

Justices Won't Confront, for Now, Scope of Excessive Fines Clause

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A Colorado state court ruling that said the U.S. Constitution's excessive fines clause applies to both corporations and individuals was among the cases the U.S. Supreme Court on Monday declined to review.

The Colorado Department of Labor and Employment **asked** the Supreme Court in November to take the dispute, which involved a workers' compensation-related fine imposed on a motel owner. Lawyers for Dami Hospitality LLC, represented by Latham & Watkins, **also asked** the justices to pick up the case.

Dami, the owner-operator of a Denver motel, let its workers' compensation insurance lapse, and the company got hit with 1,698 per diem fines—totaling \$841,200. The company's lawyers argued the fine was prohibited under the Constitution's excessive fines clause.

The Colorado Supreme Court in June **said** the excessive fines clause does, in fact, apply to corporations—not just individuals—and that an offender's ability to pay can be considered as part of a court's review of the constitutionality of the fine. The court scrapped the fine and ordered a do-over that took into account Dami's ability to pay.

Eric Olson, the Colorado state solicitor general, challenged the state court ruling at the Supreme Court.

“The animating purpose of the clause was to prevent the government from using fines to place people in prison arbitrarily. Corporations, of course, do not have liberty rights and cannot be imprisoned for failing to pay a fine,” Olson, a former Bartlit Beck partner, told the justices.

Olson, who clerked for the late Justice John Paul Stevens, said any delay in reviewing the dispute “would put the constitutionality of nearly all routine government fines in serious doubt.”

The Supreme Court did not issue any statement Monday in declining to review the Colorado ruling. The justices last term looked at the reach of the excessive fines clause in a ruling that applied prohibitions to state actors. That case, ***Timbs v. Indiana***, involved police seizure of a vehicle in a drug-related prosecution.

Gregory Garre of Latham & Watkins, chairman of the firm's Supreme Court and appellate team, had also asked the justices to review the Colorado Supreme Court ruling.

Garre told the justices that Colorado's petition "presents an opportunity to resolve a question the court left open more than two decades ago—whether and how a defendant's 'income and wealth are relevant considerations in judging the excessiveness of a fine' under the excessive fines clause."

He urged the justices to "reaffirm the fundamental, and increasingly important, protections that the Framers adopted in the excessive fines clause against ruinous financial penalties."

Garre told the court: "Regulated entities, and especially small businesses like Dami, would benefit from a ruling from this court making clear that the excessive fines clause protects corporations, too." Colorado's six-figure fine, Garre argued, would "plunge" Dami into bankruptcy and put the motel out of business.

In the Colorado state court proceedings, Dami found a friend in the Cato Institute.

"The text of the Eighth Amendment is structurally similar to the text of the First and Fourth amendments, which also forbid certain government actions, regardless of whether those actions are directed at a natural person or a corporate person," Cato lawyers and Independence Institute, said in an **amicus brief**.

The Supreme Court's reluctance to hear Dami's case may have stemmed from a jurisdictional issue.

The Colorado Supreme Court had remanded the case to the lower court for additional proceedings that could have run up against the justices' tendency to review only final judgments or decrees from state courts.

Garre and Olson had addressed the jurisdictional issue in their briefs, arguing that the Dami case fell within exceptions to the finality rule in which the justices have said "immediate rather than delayed review would be the best way to avoid 'the mischief of economic waste and of delayed justice.'"

Colorado's Olson argued that the federal issue, "finally decided by the highest state court, may not be available for later review because respondent may go out of business for other reasons or may choose to dissolve instead of paying whatever penalty the Colorado Department of Labor assesses."