NO. 25-465

In the Supreme Court of the United States

TIMOTHY BARTON,

Petitioner,

v.

SECURITIES AND EXCHANGE COMMISSION,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF AMICI CURIAE LIBERTARIAN PARTIES OF IDAHO, KENTUCKY, MAINE, MARYLAND, MISSISSIPPI, NEBRASKA, OREGON, PENNSYLVANIA, TENNESSEE, AND THE WE THE PEOPLE PARTY OF PENNSYLVANIA IN SUPPORT OF PETITIONER

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INTEREST OF THE AMICI CURIAE

The Amici Curiae[1] are:

- LIBERTARIAN PARTY OF KENTUCKY
- LIBERTARIAN PARTY OF MAINE
- LIBERTARIAN PARTY OF MARYLAND
- LIBERTARIAN PARTY OF MISSISSIPPI
- LIBERTARIAN PARTY OF NEBRASKA
- LIBERTARIAN PARTY OF OREGON
- LIBERTARIAN PARTY OF PENNSYLVANIA
- LIBERTARIAN PARTY OF TENNESSEE
- WE THE PEOPLE PARTY OF PENNSYLVANIA

Amici Curiae are state-level political organizations dedicated to advancing individual liberty, limited government, and robust constitutional protections against government overreach, particularly in areas such as civil asset forfeiture and due process violations. Each Amicus respectfully submits this brief in support of the petition for a writ of certiorari. Their platforms explicitly condemn civil asset forfeiture as an abridgement of fundamental property rights, calling for an end to its use without due process and supporting reforms

[1] Pursuant to Supreme Court Rule 37.2(a), Amici Curiae provided timely notice of its intent to file this brief to counsel for all parties. No counsel for any party authored this brief in whole or in part, and no one other than Amici and its supporters made any monetary contribution to its preparation or submission.

to ensure seizures occur only after conviction with protections for the innocent.[2]

Amici represent thousands of members across their respective states who value constitutional safeguards against government overreach, particularly in practices that incentivize revenue-driven enforcement over justice. Civil asset forfeiture and analogous SEC receiverships operate nationwide, generating millions for law enforcement and agencies while implicating due process and separation-of-powers concerns in every jurisdiction. For example, in Oregon, state forfeiture laws have generated millions for law enforcement agencies, with at least 74% of forfeited properties processed under civil (non-criminal) laws, often without convictions.[3] Comparable abuses occur in Amici's home states, driving their collective advocacy for reform, as such practices create legal uncertainty that burdens economic activity and erodes trust in institutions.

Amici's interests align with the public's: preserving a constitutional order where law precedes seizure and enforcement follows conviction. SEC receiverships, like those challenged here, function analogously to civil forfeiture by freezing assets pre-conviction. If unchecked, they undermine the objective standards—enacted by Congress and enforced by courts—that Amici's members require for secure property rights. Amici submit

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[2] Libertarian Party, *Platform* § 2.1 (Aggression, Property, and Contract) (2024), https://lp.org/platform-page/.

[3] Institute for Justice, *Policing for Profit: The Abuse of Civil Asset Forfeiture* 45 (3D ED. 2023), https://ij.org/report/policing-for-profit/ (noting national trends, including Oregon's 80% non-conviction seizure rate).

this brief to defend the principle of divided, accountable power that sustains American liberty.

SUMMARY OF ARGUMENT

Civil asset forfeiture allows the government to seize private property on suspicion alone, without charging or convicting the owner, often forcing innocents to prove their claims in costly proceedings. From a libertarian perspective, this practice erodes the Fourth, Fifth, Eighth, and Fourteenth Amendments by prioritizing revenue over justice, inverting the presumption of innocence, and incentivizing abuse. SEC receiverships, as in this case, mirror these flaws by enabling broad equitable freezes under Section 21(d)(5) of the *Securities Exchange Act of 1934,* 15 U.S.C. § 78u(d)(5), without adequate pre-deprivation safeguards—echoing the disgorgement limits in *Liu v. SEC.*[4]

This case exemplifies the constitutional risks: unchecked receiverships combine executive seizure with judicial ratification, placing individuals at the mercy of revenue-focused enforcement. Such volatility threatens everyday liberty, as assets underpin stability; a single overreach discourages lawful conduct and burdens the vulnerable. The separation of powers—Article I rulemaking by Congress, Article II faithful execution, and Article III adjudication—guards against this by ensuring predictability.[5]

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[4] *Liu v. SEC,* 591 U.S. 71, 140 S. Ct. 1936, 207 L. Ed. 2d 401 (2020).

