

Forbes

Supreme Court Will Decide If Civil Forfeiture Is Unconstitutional, Violates The Eighth Amendment

Nick Sibilla

June 19, 2018

For the first time in over 20 years, the U.S. Supreme Court has agreed to review the constitutionality of civil forfeiture laws, which allow the government to confiscate cash, cars, and even homes. On Monday, the court granted a cert petition from Tyson Timbs, who was forced to forfeit his \$40,000 Land Rover to the State of Indiana, after he pled guilty to selling less than \$200 worth of drugs.

Like too many Americans, Tyson was addicted to opioids, at first taking prescription painkillers before switching to heroin. When Tyson tried to sell undercover officers four grams of heroin, he was arrested in 2013. As punishment, Tyson agreed to serve one year of house arrest and pay \$1,200 in court fees. But the state also wanted his Land Rover, which Tyson had bought with life-insurance proceeds after his father died.

Determined to keep his truck, Tyson argued that forfeiting the Land Rover would violate the Eighth Amendment's ban on "excessive fines." A trial judge agreed, and rejected the forfeiture as "grossly disproportional." Under Indiana law, a felony conviction could trigger a maximum fine of \$10,000—less than a quarter of what Tyson's Land Rover was worth. That decision was upheld by an appellate court.

But in November, the Indiana Supreme Court reversed that decision, and instead ruled that the Constitution's Excessive Fines Clause provided no protection to Hoosiers. "The Excessive Fines Clause does not bar the State from forfeiting Defendant's vehicle," the court ruled, "because the United States Supreme Court has not held that the Clause applies to the States through the Fourteenth Amendment."

After the Fourteenth Amendment was ratified, most of the protections guaranteed by the Bill of Rights were steadily "incorporated" against the states, including the Eighth Amendment's ban on "excessive bail" and "cruel and unusual punishment." With this decision, the Indiana Supreme Court found itself at odds with 14 other state high courts and two federal appellate circuit courts, which had all ruled that the Excessive Fines Clause does, in fact, apply to the states.

Deprived of both his constitutional rights and his truck, it's been hard to "keep my life on track," Tyson said. "Without my car, it is incredibly difficult to do all the things the government wants me to do to stay clean, like visit my probation officer, go to AA, and keep my job," he noted. "Fighting to stay clean is hard enough. I've served out my punishment, but now the government is going beyond seeking justice. Forfeiture only makes it more challenging for people in my position to clean up and become contributing members of society."

In January, Tyson and the Institute for Justice, a public interest law firm, filed a cert petition urging the U.S. Supreme Court to take the case and overturn the Indiana Supreme Court's ruling. Their efforts earned support from all across the political spectrum, with the Southern Poverty Law Center, the Cato Institute, the U.S. Chamber of Commerce, and the National Association for Criminal Defense Lawyers, all filing briefs in support of Tyson and IJ's petition.

With the petition now granted, the U.S. Supreme Court will decide once and for all “whether the Eighth Amendment’s Excessive Fines Clause is incorporated against the States under the Fourteenth Amendment.