

No. 25-246

In the
Supreme Court of the United States

KENNETH JOHN JOUPPI

Petitioner,

v.

STATE OF ALASKA

Respondent.

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

**BRIEF OF THE INTERNATIONAL
MUNICIPAL LAWYERS ASSOCIATION
AND NATIONAL ASSOCIATION OF
COUNTIES AS *AMICI CURIAE*
IN SUPPORT OF RESPONDENT**

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INTEREST OF *AMICI CURIAE*¹

The International Municipal Lawyers Association (“IMLA”) is the nation’s oldest and largest organization devoted solely to promoting local government law. A nonprofit, nonpartisan, professional association, IMLA’s membership comprises more than 2,500 local government entities, including cities, counties, and subdivisions thereof, as represented by their chief legal officers, state municipal leagues, and individual attorneys. IMLA’s mission is to advance the responsible development of municipal law through education and advocacy by providing the collective viewpoint of local governments around the country on legal issues before the Supreme Court of the United States, the United States Courts of Appeals, and state supreme and appellate courts.

The National Association of Counties (“NACo”) is the only national organization that represents county governments in the United States. Founded in 1935, NACo provides essential services to the nation’s 3,069 counties through advocacy, education, and research.

Amici offer their perspective on why Alaska’s forfeiture law is entitled to substantial deference. *Amici* also provide valuable context, from a local government perspective, that underscores why Petitioner’s proposed Eighth Amendment paradigm would intrude on legislative prerogatives, undermine

¹ Per this Court’s Rule 37.6, this brief was not authored in whole or in part by any party, and no one other than *amici* or their counsel made a monetary contribution to its preparation or submission.

basic principles of federalism and the successful exercise of local government, and infringe on indigenous Alaskan communities' sovereignty interests.

SUMMARY OF ARGUMENT

Petitioner has asked this Court to clarify the inquiry that courts must undertake when assessing whether a fine or forfeiture contravenes the Eighth Amendment's Excessive Fines Clause. Petitioner asserts that courts assessing the gravity of harm caused by a criminal violation are limited to a defendant's individualized wrongdoing, and cannot consider the broader societal damage caused by a particular crime. That pinhole perspective will invite a torrent of Eighth Amendment litigation. Petitioner's invitation also sets the wrong course. The setting of criminal penalties has always called for a broader outlook. Criminal punishment is equally rooted in the social contract and the broader social good.

This Court's analysis must begin with the fundamental premise of *United States v. Bajakajian*, 524 U.S. 321 (1998)—that legislatures, not courts, are delegated the power to define criminal punishments. Those definitions reflect policy choices, compromises, and the political accountability of the legislative branch. *Bajakajian* calls for deference to those legislative judgments.

Alaska's mandatory aircraft forfeiture does not run afoul of the Constitution. As an *in personam* penalty, this forfeiture cannot be seen as a State's avarice. There is no money grab as *in rem* forfeiture might be characterized. Instead, mandatory

forfeiture serves as a productive and reasonable deterrent. It was reasonably designed to give teeth to the State's Local Option system.

It also reflects a success of local democracy. The Local Option system empowers the communities most grievously impacted by alcohol abuse to use the democratic process to limit or prohibit access to alcohol. Those communities have overwhelmingly chosen to keep or strengthen restrictions, supported by the enforcement mechanism at issue. And these restrictions have achieved documented successes in reducing crime and adverse public health outcomes.

Mandatory forfeiture evolved through an iterative, legislative process, and only after the Legislature determined a discretionary scheme was ineffective. This particular legislative scheme might not make sense everywhere. But it does make sense in Alaska, where aircraft offer the primary, and often the only, means for smuggling and bootlegging into remote, rural communities. As a result, the risk of forfeiture is a keystone for criminal deterrence.

The stakes for enforcement are incredibly high. Dry communities do not have the public health or law enforcement resources, let alone the necessary funds, to address the scourge of alcohol abuse. Effectively stemming the flow of alcohol into these remote communities is central to protecting their health, safety, and economic vitality.

Undermining Alaska's Local Option system, and the forfeiture law that enforces it, would not only override the Legislature's considered judgment. It would undermine the autonomy and self-determination of indigenous communities that the

law was designed to serve. The judgment of the Alaska Supreme Court should be affirmed.

ARGUMENT

I. Legislative Determinations In Crafting Criminal Penalties Are Entitled To Substantial Deference

A. *Bajakajian*'s Excessiveness Standard Is Deferential To Legislative Judgments

As this Court held in *Bajakajian*, 524 U.S. at 334, forfeitures may not be “grossly disproportional” to the gravity of an offense. To derive an excessiveness standard, this Court articulated two relevant controlling principles: (1) “judgments about the appropriate punishment for an offense belong in the first instance to the legislature,” and (2) “any judicial determination” regarding the gravity of a criminal offense is “inherently imprecise.” *Id.* at 336. Under this scheme, a forfeiture only needs to “bear *some relationship* to the gravity of the offense.” *Id.* at 334 (emphasis added). Courts owe “substantial deference” to legislatures’ “broad authority” to determine the “types and limits of punishments for crimes.” *Id.* at 336 (quoting *Solem v. Helm*, 463 U.S. 277, 290 (1983)).