[5] U.S. Const. art. I

For centuries, American prosperity has thrived under legal clarity, with courts demanding statutory grounding for government action. Forfeiture and receivership reform would engineer similar trust, supplanting discretion with due process. Yet when agencies like the SEC expand beyond statute, they erode supervised liberty.

The question presented here is pivotal: Shall property rights evolve under the *rule of law,* or yield to administrative fiat? This Court has advanced certainty—in *Timbs v. Indiana*, incorporating the Excessive Fines Clause; in *Culley v. Marshall*, mandating prompt hearings; in *United States v. Bajakajian*, curbing disproportionality.[6] Extending these to SEC receiverships would discipline enforcement, ensuring it adheres to proper channels.

The Amici submits that liberty, progress, and constitutional structure are intertwined. Honoring boundaries enables confident enterprise; breaching them invites overreach. Granting certiorari would reaffirm predictable rights as prosperity's foundation.

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[6] *Timbs v. Indiana*, 586 U.S. 146, 139 S. Ct. 682, 203 L. Ed. 2d 11 (2019); *Culley v. Marshall*, 602 U.S. 134, 144 S. Ct. 1004, 228 L. Ed. 2d 299 (2024); *United States v. Bajakajian*, 524 U.S. 321, 118 S. Ct. 2028, 141 L. Ed. 2d 314 (1998).

ARGUMENT

I. Property Rights and Predictability Are Constitutional Values.

In a free society, individuals require reasonable expectations that governing rules remain stable. The Constitution ensures this through structural continuity: government of enumerated powers, exercised predictably. When seizures or freezes—whether in forfeiture or SEC receiverships—extend beyond statute or receive undue judicial deference, predictability erodes, undermining investment and liberty.

Predictability is liberty's bedrock. As Justice Gorsuch observed in *Loper Bright Enterprises v. Raimondo*, the rule of law demands "rules—written by [the people's] representatives [and] faithfully applied."[7] For libertarians, this means planning under public, stable statutes. Discretionary asset restraints, like the SEC's here, make compliance elusive, as owners cannot anticipate unwritten risks. Liberty thus demands strict separation of powers, safeguarding property as an extension of autonomy against arbitrary whim. Since the Founding, prosperity has hinged on stable institutions. Madison warned in *The Federalist No. 47* that accumulated powers "may justly be pronounced the very definition of tyranny."[8] Regulators claiming unstatutory authority, with courts acquiescing, con-

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[7] *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385, 144 S. Ct. 2244, 231 L. Ed. 2d 238 (2024).

[8] *The Federalist No. 47* (James Madison) (Feb. 1, 1788), in 1 *The Federalist Papers* 301 (Clinton Rossiter ed., 1961).

solidate that feared power. The consequence is not overt tyranny but pervasive uncertainty, stifling free enterprise.

This Court recognizes economic stability's import. In *West Virginia v. EPA,* it required "clear congressional authorization" for major agency actions—a principle of due process predictability.[9] Similarly, *Timbs v. Indiana* unanimously applied the Eighth Amendment's Excessive Fines Clause to states, mandating proportionality before asset seizures.[10] In receiverships, as challenged here, such clarity is essential: assets sustain lives, and retroactive restraints punish possession over proven wrongdoing.

II. Civil Forfeiture Creates Incentives for Abusive "Policing for Profit".

Equitable expansions of forfeiture and receiverships —seizing or freezing assets without conviction—foster incentives misaligned with justice. Nationally, forfeitures generate billions annually, yet approximately 80% involve no arrests.[11] Libertarians view this as a perversion of enforcement into revenue generation.

