



## Excessive Fines Clause Applies to Corporations

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From *Colo. Dep't of Labor v. Dami Hospitality, LLC*:

[Constitutional g]uarantees that are "purely personal" or "limited to the protection of individuals" will not apply to corporations. The established personal guarantees include the Fifth Amendment privilege against self-incrimination and the right to privacy.

On the other hand, when a guarantee is against certain government overreach, and is a "constitutional immunit[y] appropriate to [a corporate] body," this constitutional limitation on government power can apply to protect a corporation just as it may protect a natural person. Thus, corporations have been recognized to have First Amendment rights to free speech and Fourteenth Amendment rights to due process and equal protection of the law. Similarly, corporations are protected from unreasonable searches and seizures, cannot have their property taken without just compensation, and cannot be tried twice for the same offense.

With these cases as guideposts, in considering whether the Excessive Fines Clause applies to corporations we must evaluate both the purpose of the clause and the appropriateness of applying it to corporations.

The Eighth Amendment provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." On its face, the text of the Excessive Fines Clause does not suggest that its protections are limited to natural persons. The clause is a directive to the government not to impose excessive fines. It does not include any limitation on who merits protection from the imposition of excessive fines....

[T]here is justification to conclude that the purpose of the Excessive Fines Clause supports its application to protect corporations even if the other clauses in the Eighth Amendment do not.... The bail clause is necessarily limited to natural persons because corporations cannot be jailed, and therefore cannot be subject to bail. Similarly, cruel and unusual punishment cannot be imposed upon a corporation. In short, these two guarantees are not "appropriate to [a corporate] body." By contrast, "[t]he payment of monetary penalties ... is something that a corporation can do as an entity." Moreover, the government regularly imposes a wide array of monetary penalties, both civil and criminal, on corporations for the purposes of punishing corporate misconduct and regulatory violations. And when the government imposes these punitive sanctions, we hold that it must do so in compliance with the Excessive Fines Clause....

Our own David Kopel filed an amicus brief in the case on this very question, on behalf of the Cato Institute and the Independence Institute; the court's analysis agrees with that brief. The court opinion also deals with other matters, such as how to decide whether a fine (and in particular a per-day fine) is excessive.