Bajakajian's deference is consistent with the longstanding rule that *legislatures*—not courts—are delegated the power to define criminal punishments. *Chapman v. United States*, 500 U.S. 453, 467 (1991). Setting criminal penalties involves “difficult policy choices.” *Ewing v. California*, 538 U.S. 11, 28 (2003); *Rummel v. Estelle*, 445 U.S. 263, 283 (1980)

(“Penologists themselves have been unable to agree whether sentences should be light or heavy, discretionary or determinate.”).

Federal courts “do not sit as a ‘superlegislature’ to second-guess” legislatures. *Ewing*, 538 U.S. at 28. A legislature need only have a “reasonable basis” to believe that its sentencing scheme “advances the goals of its criminal justice system in any substantial way.” *Id.*

Deference further reflects the political accountability of the legislative branch. Legislatures “make policy and bring to bear the collective wisdom of the whole people when they do, while courts dispense the judgment of only a single person or a handful.” *Democratic Nat’l Comm. v. Wis. State Legislature*, 592 U.S. 1039, 1041 (2020) (Gorsuch, J., concurring in denial of application to vacate stay). In that role, legislatures deploy “far greater resources for research and factfinding” than “can be mustered in litigation between discrete parties before a single judge.” *Id.* Legislation is a product of “compromise” and reflects “the broad social consensus necessary to enact new laws, something not easily replicated in courtrooms where typically one side must win and the other lose.” *Id.* at 1041-42.

It also reflects institutional expertise. Federal judges cannot “begin to ‘match’ the collective wisdom the American people possess in deciding ‘how best to handle’” pressing and intractable social problems. *City of Grants Pass v. Johnson*, 603 U.S. 520, 560 (2024). Legislatures may “experiment with one set of approaches only to find later another set works better” or “they may find certain responses more appropriate for some communities than others.” *Id.* States

continue to act as laboratories of democracy by adopting local solutions to local problems; in some cases, criminalizing what other states allow. As this Court recognized in *Grants Pass*, the Eighth Amendment serves “many important functions,” but it “does not authorize federal judges to wrest those rights and responsibilities” away from the legislative sphere, which is most accountable to the democratic process. *Id.*

Substantial deference to legislatures’ broad authority to define criminal punishments restrains courts “from an extended analysis of proportionality save in rare cases.” *United States v. MacEwan*, 445 F.3d 237, 247-48 (3d Cir. 2006). This is further consistent with the rule that courts do not even require a “legislature to articulate its reasons for enacting a statute.” *F.C.C. v. Beach Commc’ns, Inc.*, 508 U.S. 307, 315 (1993) (“a legislative choice is not subject to courtroom fact-finding”). Thus, if the government provides a “commonsense explanation or *some*—even relatively weak—evidence” to justify a fine or forfeiture, “it will likely prevail against an Excessive Fines Clause challenge.” *Diamond Sands Apartments, LLC v. Clark County Nevada*, 164 F.4th 759, 764 (9th Cir. 2026).

B. Courts Properly Consider Harm To The Government In Assessing Proportionality

Among the *Bajakajian* factors to assess proportionality is “the nature and extent of the harm suffered by the government.” *Pimentel v. City of Los Angeles*, 115 F.4th 1062, 1067 (9th Cir. 2024).

This is not an abstract inquiry, but neither is it limited to one specific defendant’s wrongdoing. The social contract—and principles of deterrence—have always required a broader assessment. *See, e.g., Bennis v. Michigan*, 516 U.S. 442, 453 (1996) (upholding forfeiture of jointly owned car, deferring to State law designed “to deter illegal activity that contributes to neighborhood deterioration and unsafe streets”).

In assessing proportionality, Courts of Appeals consistently look at the bigger picture. For example, in *U.S. Securities & Exchange Commission v. Murphy*, 50 F.4th 832, 850 (9th Cir. 2022), the Ninth Circuit upheld approximately \$2.5 million in penalties for a bond-flipping scheme, even though the appellants’ violations did not harm any investors. The penalties were proportional because the appellants’ failure to comply with registration requirements undermined an “important system of government oversight.” *Id.*

Similarly, in *United States v. Castello*, 611 F.3d 116, 118, 123-24 (2d Cir. 2010), the Second Circuit affirmed a \$12,012,924 forfeiture for failure to file currency transaction reports, even though the defendant had been acquitted of tax fraud and related crimes. The court underscored that defendant’s failure to file reports “allowed others to commit crimes” that the government otherwise “could have prevented or prosecuted.” *Id.* at 124.