In *United States v. Bajakajian,* this Court reduced a $357,000 forfeiture to a $5,000 fine proportional to the offense.[12] Yet the "gross disproportionality" test

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9 *W. Va. v. EPA,* 597 U.S. 697, 721, 142 S. Ct. 2587, 213 L. Ed. 2d 896 (2022).

10 *Timbs v. Indiana*, 586 U.S. 146, 149, 139 S. Ct. 682, 203 L. Ed. 2d 11 (2019).

11 Inst. for Justice, *supra* note 2, at 12.

12 *United States v. Bajakajian*, 524 U.S. 321, 324, 118 S. Ct. 2028, 141 L. Ed. 2d 314 (1998).

remains underenforced, permitting excessive penalties. Raids yielding minimal evidence—residue traces or administrative violations—prioritize funds over accountability. The pending *Young v. United States* builds on *Honeycutt v. United States* to limit liability for untainted assets.[13]

Grupo Mexicano de Desarrollo S.A. v. Alliance Bond Fund, Inc. confines equitable remedies to historical practice.[14] *Free Enterprise Fund v. Public Co. Accounting Oversight Board* mandates oversight for accountability.[15] Yet receiverships evade these by sidestepping criminal process, as in *Liu v. SEC,* which cabined disgorgement to net profits.[16] *State v. One (1) 2004 Lincoln Navigator* rejected the exclusionary rule for forfeitures, enabling tainted evidence and overreach.[17] Such practices demand reform, as *The Federalist No. 62* deems predictability law's essence.[18]

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[13] *Young v. United States*, No. 24-571 (U.S. Apr. 29, 2025) (*cert. denied*); *Honeycutt v. United States*, 581 U.S. 402, 408, 137 S. Ct. 1626, 198 L.Ed.2d 39 (2017).

[14] *Grupo Mexicano de Desarrollo S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 319, 119 S. Ct. 1961, 144 L. Ed. 2d 319 (1999).

[15] *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 484, 130 S. Ct. 3138, 177 L. Ed. 2d 706 (2010).

[16] *Liu v. SEC*, 591 U.S. 71, 81, 140 S. Ct. 1936, 207 L. Ed. 2d 401 (2020).

[17] *State v. One* (1) *2004 Lincoln Navigator*, 437 S.W.3d 386, 392 (Tex. 2014).

[18] *The Federalist No. 62* (James Madison) (Feb. 27, 1788), in 1 *The Federalist Papers* 378 (Clinton Rossiter ed., 1961).

See also Letter from Alexander Hamilton to Edward Carrington (warning against caprice).[19]

III. Forfeiture as Punishment Without Due Process Harms the Innocent.

Forfeiture and analogous restraints punish process, not crime, by seizing innocents' assets and shifting the proof burden to claimants. In *Culley v. Marshall*, this Court required post-seizure hearings but not pre-deprivation review, potentially depriving owners of assets for months contrary to *Mathews v. Eldridge's* balancing.[20] Justice Gorsuch critiqued this as "guilt by association," disproportionately affecting vulnerable individuals.[21] *Leonard v. Texas* deemed forfeiture "suspect" for lax safeguards, invoking Takings concerns—yet upheld a $200,000 seizure against an innocent.[22] In *Snitko v. United States*, the Ninth Circuit condemned warrantless forfeitures of 1,500 safe-deposit boxes as Fourth and Fifth Amendment violations.[23]

These practices echo in state-level excesses, analogous to the federal overreach in SEC receiver-

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[19] Letter from Alexander Hamilton to Edward Carrington (May 26, 1792), in 11 *The Papers of Alexander Hamilton* 428 (Harold C. Syrett ed., 1962).

[20] *Culley v. Marshall*, 602 U.S. 134, 140, 144 S. Ct. 1004, 228 L. Ed. 2d 299 (2024); *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976).

