



What the Supreme Court ruling could mean for civil asset forfeiture

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As the U.S. Supreme Court pointed out on Feb. 20, the constitutional clause that protects Americans from having to pay “excessive fines” traces its lineage to the Magna Carta, which set forth certain rights in England more than 800 years ago.

The Founding Fathers considered this concept so important to the new American democracy that they enshrined it in the Bill of Rights. The Eighth Amendment holds that “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

Until this year, however, the Supreme Court had never ruled that states had to abide by the excessive fines clause. That changed with the Court’s unanimous ruling in *Timbs v. Indiana*, a finding that could set the stage for dramatic reforms in the criminal justice system.

The case involved a man named Tyson Timbs. After pleading guilty to a drug offense in Indiana, he was fined \$1,200 and sentenced to a year of home detention. But there was another cost to Timbs. When he was arrested, police used a process called civil asset forfeiture to seize and forfeit – or permanently keep – his SUV, a Land Rover for which he had paid \$42,000 with money he inherited from a life insurance policy upon his father’s death. In effect, this amounted to an additional fine that was four times larger than the \$10,000 maximum fine for his crime.

Timbs went to court to get his vehicle back. He won at the trial court but lost at the Indiana Supreme Court, which ruled that states weren’t bound by the Constitution’s excessive fines clause. The U.S. Supreme Court thought differently, ruling that the clause does indeed apply to the states.

Though this was a particularly egregious case, the same thing happens all across America, to thousands of people.

Police, in fact, are reaping billions of dollars in cash and property each year from people who are merely suspected of committing crimes. Many are never even charged. Even in cases where they are found guilty, the value of their property may be far greater than the maximum fine they would face, as was the case in Timbs. But to get their property back, they must go to court, which generally requires the financial ability to hire a lawyer. Plus, they face a high legal standard. In a criminal case, the government must prove guilt “beyond a reasonable doubt.” In most civil forfeiture cases, the government must show only that there’s a “preponderance of evidence” that the property facilitated, or resulted from, the commission of a criminal act.

What this all means is that police are empowered to forfeit property based on unsubstantiated claims. For example, they can – and quite often do – set up highway checkpoints, pull over motorists for minor violations and seize their assets (usually cash) based merely on “indicators” of criminal activity.

Law enforcement agencies have a strong incentive to abuse this process. In some states, such as Alabama, they get to keep virtually all of the proceeds that are forfeited, often with little or no accountability regarding how they spend the money. In states that don’t allow them to keep the money, they can simply turn it over to the federal government – under its “equitable sharing” program – and get 80 percent of it back. President Obama scaled back this program, but it has been revived under President Trump.

Distorts law enforcement

This incentive has grossly distorted law enforcement over the past 30 years, leading to a greater emphasis on the enforcement of minor drug crimes because of the opportunity to seize and keep cash and property.

What was sold to the public in the 1980s as a tool for confiscating the ill-gotten gains of drug kingpins has metastasized into a highly abusive, money-making venture for law enforcement. One national study found that about 40 percent of the municipal and county agencies surveyed across the country relied on forfeiture profits as a “necessary” part of their budget, leading the author to conclude that they were “addicted to the drug war.”

Federal forfeitures alone grew by a whopping 4,667% between 1986 and 2014 – to \$4.5 billion a year. And that doesn’t count the money that goes through state courts, much of which is never even tracked in a systematic way.

The Timbs ruling provides a powerful new legal argument for many litigants who claim their property was wrongly taken.

But it’s not a cure-all. And it doesn’t go far enough.

It’s doubtful, for example, that many law enforcement agencies are going to change their practices voluntarily. And Timbs won’t help the sizable number of people who never seek to get their property back because of the legal costs of doing so – costs that often exceed the value of the seized property or cash.

In addition, as we pointed out to the Supreme Court in an amicus brief in support of Timbs, civil asset forfeiture is emblematic of a larger pattern in the criminal justice system: governments’ increasing reliance on generating revenue from fines, costs, and fees imposed against defendants in criminal cases. For the last 30 years, fines, costs, and fees have ballooned as state and local governments sought more and more revenue to prop up a criminal justice system that has led to the world’s largest prison population. Some cities even finance other government functions through their court system.

This financial incentive has perverted law enforcement in many places. In Ferguson, Missouri, for example, the Department of Justice’s 2014 investigation of racially discriminatory policing practices found that city officials put unrelenting pressure on police to generate more revenue for the city’s general fund through fines and court fees, leading many officers to see residents of the

city's predominantly African-American neighborhoods "less as constituents to be protected than as potential offenders and sources of revenue."

Such a short-sighted approach not only drives a wedge between police and the communities they serve – as it did in Ferguson – it costs society much more than the revenue generated.

In the United States today, some 10 million people owe \$50 billion in court debt. This represents a massive transfer of wealth that's devastating low-income communities, leading to more poverty, crime, recidivism, and mass incarceration.

Fortunately, there's a growing movement for reform, one that spans the political spectrum. In fact, the SPLC joined with the Cato Institute and the ACLU in two separate amicus brief in Timbs. The U.S. Chamber of Commerce also weighed in on the same side, citing its concern that excessive fines hinder economic growth.

The Timbs ruling was a good start. But much more action is needed.