Vasudeva v. United States, 214 F.3d 1155, 1160-61 (9th Cir. 2000) upheld fines of up to \$40,000, even where the defendant store owners did not benefit from a fraudulent food stamp scheme. The Ninth Circuit weighed the broader social ills caused by defendants’ misconduct. Because “trafficking in food

stamps is a serious offense that defrauds the federal government and undermines the viability of an important government program for the needy,” the penalty was appropriate. *Id.*

In upholding the forfeiture of Kenneth Jouppi’s plane, the Alaska Supreme Court followed the same playbook. The court deferred to “the legislature’s judgment on the gravity of his offense” and it considered the harm of illegal alcohol smuggling to the government writ large. *Jouppi v. Alaska*, 566 P.3d 943, 956-57 (Alaska 2025); see also *Alaska v. Jouppi*, 519 P.3d 653, 670, 675 (Alaska Ct. App. 2022) (Mannheimer, J., concurring in part and dissenting in part) (deferring to “reasoned legislative response to a serious social problem” that empowers rural communities to prohibit the sale or possession of alcohol coupled with mandatory forfeiture to “punish and deter” violators).

The Alaska Supreme Court’s decision also respected the local community’s democratic choice to restrict access to alcohol under the state’s Local Option system. Beaver, Alaska sits a long way from Washington, D.C. Its isolation and distance should not obscure its right to choose; its decision to remain dry should be respected, deferred to and not undermined.

C. Mandatory Forfeiture Is A Familiar Tool Of Criminal Deterrence

The Alaska legislature’s mandatory forfeiture law is unique to the particular needs of its remote, rural communities. But legislatures’ need to employ mandatory criminal penalties, including forfeiture, as

an effective tool for criminal deterrence is neither special, nor controversial.

Mandatory sentences are legion throughout the federal criminal justice system and in the States. For instance, the United States Sentencing Commission has identified 195 federal statutes that carry mandatory minimum penalties.² In fiscal year 2025, 13,926 of the 66,662 federal cases reported to the Commission—20 percent—involved an offense carrying a mandatory minimum penalty.³ Each of these statutes fixes punishment by the category of conduct, not by the individual defendant’s circumstances.

State and local governments similarly resort to mandatory criminal forfeiture when warranted. Take, for example, the evolving problems of “street takeovers.” Galvanized by social media, street takeovers occur when huge crowds surround city intersections to watch people engaging in dangerous horseplay with vehicles spin around at ever increasing speeds. The result can be as tragic as it is predictable. Participants can be injured or killed, but there have also been multiple fatalities among spectators and innocent bystanders.⁴

² U.S. Sent’g Comm’n, *Report to the Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System*, 348 n. 838 (2011).

³ U.S. Sent’g Comm’n, *Quick Facts: Mandatory Minimum Penalties* (FY 2025), <https://tinyurl.com/bdd8a6z9>.

⁴ This is not a small problem. For example, California Highway Patrol reported 264 crashes and 30 fatalities due to sideshows and street takeovers from 2019 to 2024. See *Hearing on A.B. 1588 Before the Assem. Comm. on Pub. Safety*, 2025–2026 Reg.

State legislatures should be empowered to include mandatory forfeiture in connection with this kind of criminal conduct if other deterrents continue to fail.⁵ Local governments, exercising the forfeiture authority that state law confers, are already experimenting with forfeitures related to illegal street takeovers, and in some cases, destroying the vehicles to deter crime.⁶ A ruling in favor of Petitioner risks undermining state and local governments' abilities to effectively deter a myriad of public safety threats.

D. Alaska's Forfeiture Laws Reflect A Carefully Crafted Response To A Public Health And Safety Crisis

Alaska's forfeiture statute was not enacted in a vacuum. It was the product of a decades-long legislative process in response to a public health and safety crisis, informed by extensive testimony, peer-reviewed research, and the lived experience of Alaska's Native communities.

Sess. (Cal. Apr. 14, 2026) (statement of Benjamin Shea); *see also* Nathan Solis & Melissa Hernandez, *Inside L.A.'s Deadly Street Takeover Scene: 'A Scene of Lawlessness'*, L.A. Times (Aug. 22, 2022), .

⁵ Law enforcement often lacks the resources to stop street takeovers while they are in progress. Large crowds may become hostile, and there have been instances of officers being attacked and patrol cars being crashed into, which makes combatting the problem more challenging. *See id.*

⁶ *See* Glenn Puit, *Las Vegas Police Crush Street Takeover Cars in Massive Shredder*, Las Vegas Review-Journal (June 17, 2026), ; Joanna Putman, *San Diego PD Crushes Impounded Vehicles in Crackdown on Illegal Street Racing*, Police1 (Aug. 1, 2025), .

