



Freedom At A Cost: Fighting Court Fees On The Acquitted

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In 2017, after two trials and years of legal fees that wiped out his life savings, Curtis Lovelace was acquitted of the murder of his wife, but the court ruled he still had to pay \$35,000 as a "bond forfeiture fee," something Lovelace is now arguing is unconstitutional.

Lovelace wants the U.S. Supreme Court to nix that fee, arguing that Illinois' practice of confiscating up to 10 percent of the money that criminal defendants put up for bail is a violation of the Constitution's protections against excessive fines and fees. The practice also encourages courts to set high bail amounts in order to collect larger fees to fund court operations, Lovelace contends.

While it remains to be seen whether the justices will hear the case, Lovelace's argument has drawn support from a wide array of nonprofits and think tanks across the political spectrum, with advocates and Lovelace all saying that the problem of bail forfeiture fees is widespread in the U.S.

"Bail bond forfeitures are routinely imposed on acquitted persons throughout the country, and, like the forfeiture at issue here, are often used to fund the very courts that impose them," Lovelace said in his petition with the court.

Lovelace's case is striking in many ways. His first wife, Cory Lovelace, died in 2006 of what appeared to be natural causes. Eight years later, however, investigators re-opened the case and concluded that Curtis Lovelace had smothered her with a pillow.

He was charged with murder, and after his first trial ended in a hung jury, the jury in a second trial found him not guilty.

Before the second trial, the judge imposed a \$3.5 million bail. At that point, Lovelace was considered indigent — he had previously been a prosecutor and was now unable to work, and he had exhausted his life savings, according to the petition. But friends agreed to put up the 10 percent of the bail amount for a bond that Lovelace needed to avoid awaiting trial in jail.

After being acquitted, however, Lovelace learned that the court would not be returning the full amount. Even though Lovelace had made every court appearance and was found not guilty, 10 percent of the \$350,000 posted would be retained by the court as a bail forfeiture fee, which the judge said helped to fund the operations of the court clerks.

An appellate court later upheld the fee, and the Illinois Supreme Court declined to hear the case.

It's a policy that Lindsay Hagy, one of the attorneys representing Lovelace, said is scary in its implications.

"People don't realize there are court costs that can be charged even if a person is acquitted," she said.

The organizations supporting Lovelace's high court bid range from the Fines and Fees Justice Center to free-market research group R Street Institute to the left-leaning Southern Poverty Law Center to the National Association of Criminal Defense Lawyers.

"It runs the political gamut," Emily Early, a staff attorney at the SPLC, told Law360. "Those on the left, some on the right, as well as libertarians, support the need for reform and are against the government's increasing reliance on fines and fees — and forfeitures specifically."

The Lovelace case, she said, was a glaring example of a problem that goes beyond bond forfeiture fees. Rather than raising funds using taxes, she said, some state and local governments tried to use the criminal justice system as a source of revenue.

This might involve strategies from writing more traffic tickets to raising court fees, she said, adding that regardless of the mechanism, this approach was bad policy because it inevitably ensnares people who are unable to pay. And those who can't pay then also might be jailed or face other penalties, fueling the criminalization of poverty, Early said.

She noted that the issues involved in the Lovelace case are also similar to another case the U.S. Supreme Court decided last week: *Timbs v. Indiana*, in which a man challenged the state's ability to confiscate his \$42,000 Land Rover under a policy called civil asset forfeiture after he pled guilty to a drug offense. The court unanimously decided that the state's action was unconstitutional.

Jay Schweikert, a policy analyst at the libertarian think tank Cato Institute, which signed on to one of the amicus briefs, also drew comparisons to the *Timbs* decision and hoped the diverse support for Lovelace would encourage the court to take up his case as well.

"The issues in this case are problems in their own right where people are being financially exploited as part of extracting fines, fees and forfeitures, but it also contributes to the larger issues in our criminal justice," he said.

The odds of any case being heard by the Supreme Court are always slim, but advocates hope that the decision in *Timbs* might signal that the justices would be interested in the issues involved in the Lovelace case. The court also recently requested that the state of Illinois file its own response in the case, after the state initially waived its right to respond.

That response is due in March. An attorney with the state did not immediately return a request

for comment on the case.

Lisa Soronen, executive director of the State and Local Legal Center, told Law360 that in recent years many municipalities have started to pay more attention to court fees and take steps towards reform.

"State and local governments have been made aware of problematic practices," she said. "That's led to some changes."

She questioned, however, whether the Supreme Court would take up the issue, noting that appellate courts are not divided on the issue, as they are for most of the cases the high court takes up.

Even if the court does not hear the case, however, Early said that she hopes the Timbs decision will act as a wake-up call to state lawmakers.

"We're hoping this urges state legislatures across the country to fix their [forfeiture] laws," she said.

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