

NEWS RELEASES

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Husch Blackwell Files Amicus Brief at U.S. Supreme Court on Behalf of Fair and Just Prosecution in Excessive Fines Clause Case

Husch Blackwell filed an amicus curiae brief today at the U.S. Supreme Court on behalf of Fair and Just Prosecution (FJP), a network of elected prosecutors committed to fairness, equity, and fiscal responsibility in the criminal justice system, in support of the petitioner in *Kenneth J. Jouppi v. Alaska*. The case asks whether, in assessing the proportionality of a civil forfeiture under the Eighth Amendment's Excessive Fines Clause, courts may evaluate the gravity of the underlying offense purely in the abstract or must instead consider the gravity of the specific defendant's own conduct.

Kenneth Jouppi is an Alaska bush pilot whose airplane was subject to forfeiture after he transported, while the plane never left the ground, a six-pack of beer to a dry village in violation of a local alcohol importation law—a first-time, misdemeanor offense. The Alaska Supreme Court upheld the forfeiture by analyzing the gravity of the offense only at a high level of generality, without regard to the specific facts of Jouppi's conduct. Jouppi petitioned the U.S. Supreme Court for review, and the Court granted certiorari.

Husch Blackwell's brief, written by attorneys Joseph Diedrich, Danny Solomon, and Kayla Fowler-Smith on a pro bono basis, argues that the Excessive Fines Clause requires courts to consider the gravity of the individual defendant's wrongdoing, not merely the offense in the abstract. The brief explains that forfeiture has increasingly become a revenue-generating tool untethered from its original purposes of retribution and deterrence, creating perverse incentives for governments to pursue penalties disproportionate to the conduct at issue. It further argues that prosecutors bear a duty to seek justice, not merely convictions, and that this duty requires proportionality in

charging and in the penalties prosecutors pursue—an obligation that abusive, mandatory forfeiture statutes undermine by stripping prosecutors and courts of the discretion needed to tailor punishment to culpability. Finally, the brief contends that disproportionate punishments erode public confidence in the legitimacy of the criminal justice system, weakening the community trust and cooperation on which effective law enforcement depends.

“Prosecutors have a duty to seek justice, not just convictions, and that duty demands proportionality at every stage of a case,” Diedrich said. “When forfeiture laws strip courts and prosecutors of the ability to weigh a defendant's actual conduct, the Excessive Fines Clause has to serve as the backstop the Constitution promises.”

“Disproportionate forfeitures like the one imposed on Mr. Jouppi don't just harm the individual defendant—they erode the public's confidence in the fairness of the justice system as a whole,” Solomon said. “We are honored to prepare this brief on behalf of Fair and Just Prosecution and its network of prosecutors who understand that lasting public safety depends on perceived legitimacy and fairness.”

The brief urges the Court to reverse the judgment of the Alaska Supreme Court and remand the case for further proceedings applying a proportionality standard that accounts for the defendant's individual culpability.