1. The Legislature's Iterative, Evidence-Based Response

Alcoholism and alcohol-related crime in Alaska's rural communities has been a documented public health and safety emergency without parallel in the lower 48 States. Alcohol abuse presents massive problems that have persistently plagued these communities, which often lack adequate police and health-care resources to respond.

The Legislature first took action in response to several, comprehensive studies that documented the extent of alcohol-related abuse, the economic costs of that abuse, and the close association between alcohol and crime, particularly in rural communities. *Harrison v. Alaska*, 687 P.2d 332, 335, 339 (Alaska Ct. App. 1984) (upholding constitutionality of local option statutory scheme, affirming the "law bears a close and substantial relationship to the legitimate legislative goal of protecting the public health and welfare by curbing the level of alcohol abuse in our state").

One study, by the Governor's Commission on the Administration of Justice, specifically recommended that rural villages be allowed to control access to alcoholic beverages. 687 P.2d at 335. Another reported that, in rural areas, 77.9% of violent crime and 55.6% of property crimes were committed under the influence of alcohol. *Id.* A third documented the sheer volume of devastation caused by alcoholism, noting Alaska's alcoholism mortality rate was 418% higher than the national average, consumption was growing at almost twice as fast as other parts of the country, and was worst in rural areas. *Id.* The costs to the State and its people were staggering. *Abraham v. Alaska*, 585 P.2d 526, 532

n.19 (Alaska 1978) (noting the total cost of alcohol-related crime was over 30% of the State's total criminal justice expenditures).

Alaska responded to this crisis with the Local Option system in 1980, giving communities the power to restrict alcohol through democratic vote.⁷ Around the same time, it developed a forfeiture scheme to give communities the tools to enforce these laws, deter violators, and stem the flow of alcohol into communities. These laws gave courts the authority to order the forfeiture of planes, vessels, or vehicles used to circumvent local option laws. SLA 1980, ch. 131, § 3.

Six years later, the Legislature acted again, expanding the authority of local communities to *completely ban* the possession of alcoholic beverages. SLA 1986, ch. 80, § 2. It explained its action in a series of legislative findings, noting (1) the acute dangers to public health and safety arising from alcohol abuse in rural areas, (2) the lack of adequate health care facilities or law enforcement in these areas, and (3) the economic reality that these rural communities could not afford the cost of alcohol abuse. SLA 1986, ch. 80, § 1, subds. (2), (6), (8).

The Legislature acknowledged that the prior Local Option statutes had fallen short, by prohibiting the sale and importation of alcohol, but not personal possession. By 1986, the Legislature concluded rural areas needed the additional authority to impose a

⁷ Matthew Berman & Teresa Hull, *Alcohol Control by Referendum in Northern Native Communities: The Alaska Local Option Law*, Reports 272 (2000), .

total ban to achieve their goals. SLA 1986, ch. 80, § 1, subd. (6).

Initially, the Legislature left the forfeiture of aircraft, vehicles, and boats used to facilitate smuggling to courts' discretion. *See* Former Alaska Stat. § 04.16.220(a)(3) (1980). But it revisited that issue twenty-four years later, and made the forfeiture of airplanes mandatory.

This, too, was by design. At the time the mandatory forfeiture law was passed, twenty-five percent of all deaths in Alaska were alcohol-related.⁸ The Legislature focused on aircraft because of the primacy of aircraft-facilitated bootlegging and communities' otherwise limited means to stop it. Hearing on S.B. 170 Before the Sen. Judiciary Comm., 23d Leg., 2d Sess. (Alaska Mar. 10, 2004) at 7 (statement of Susan Parkes, Deputy Att'y Gen.) (mandatory forfeiture law addresses "problems primarily found in rural communities" and is "aimed at strengthening communities' ability" to enforce their local option laws).

The penalties had to be stringent to be effective. Illegal bootlegging in Alaska is a lucrative criminal enterprise. The Local Option laws were created with the express intention of stopping it. Hearing on S.B. 170 Before the Sen. Judiciary Comm., 23d Leg., 2d

⁸ Bernard Segal, *Drinking and Drinking-Related Problems Among Alaska Natives*, 22 Alcohol Health & Res. World 276 (1998). Those trends have continued. Alaska's rate of alcohol-induced deaths remains the second highest in the nation. Tony Wong, et al., *Alcohol-induced Deaths in the United States Across Age, Race, Gender, Geography, and the COVID-19 Pandemic*, PLOS Global Public Health 5(9): e0004623 (Sept. 17, 2025).

Sess. (Alaska Mar. 10, 2004) (statement of Lt. Al Storey) at 21 (“far more money is made per dollar invested in the alcohol business in Alaska than in the drug business”).

