

## **U.S. Supreme Court strikes blow to civil forfeiture, limits states' ability to raise money from excessive fines**

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In a victory for property rights and a blow to South Carolina law enforcement's use of civil asset forfeiture revealed by The Greenville News' groundbreaking TAKEN investigation, the U.S. Supreme Court ruled unanimously Wednesday that states can't use forfeiture or other fees and fines to impose excessive punishment or to raise money.

The 9-0 decision united the conservative and liberal justices in a decision that immediately will affect how states such as South Carolina use civil forfeiture.

The court ruled that their decision applies to states. The decision, however, does not eliminate the use of forfeiture.

Beginning last month, The Greenville News published its findings in an in-depth series of articles that looked at South Carolina's use of civil asset forfeiture. Over a three-year period, law enforcement seized more than \$17 million from people. That vast majority of that money ended up back in the hands of the police departments that seized it, the investigation found.

More than 65 percent of all seizures were taken from black men, who make up 13 percent of the state's population. In 19 percent of cases, no one was charged with a related crime, and in nearly 800 cases where someone was charged with a crime, no one was convicted.

Last week, after thanking the newspaper for its TAKEN series, 93 House members announced they planned to work together to overhaul the state's forfeiture laws. They want to make it an option for law enforcement only after a criminal conviction.

The Supreme Court's ruling may further affect how South Carolina law enforcement use civil forfeiture as a tool to boost police budgets and punish people police believe may be connected to criminal activity.

Associate Justice Ruth Bader Ginsburg, just back from lung cancer surgery, wrote the court's majority opinion and announced it from the bench. The historical and logical case that excessive fines and fees violate an individual's right to due process "is overwhelming," she wrote. Justices Neil Gorsuch and Clarence Thomas wrote concurring opinions but said states shouldn't be allowed to impose excessive fines because of "privileges or immunities of citizens of the United States" as stated in the 14th Amendment.

The case came to the Supreme Court from Indiana, where Tyson Timbs was convicted of selling less than \$400 worth of heroin to undercover police officers in 2013. Indiana seized his Land

Rover, which he had purchased for more than \$42,000 using inheritance money after his father died.

Indiana made the argument that the clause in the Bill of Rights against excessive fees and fines doesn't apply to states. The court ruled that it does.

"Today's ruling should go a long way to curtailing what is often called 'policing for profit'— where police and prosecutors employ forfeiture to take someone's property then sell it, and keep the profits to fund their departments," said Wesley Hottot, the attorney who argued the case on behalf of Timbs. "This gives them a direct financial incentive to abuse this power and impose excessive fines."

The ruling should have an immediate effect on law enforcement's use of civil forfeiture in South Carolina, said Deborah Barbier, an attorney in Columbia who specializes in civil forfeiture cases.

"Forfeiture is an incredibly powerful law enforcement tool. It must be used reasonably," she said. "This case demonstrates that when law enforcement tries to overreach – the courts have the power to stop those abuses."

She called it a victory for the civil liberties of all Americans to be free from grossly disproportionate seizures of their personal property by law enforcement.

While it's not a direct ruling on law enforcement's seizure of property they believe may be connected to a crime, officers now must consider whether property they seize under South Carolina's civil forfeiture law could be considered excessive, she said.

Practically, the ruling won't undo most forfeiture cases filed in the state right now because most fines and forfeitures wouldn't be ruled unconstitutionally excessive, said Sam Dedge, an attorney with Institute for Justice, a nationwide property rights advocacy law firm.

It also doesn't address the systemic issues built into most states forfeiture laws — pressure to consent to forfeiture, the cost to hire an attorney, the time it takes to fight a case in court — that some states have reformed in recent years, he said.

The ruling is important though, because as Ginsburg noted in the majority opinion, there is a real danger that government has a built-in incentive to seize property and the courts must protect against those abuses, he said.

Now there is a safety valve to protect against the worst forfeiture abuses, he said.

"It at least introduces the Supreme Court to the worst abuses people are seeing when it comes to economic sanctions," he said.

The ruling applies beyond forfeiture to other fines and fees states assess as punishment.

State and local governments increasingly use funds collected in criminal and civil cases to pay for municipal services. The 100 cities with the highest proportion of revenue from fines and fees in 2012 financed between 7 percent and 30 percent of their budgets that way, according to the America Civil Liberties Union.

The practice often leads low-income defendants further into poverty, crime, prison and recidivism, the liberal Southern Poverty Law Center and libertarian Cato Institute argued in court

papers. The American Bar Association noted that nearly two-thirds of prisoners have little prospect of paying the fines and fees after their release.

"Imposing monetary penalties that bury people under mountains of accumulating debt has devastating consequences on individuals, families, and entire communities, particularly low-income communities of color," said Nusrat Choudhury, deputy director of the ACLU Racial Justice Program, which also filed a brief in the case.