[21] *Culley v. Marshall*, 602 U.S. 134, 153, 144 S. Ct. 1004, 228 L. Ed. 2d 299 (2024) (Gorsuch, J., concurring).

[22] *Leonard v. Texas*, 137 S. Ct. 978 (2017) (statement respecting denial of certiorari).

[23] *Snitko v. United States*, No. 22-56050, 2024 WL 253211, at *1 (9th Cir. Jan. 23, 2024).

ships, where unproven suspicions justify asset freezes disproportionate to any penalty. In 2023, this Court held in *Tyler v. Hennepin County*, that the Fifth Amendment's Takings Clause prohibits retaining excess value from seized property beyond the debt owed.[24] The same standard should govern civil asset forfeitures, limiting takings to levied fines.

For instance, in *Jouppi v. Alaska*,[25] a pilot's $88,000 Cessna was forfeited for transporting a six-pack of beer to a remote Alaskan village—a $300 misdemeanor.[26] Under *Tyler*, the state could retain only $300 after sale, returning the surplus or offering redemption.

In Oregon, detailed data tracks similar disparities: from 2023–2024, forfeitures fell from 26 to 22 cases, yet 90.9% were drug-related—mostly black-market cannabis operations spurred by California's overregulation and taxation, inviting federal raids under the Controlled Substances Act.[27] These seizures, often exceeding fines by multiples, have devastated small-scale operations and family livelihoods, sometimes driving individuals toward illicit alternatives to sur-

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[24] *Tyler v. Hennepin Cnty.*, 598 U.S. 631, 143 S. Ct. 1369, 215 L. Ed. 2d 109 (2023).

[25] *Jouppi v. Alaska* (U.S. cert. petition pending, No. 25-246 (filed Aug. 29, 2025)).

[26] *Jouppi v. State*, Nos. S-18598/S-18637, 2025 WL 18598, at *1 (Alaska Apr. 18, 2025).

[27] Press Release, U.S. Dep't of Justice, *$6 Million Worth of Oregon Properties Forfeited in Connection to Interstate Marijuana Trafficking* (Apr. 1, 2024), https://www.justice.gov/usao-or/pr/6-million-worth-oregon-properties-forfeited-connection-interstate-marijuana-trafficking (last visited Nov. 13, 2025).

vive.[28] Reforms must apply *Tyler*'s limits to prevent such inequities, ensuring federal tools like receiverships do not amplify state-level imbalances. This parallels *Near v. Minnesota's* bar on prior restraints.[29] *Luis v. United States* protects untainted assets;[30] Gorsuch's *Gundy v. United States* dissent and *Youngstown Sheet & Tube Co. v. Sawyer* curb executive improvisation.[31] As the Institute for Justice documents, these abuses devastate communities; reforms must require proof beyond suspicion and extend *Timbs'* proportionality.[32]

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[28] Or. Criminal Justice Comm'n, *Asset Forfeiture Report* 45 (2024), https://www.oregon.gov/cjc/CJC%20Document%20Library/2024_Asset_Forfeiture_Report.pdf (last visited Nov. 13, 2025).

[29] *Near v. Minnesota ex rel. Olson*, 283 U.S. 697, 713, 51 S. Ct. 625, 75 L. Ed. 1357 (1931).

[30] *Luis v. United States*, 578 U.S. 5, 10, 136 S. Ct. 1850, 195 L. Ed. 2d 282 (2016).

[31] *Gundy v. United States*, 588 U.S. 128, 167, 139 S. Ct. 2116, 204 L. Ed. 2d 522 (2019) (Gorsuch, J., dissenting); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 589, 72 S. Ct. 863, 96 L. Ed. 1153 (1952).

[32] *Timbs v. Indiana*, 586 U.S. 146, 154, 139 S. Ct. 682, 203 L. Ed. 2d 11 (2019); Inst. for Justice, *supra* note 2, at 56.