At the time the law was passed, a \$10 bottle of liquor purchased in Anchorage could be sold for up to \$150 in the far reaches of the State. *Id.* The margins have only grown more extreme. In 2025, Alaska State Troopers estimated that a \$10 bottle of liquor could be sold for “anywhere from \$200-\$400 a bottle” depending on the community.⁹ These profit margins create powerful incentives to exploit the very transportation infrastructure on which remote communities depend for survival.

The legislative choice for villages to vote to stay dry or wet “was requested by rural Alaskans” themselves, with the express aim that it “would be enforceable and that its creation would not contribute to there being a profitable situation for bootleggers.” Hearing on H.B. 65 Before the House Transp. Standing Comm., 23d Leg., 1st Sess. (Alaska May 6, 2003) at 11 (statement of Matt Felix, National Council on Alcohol and Drug Dependence); *see also id.* at 10 (statement of Rep. Bob Lynn) (“Our Alaska villages have a right to determine if they are dry or if they are wet[.]”).¹⁰

⁹ Olivia Nordyke, *150 Bottle of Alcohol Seized in Yukon Delta Region Bootlegging Arrests*, AK News Source (May 30, 2025), .

¹⁰ H.B. 65 would have also made forfeiture mandatory for motor vehicles, aircraft, and vessels. *Id.* at 10–11. The House Transportation Committee heard the bill but it did not become law in that form. *Id.* at 17. During the interim, the Senate Judiciary Committee added the same bootlegging and forfeiture

Mandatory forfeiture of aircraft had broad support from the stakeholders that knew the issues facing rural Alaskans best. The Attorney General's office touted the due process protections built into the forfeiture procedure. The State would first have to prove a violation of the Local Option law beyond a reasonable doubt, and only then could it seek forfeiture. Hearing on H.B. 65 Before the House Transp. Standing Comm., 23d Leg., 1st Sess. (Alaska May 6, 2003) at 13 (testimony of Anne Carpeneti, Assistant Att'y Gen., Criminal Div., Dep't of Law). Even the Public Defender Agency recognized the proposal's substantial procedural safeguards. *Id.* at 11 (testimony of Linda Wilson, Deputy Dir., Public Defender Agency, Dep't of Admin.).

In reviewing H.B. 65 and S.B. 170, the Legislature carefully considered whether mandatory aircraft forfeiture was necessary to give practical force to the democratic choices made by dry villages. A court that second-guesses that judgment does not just substitute its own view for the Legislature's and the local community's; it overrides a considered policy informed by decades of evidence that the Local Option system works—if it can be enforced.

provisions to SB 170. Minutes, Sen. Fin. Comm. (Apr. 16, 2004) at 13. Those provisions only included mandatory forfeiture of aircraft. SB 170, as amended, was enacted as Chapter 124, SLA 2004; Section 11 contains the aircraft forfeiture requirement at issue here. SLA 2004, ch. 124, § 11.

2. The Structure Of The Forfeiture Statute Reflects Deliberate Calibration

The Legislature also did not impose a one-size-fits-all forfeiture regime. For vehicles and watercraft used to import alcohol into dry communities, forfeiture is reserved for repeat offenders, felony probationers, and those transporting at least twice the quantity presumed for barter or sale. Alaska Stat. § 04.16.220(i)(2); *see also id.* § 04.11.010(c).

Aircraft are treated more severely *because* the Legislature considered aircraft-facilitated bootlegging a categorically different threat to communities accessible only by air. *Id.* § 04.16.220(i)(1); § I.D.1, *supra*. This graduated structure is the hallmark of a legislature acting with precision, not arbitrariness.

The Legislature's calibration extends further. The forfeiture statute explicitly provides an innocent-owner defense, ensuring forfeiture does not reach property owners who neither knew of nor consented to the unlawful use. *See* Alaska Stat. § 04.16.220(e)(2).

The statute evolved over decades of iterative refinement. And it is rooted in an even longer State history of effectively using forfeiture to enforce smuggling and poaching statutes, and to deter violations of those laws. *Jouppi*, 519 P.3d at 675-77 (Mannheimer, J., concurring in part and dissenting in part) (providing overview of Alaska forfeiture statutes from 1867 to present day, which included the forfeiture of airplanes from “the birth of commercial aviation”); *Jordan v. Alaska*, 681 P.2d 346, 350 (Alaska Ct. App. 1984) (upholding forfeiture of defendant's \$10,000 interest in plane following

conviction for hunting black bear, as necessary for deterrence).

This incremental development is itself evidence of proportionality. A legislature that escalates penalties only after carefully reviewing whether its prior legislative efforts have achieved its goals is the antithesis of acting arbitrarily.

