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# The Supreme Court At Last Moves to Curb Civil Asset Forfeiture

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In a huge victory against government abuses of power, the Supreme Court has finally put some curbs on civil asset forfeiture.

Last month, the court ruled unanimously in favor of the plaintiff in *Timbs v. Indiana*, establishing that states must protect your Eighth Amendment protection against excessive government fines.

The legal precedent in this case stemmed from the drug arrest of Tyson Timbs in 2015. He sold a total of $260 worth of heroin to an undercover officer on three occasions. He was sentenced to one year of house arrest and five years of probation. Timbs was also assessed $1,203 in fines and fees.

Here's where the controversy lies: the state of Indiana also seized his $42,000 Land Rover even though the maximum fine for his offense is $10,000. Furthermore, Timbs had proof that his car wasn't purchased with the proceeds of drug sales; it was acquired with funds from his father's life insurance policy.

In order to seize the car, the state of Indiana asserted a draconian level of authority that should frighten every American. During questioning, Indiana Solicitor General Thomas Fisher proclaimed that there is no limit to the value of property that can be seized in cases of civil asset forfeiture.

Justice Stephen Breyer probed further by asking if a "Bugatti, Mercedes, or a special Ferrari" could be seized by police even if the driver was merely traveling five miles per hour over the speed limit. Fisher responded affirmatively that the state had that power.

The overarching legal principle at stake was whether the Eighth Amendment's protection against excessive fines applied to the states. The Fourteenth Amendment was supposed to ensure that the protections within the Bill of Rights were all applicable at the state level, not just the federal one. However, there have been a number of cases that have challenged this "incorporation," including *Timbs v. Indiana*.

Ultimately, the U.S. Supreme Court ruled against the state of Indiana, with Justice Ruth Bader Ginsburg writing the opinion for the court. "Forfeiture of the Land Rover, the court determined, would be grossly disproportionate to the gravity of Timbs's offense," she said.

All in all, this ruling was a strong step towards sensible criminal justice reform. Timbs was represented by the libertarian nonprofit Institute for Justice. His case drew support from other organizations of diverse ideologies, including the ACLU, NAACP, American Bar

Association, National Association of Criminal Defense Lawyers, Cato Institute, and Southern Poverty Law Center, among others.

To be clear, however, the Supreme Court didn't abolish civil asset forfeiture. And remarkably, this practice, which is fundamentally unjust and opposed by 84 percent of Americans, has previously been sanctioned by the highest court in the land.

For example, in 1996, the court ruled against Tina Bennis in *Bennis v. Michigan*, after local authorities seized the car that she co-owned with her husband following his arrest for soliciting a sex worker.

Obviously, Tina didn't authorize her husband to use the car in this manner. Hence, her attorneys presented an innocent owner defense, and asserted that her right to due process had been violated.

The late Chief Justice William Rehnquist wrote the majority opinion in this five-to-four ruling. He countered with a contention that civil asset forfeiture was "too firmly fixed in the punitive and remedial jurisprudence of the country to be now displaced."

Rehnquist was accurate in one respect. Civil asset forfeiture has been a part of American law from the time of our country's founding. (Though the floodgates opened after the Comprehensive Control Act of 1984, which allowed federal agencies to share up to 80 percent of their seizures with local law enforcement agencies.)

Civil asset forfeiture was originally designed as a way to fight piracy at sea. The pirates themselves generally lived outside of American jurisdiction and were unlikely to enter a U.S. court. Thus the property itself was charged with a crime.

That's the essential theory behind the practice. But property isn't protected from the government with the same standard of evidence as a human being, i.e. proof beyond a reasonable doubt. Instead, the onus is on the owner of the property, who must prove with a preponderance of evidence that it was not used to commit a crime or derived from criminal activity.

This low burden of proof is one reason why most in law enforcement laud civil asset forfeiture as a powerful tool. But the ends don't justify the means.

Evidence shows that there's often a racial component of selective enforcement involved in civil asset forfeiture. A recent report by the *Greenville News* examined every case of forfeiture in South Carolina from 2014 to 2016. It found that black males represent 13 percent of the state's population, yet accounted for 65 percent of those whose assets were confiscated.

But the abuses span all racial lines. Police have a perverse incentive to take your money because there's often no reasonable legal recourse. That same report showed that in over 55 percent of the cases involving cash, the seizures were for an amount less than $1,000. In other words, for those affected, it would have been futile to contest their cases in court because the proceedings generally cost at least $2,000 in fees.

Therefore, although the ruling in *Timbs v. Indiana* was a huge step in the right direction, it did nothing to address the kinds of lower dollar figure cases that are not considered "excessive" by the letter of the law.

So an unfortunate question remains. How much of an impact will *Timbs v Indiana*have on the day-to-day actions of law enforcement officials? In short, there's still a tremendous financial incentive for "policing for profit."

Sarah Seo, an associate professor of law at the University of Iowa, stressed that hopes of reducing asset forfeitures following the court's decision should be tempered. She noted, "The only thing that the court held was that the excessive fines clause is incorporated. It didn't define what 'excessive' is. That's going to be litigated, and it'll take time."

In response, many within the law enforcement and prosecution communities seem to have dug in their heels. Pete Skandalakis, executive director of the Prosecuting Attorneys' Council of Georgia, spoke to the *National Law Journal* and said, "Bottom line, the *Timbs* decision will have no impact on Georgia prosecutors."

The vast majority of those working within the criminal justice system clearly have a financial incentive to maintain the status quo. Their mammoth bureaucracies flourish as a direct result of this funding.

Federal agencies seized over $5 billion in 2014, according to a report by the Institute for Justice. That was a more than 1,000 percent increase from 2001. Also, as an apt comparison, federal agencies seized more assets in 2014 than the amount of property burglarized that same year—$3.9 billion.

Fortunately, such glaring injustices have already led many states to reform their policies. Although *Timbs v. Indiana* didn't abolish civil asset forfeiture, it did set a tone for reform. And such a strong statement, in the form of a unanimous ruling, will help build support for similar initiatives.

For instance, eight days after that ruling, the Arkansas Senate voted unanimously to take significant action against civil asset forfeiture in their state. Their bill would require a felony conviction before property can be seized.

It's a good start and hopefully more will come. After all, you'd have to be a fool to cede willingly to the government the ability to seize your car for going five miles per hour over the speed limit.