]he provisions in the bill are aimed at strengthening communities’ ability to do that” by ensuring that third-party owners of aircraft and other vehicles “cannot just turn a blind eye to what is going on”); *id.* at 13 (Fairbanks Police Chief explaining that strengthening forfeiture “will take the profit motive away from bootleggers and give the statute teeth”); Minutes, H. Judiciary Comm., HB 244, at 11 (Mar. 24, 2004), <https://www.akleg.gov/PDF/23/M/HJUD2004-03-241315.PDF> (Alaska State Trooper testifying that the bill’s alcohol provisions were meant to “help[] villages help themselves in their battle against alcoholism”). Testimony likewise described the deterrent effect that forfeiture had on aircraft operators who traveled to dry communities. Minutes, H. Judiciary Comm., HB 244, at 11 (Mar. 24, 2004) (reporting that recent forfeitures were “having a direct impact on bootlegging behavior”); *id.* at 6 (explaining that “word of . . . a forfeiture provision can spread quickly in small communities, and so that kind of a provision could perhaps become a deterrent”); Minutes, H. Transp. Comm., CSHB 65, at 16–17 (May 6, 2003) (observing that “having a law

by which a vehicle may be confiscated would deter even more people” from bootlegging). And testimony explained precisely whose conduct the statute targeted. Minutes, S. Judiciary Comm., SB 170, at 9 (Mar. 10, 2004) (explaining that forfeiture “is aimed at the interest of the defendant, or a third party who knew the vehicle would be used for illegal activity”).

The Legislature passed SB 170 with unanimous approval. 2004 Alaska House Journal 4175; 2004 Alaska Senate Journal 3647. The provision, now codified in AS 04.16.220, took effect on July 1, 2004. SLA 2004, ch. 124, § 35.<sup>9</sup>

**B. The forfeiture statute treats aircraft differently from other vehicles and targets only those the Legislature intended to punish.**

AS 04.16.220 treats aircraft-facilitated bootlegging as uniquely serious in several ways. First, the statute makes forfeiture of aircraft mandatory upon conviction of enumerated offenses (including importing alcohol

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<sup>9</sup> Sixteen days earlier, the people of Beaver voted to ban alcohol from their village. The village’s decision to prohibit the sale, importation, and possession of alcohol came on the heels of a tragedy. On the night of December 10, 2003, Arvin Petruska, a Beaver resident, began drinking. He drank until he passed out outdoors. “He was brought in out of the cold—the temperature fell to minus 18 that night in nearby Fort Yukon—but later vomited and choked to death.” Joel Gray, *Death spurs village to ban booze*, Anchorage Daily News (Aug. 15, 2004). Within weeks, his neighbors began gathering signatures to make Beaver dry. *Id.* Beaver residents realized that alcohol was coming “from Fairbanks, which is 110 miles and a quick airplane trip away,” and explained that they had “told the airlines that fly into Beaver not to haul anyone who is carrying booze or is under the influence.” *Id.*

into a local-option village), whatever the quantity of alcohol and whatever the defendant's criminal record. AS 04.16.220(i)(1). By contrast, forfeiture of a watercraft or other motor vehicle is mandatory only where the defendant has a prior violent felony conviction, is on felony probation or parole, has a prior bootlegging conviction, or transported at least twice the amount of alcohol meeting the statutory threshold for an intent-to-sell offense. AS 04.16.220(i)(2). As the context in which the provision was enacted makes plain, the Legislature "viewed the gravity of aircraft-facilitated importation as more severe than other methods of unlawful importation." Pet. App. 20a.

Second, the law provides that where a watercraft or other motor vehicle would otherwise be subject to mandatory forfeiture, a court need not order forfeiture if the vehicle or watercraft is "the sole means of transportation for a family residing in a village," provided the court made certain findings. AS 04.16.220(j)(1). Testimony during legislative hearings indicated that the exception covers "a car, truck, snowmachine, fourwheeler, or watercraft." CS for Senate Bill 170 (JUD), Sectional Summary, at 10 (Apr. 5, 2004), *available in* Senate Finance Committee Bill File for SB 170, [https://www.akleg.gov/library/AS%20compilations/AS%2012/AS%2012.55.%20127%20and%20145/AS%2012.55.127\(c\)\(2\)\(F\)/SB%20170%20\(2004\)/SFIN23%20SB%20170.pdf](https://www.akleg.gov/library/AS%20compilations/AS%2012/AS%2012.55.%20127%20and%20145/AS%2012.55.127(c)(2)(F)/SB%20170%20(2004)/SFIN23%20SB%20170.pdf). The exception demonstrates that the Legislature considered and accounted for the hardship forfeiture can cause a village family who might rely on a boat or snowmachine to hunt, fish, haul water and fuel, or travel to the next village downriver. But the Legislature omitted aircraft from the exception.

The Legislature also ensured that innocent parties would not face forfeiture. The statute makes man-

datory forfeiture expressly “subject to remission to innocent parties.” AS 04.16.220(i). An owner, or a person holding a lien, mortgage, or conditional sales contract, may recover the property by showing that he (1) was not a party to the violation, (2) had “no actual knowledge or reasonable cause to believe” that the property would be used unlawfully, and (3) had no actual knowledge or reasonable cause to believe that the user had a criminal record for Title 4 violations or had committed other Title 4 violations. AS 04.16.220(e)–(f). This safe harbor ensures that only those who “turn a blind eye” will lose their property. Minutes, S. Judiciary Comm., SB 170, at 8 (Mar. 10, 2004).

**V. The Alaska State Legislature’s calibrated response fit the state’s unique needs and challenges, and directly addressed the problem the Legislature was trying to solve.**

As the legislative history described above indicates, the Alaska State Legislature was well informed of the problem it sought to solve. It faced a public-safety crisis that presented challenges rarely, if ever, encountered elsewhere in the Nation. It knew the hardships attendant to village life, including the lack of law enforcement available to assist in a crisis. It recognized the importance of self-determination for the villages, mostly populated by Alaska Native people, that sought to stem the tide of alcohol—and the associated waves of illness and violence—entering their communities. And it learned of the pilots like Petitioner who ignored local bans and continued to deliver alcohol to villages that eschewed it.

The Legislature’s approach was incremental and measured: modest at first, growing more robust as the problem continued unabated. Its policy judgment that

aircraft forfeiture was an appropriate punishment was based on the evidence before it—including evidence that the risk of forfeiture would deter carriers from transporting alcohol into dry villages. That judgment is entitled to this Court’s deference.

### CONCLUSION

For the foregoing reasons, the Court should affirm.

Respectfully submitted,

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