II. “Alaska Is Different” And Those Differences Matter Here

A. Alaska-Specific Circumstances Necessitate An Alaska-Specific Law

This Court has regularly recognized that idiosyncratic conditions necessitate location-specific law. *See, e.g., Maine v. Taylor*, 477 U.S. 131, 150-51 (1986) (upholding Maine’s ban on importing live baitfish, where importation threatened fisheries that were “unique and unusually fragile”); *Hawaii Hous. Auth. v. Midkiff*, 467 U.S. 229, 241-42 (1984) (upholding land-use condemnation scheme born of a historic oligopoly originating with early chiefs of the Hawaiian islands).

This is particularly true for Alaska. As this Court has recognized, more than once, “Alaska is different.” *Sturgeon v. Frost*, 577 U.S. 424, 438 (2016). Its state-specific provisions “reflect the simple truth that Alaska is often the exception, not the rule.” *Id.* at 440. “[E]xtreme climate and rugged terrain” make its residents uniquely dependent on aircraft, watercraft, and even hovercraft to reach market, a hospital, or a home. *Sturgeon v. Frost*, 587 U.S. 28, 58 (2019).

These differences define how Alaskans live, how their communities function, and why their Legislature makes the choices it does. Over three-quarters of Alaska’s approximately 300 communities are located in regions unconnected to the State’s road system. *Id.* at 57. Alaskans rely on modes of transit other than roads, “to an extent unknown anyplace else in the country.” *Id.* For these communities, planes in the sky are the equivalent of cars on a highway.

The State’s dry communities exemplify these dynamics. (See App. 1a (map of Alaska Local Option communities).) They are mostly unconnected by roads, far from any police station. (See App. 2a (map of Alaska law enforcement agencies).) In these remote locations, aircraft is the primary means by which bootleggers smuggle alcohol into dry communities.

And there is minimal law enforcement to stop it. Many rural villages are served only by occasional visits from Alaska State Troopers and, in some cases, a village public safety officer (“VPSO”).¹¹ Some villages do not even have that. *Id.* Even where there is a police presence, it is sparse at best. For example, three officers are tasked with enforcement for 56 villages in the Yukon-Kuskowim Delta area—an area that spans roughly 58,000 square miles (comparable in size to the State of New York) and is completely unconnected to the road system.¹²

¹¹ Joel Gay, *Death Spurs Village to Ban Booze*, Anchorage Daily News (Aug. 15, 2004), .

¹² Ben Matheson, *A Moving Target: WAANT Pursues Bootleg Liquor*, Alaska Public Media (Apr. 27, 2015), ; *About the YK Delta*, Yukon-Kuskokwim Health Corporation, ; *Our Region*, Association of Village Council Presidents, .

B. Native Communities' Democratic Choice To Remain Dry Should Be Respected

The communities most affected by alcohol abuse in rural Alaska have not been passive observers of state policy. Nor have they sat idly by as alcoholism has become a crisis within the State's Native populace. Tribal governments have led efforts to exercise Local Option laws to curb alcohol abuse. Nearly one in three Alaska Natives lives in a village or town that has restricted access to alcohol.¹³

This choice reflects a broader shift from federal paternalism to tribal empowerment.¹⁴ Prior to statehood in 1959, the Bureau of Indian Affairs worked with Native village councils under the Indian Reorganization Act of 1936 to regulate alcohol in Alaska Native communities.¹⁵ The sale of alcohol to a Native person was a federal felony. *Id.* After statehood, village councils lost the ability to enforce limitations on alcohol, and alcohol-related violence and death among Alaska Natives grew exponentially. *Id.*

Local Option laws partially restore to communities a power that statehood had taken

¹³ Kyle Hopkins, *Wet or Dry? Shishmaref Must Make a Choice*, Anchorage Daily News (Oct. 19, 2013), .

¹⁴ Elizabeth Hidalgo Reese, *The Three Phases of the Tribal Self-Determination Era and the Phase Out of Federal Paternalism*, 125 Colum. L. Rev. F. 205 (2025).

¹⁵ Mary T. Weiss, *Wet, Dry, or Damp*, The Evergreen State College (2013), .

away.¹⁶ Any community, through petition and election, can impose restrictions on alcohol that exceed State-mandated limits. *Id.*

The democratic process through which a community becomes “dry” is deliberate, structured, and participatory. Alaska Stat. §§ 04.11.491(b), 04.11.507(a)-(c). For an established village—which is how most rural Alaska Native communities are classified—35 percent or more of the registered voters residing within the village must sign a petition to place a Local Option prohibition on the ballot. *Id.* § 04.11.507(c).

The law also includes safeguards against impulsive reversal: an election to remove a local option, or to change to a less restrictive one, cannot be held during the first 24 months after adoption or more than once in any 36-month period. *Id.* § 04.11.507(f). These procedural requirements ensure that the choice to go dry—or to reverse that choice—reflects the sustained and considered will of the community.

This is not a restriction imposed on these communities from the outside. It is one they choose for themselves, through a deliberate democratic process, because they live with the consequences of alcohol abuse and are best positioned to judge how serious a response those consequences require.