IV. Reforming Forfeiture Restores Trust in Individual Liberty and the Rule of Law.

Reform—tethering seizures to convictions and mandating hearings—rebuilds trust by enforcing separation. *Loper Bright Enterprises v. Raimondo* and *West Virginia v. EPA* insist on clear authorization; *SEC v. Jarkesy* requires Article III juries for penalties.[33] *Timbs v. Indiana* incorporates fines protections; *United States v. Bajakajian* demands proportionality.[34] *McCulloch v. Maryland* affirms enduring limits on power.[35] *The Federalist No. 78* praises judicial fidelity.[36] Remedies include warrants, evidence suppression, and innocent-owner shields—channeling enforcement through statute. Economic liberty and constitutional design interlink: observed boundaries foster confidence; breaches enable overreach.[37] Certiorari here would affirm rights as governance's infrastructure.

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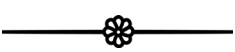
[33] *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 387, 144 S. Ct. 2244, 231 L. Ed. 2d 238 (2024); *W. Va. v. EPA*, 597 U.S. 697, 721, 142 S. Ct. 2587, 213 L. Ed. 2d 896 (2022); *SEC v. Jarkesy*, 603 U.S. 109, 128, 144 S. Ct. 2117, 229 L. Ed. 2d 1 (2024).

[34] *Timbs v. Indiana*, 586 U.S. 146, 149, 139 S. Ct. 682, 203 L. Ed. 2d 11 (2019); *United States v. Bajakajian*, 524 U.S. 321, 336, 118 S. Ct. 2028, 141 L. Ed. 2d 314 (1998).

[35] *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 405, 4 L. Ed. 579 (1819).

[36] *The Federalist No. 78* (Alexander Hamilton) (May 28, 1788), in 1 *The Federalist Papers* 465 (Clinton Rossiter ed., 1961).

[37] *The Federalist No. 47*, *supra* note 8, at 301.



CONCLUSION

From a libertarian standpoint, civil asset forfeiture and analogous SEC receiverships exemplify governmental overreach, inverting innocence by presuming assets guilty and enabling pre-conviction confiscation without compensation. This regime violates the Eighth Amendment's Excessive Fines Clause—as *Timbs v. Indiana* and *United States v. Bajakajian* require proportionality—but also erodes Fourteenth Amendment due process, disregarding *Mathews v. Eldridge's* balancing and *Culley v. Marshall's* hearing mandate.[38] Echoing Madison's caution in *The Federalist No. 47* that power accumulation defines tyranny, it permits regulators to usurp legislative roles, with courts abetting executive excess akin to critiques in Justice Gorsuch's *Gundy v. United States* dissent and *Youngstown Sheet & Tube Co. v. Sawyer's* limits.[39] The Institute for Justice's reports expose how this revenue-driven enforcement harms communities, fostering uncertainty that hampers the free enterprise the Founders championed.[40]

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[38] *Timbs v. Indiana*, 586 U.S. 146, 139 S. Ct. 682, 203 L. Ed. 2d 11 (2019); *United States v. Bajakajian*, 524 U.S. 321, 118 S. Ct. 2028, 141 L. Ed. 2d 314 (1998); *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976); *Culley v. Marshall*, 602 U.S. 134, 144 S. Ct. 1004, 228 L. Ed. 2d 299 (2024).

[39] *The Federalist No. 47*, *supra* note 8; *Gundy v. United States*, 588 U.S. 128, 139 S. Ct. 2116, 204 L. Ed. 2d 522 (2019) (Gorsuch, J., dissenting); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 72 S. Ct. 863, 96 L. Ed. 1153 (1952).

[40] Inst. for Justice, *supra* note 2.

To restore fidelity, the Court should grant certiorari, vacate the judgment below, and remand with instructions for reforms: link forfeitures to convictions, bolster innocent-owner defenses, and demand state-borne evidentiary burdens exceeding suspicion. By unmasking the procedural shields for these restraints and applying Takings scrutiny, we secure self-ownership, positioning government as servant rather than sovereign. Only so can prosperity thrive free from arbitrary deprivations that undermine the American experiment.

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November 17, 2025