¹⁶ The Alaska Native Claims Settlement Act created a system of more than 200 Native village corporations, chartered under state law. *Yellen v. Confederated Tribes of Chehalis Reservation*, 594 U.S. 338, 343 (2021); see also Mitchell Forbes, Comment, *Beyond Indian Country: The Sovereign Powers of Alaska Tribes Without Reservations*, 40 Alaska L. Rev. 171 (2023).

Local choice is only as effective as the enforcement tools behind it. A community that has gone through this process has made a considered judgment that the threat of alcohol arriving by air is serious enough to justify a strong deterrent, and mandatory forfeiture is the mechanism the Legislature chose to give that deterrent teeth.

These tools work. When indigenous communities exercise control over their own public health decisions, outcomes have improved.¹⁷ A study of 135 Alaska Native villages found that communities banning the sale and importation of alcohol experienced average decreases in accidental death rates of 74 per 100,000 and homicide death rates of 66 per 100,000, while a control group of 61 communities that did not change their alcohol status showed no significant changes.¹⁸ A separate study comparing wet and dry villages from 1990-1993 found that Alaska Natives in wet villages had a 2.7 times greater risk of alcohol-related injury death than those in dry

¹⁷ Ralph T. Bryan, et al., *Public Health Legal Preparedness in Indian Country*, 99 Am. J. Pub. Health 607, 609 (2009) (strengthening tribal legal foundations for public health regulation goes “hand in hand with the tenets of tribal self-determination”); see also Vanessa Ann Racehorse, *Tribal Health Self-Determination: The Role of Tribal Health Systems*, 56 Colum. Hum. Rts. L. Rev. 183 (2025) (tribal self-governance in health care produces better outcomes than federal administration).

¹⁸ Matthew Berman, et al., *Alcohol Control and Injury Death in Alaska Native Communities: Wet, Damp and Dry Under Alaska’s Local Option Law*, 61 J. Stud. on Alcohol 311 (2000).

villages, with especially elevated risk ratios for motor vehicle deaths, hypothermia, and homicide.¹⁹

The community of Barrow (now Utqiagvik), an Inupiat community of approximately 4,000 people on the Arctic coast provides a particularly stark example. During the four years before the community voted to go dry in November 1994, there were 87 reported rapes, 8 alcohol-related suicides and 45 suicide attempts, 2,057 arrests for drunk and disorderly conduct, 675 drunken assaults, and 229 children arrested for drinking. Fetal alcohol syndrome rates were among the highest in the world.²⁰ After the ban took effect, alcohol-related outpatient visits dropped by 84.7 percent.²¹

The inverse is equally instructive. When Emmonak, a remote village with approximately 825 residents, loosened its restrictions and went from dry to damp in 2016, “the community saw a spike in the number of intoxicated people in the streets and violence in homes.”²²

Since the enactment of Local Option laws, the overwhelming majority of subject elections—69 percent—resulted in increased restrictions, while only

¹⁹ M.G. Landen, et al., *Alcohol-Related Injury Death and Alcohol Availability in Remote Alaska*, 278 JAMA 1755 (1997).

²⁰ Kim Murphy, *Cultures Clash as Alaska Town Votes on Alcohol Ban*, L.A. Times (Oct. 2, 1995), .

²¹ A.Y. Chiu, et al., *The Effect of an Alcohol Ban on the Number of Alcohol-Related Hospital Visits in Barrow, Alaska*, 57 Int. J. Circumpolar Health (Supp. 1) 439 (1998).

²² Alena Naiden, *Utqiagvik May Consider Allowing Alcohol Sales on City Premises*, Anchorage Daily News (Jan. 15, 2024), .

13 percent have removed them.²³ In other words, Alaska Native communities do not merely tolerate these restrictions—they have actively advocated for them.

“Under the terms of [the constitutional] bargain, Indian Tribes remain independent sovereigns with the exclusive power to manage their internal matters.” *Haaland v. Brackeen*, 599 U.S. 255, 307 (2023) (Gorsuch, J., concurring). The Local Option system is a parallel expression of that promise. Improving public safety in rural Alaska requires “tribal, state, federal and local governments” to “jointly identify and implement” solutions.²⁴ The forfeiture statute is precisely such a joint solution—a state law enacted with the support of tribal communities, enforced through state mechanisms, and designed to give effect to locally determined alcohol restrictions. A ruling that weakens it would not only override the Alaska Legislature’s considered judgment. It would undermine the sovereignty of tribes that this Court has promised to protect.

²³ Matthew Berman & Teresa Hull, *Alcohol Control by Referendum in Northern Native Communities: The Alaska Local Option Law*, Inst. of Soc. & Econ. Rsch., Univ. of Alaska Anchorage (Aug. 2000), .

²⁴ Alaska Rural Just. & Law Enft Comm’n, *Report to the United States Congress and the Alaska State Legislature* (Jan. 2012), .

CONCLUSION

For the foregoing reasons, Amici Curiae the International Municipal Lawyers Association and National Association of Counties respectfully submit that the judgment of the Supreme Court of Alaska should be affirmed.

Respectfully submitted,

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APPENDIX

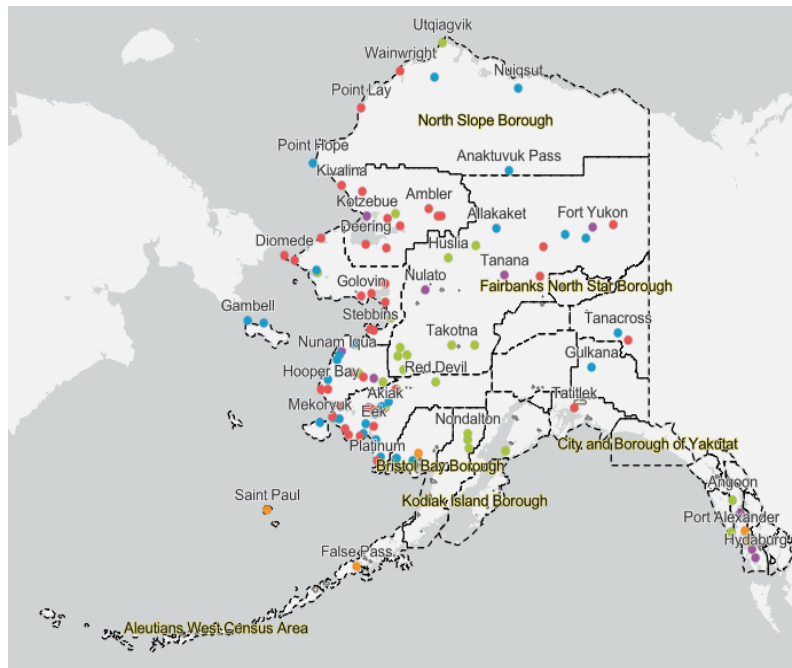
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Appendix A

Map of Alaska Local Option Communities



Local Option - Alcohol

- Ban sale and importation
- Ban sale, importation, and possession
- Ban Sale
- Sale by municipality operated license only
- Sale by specific type of license only

City Boundaries



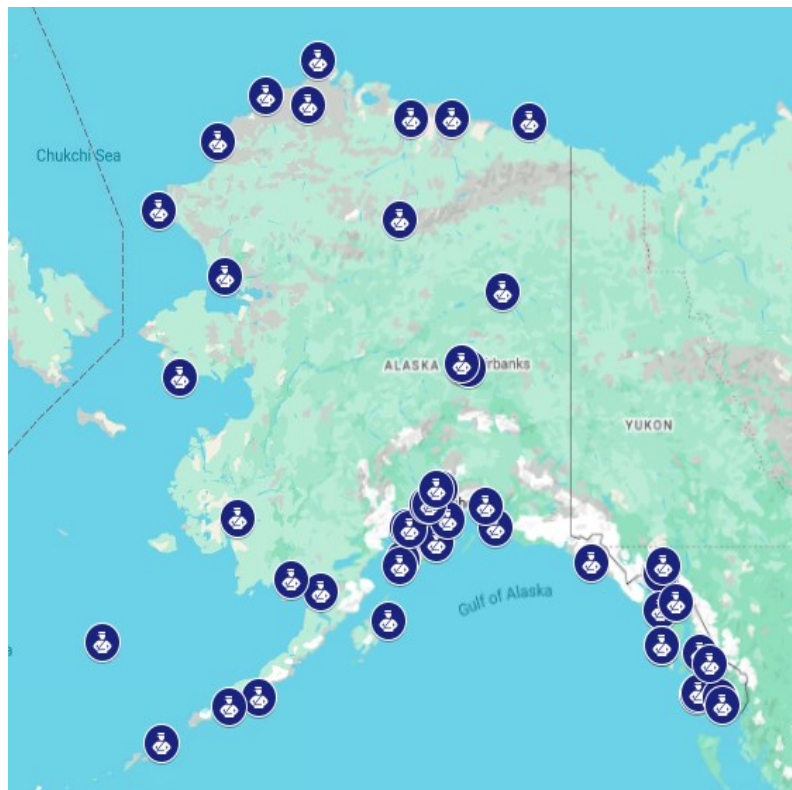
Borough and Census Area Boundaries



Source: <https://www.arcgis.com/apps/dashboards/ccd10e6ddcab433292df26205781c00a#>

2a

APPENDIX B
Map of Alaska Law Enforcement Agencies



Source: <https://dps.alaska.gov/apsc/apsc-agency-map/>