



Court Decision Doesn't Guarantee Radical Changes to Fines and Property Seizures

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It's doubtful that law enforcement programs involving the seizure of property will be swiftly upended by a Supreme Court ruling on Wednesday that says constitutional protections against excessive fines apply to states and localities the same way they do at the federal level.

The decision in the case of *Tyson Timbs and a 2012 Land Rover LR2 v. State of Indiana* does not outlaw "civil asset forfeiture" or outline a formula for determining when fines might be too severe. But it does broaden the pathway for possible legal challenges in these areas.

State and local fine, fee and property forfeiture policies have come under increased scrutiny in recent years, with critics saying they are prone to misuse and can be particularly burdensome for poor and minority communities.

"We still have a long way to go," Neil Sobol, a professor at Texas A&M University's school of law, who has written about abuses involving criminal justice debt, said as he discussed the court decision. "The people that don't have the ability to fight it, they're the ones that are the most at risk," he added. "This does give them another tool."

In issuing the ruling the justices held that a clause in the U.S. Constitution's Eighth Amendment, protecting Americans against excessive fines, is "incorporated" against, or applies to, the states.

The clause was one of the last parts of the Bill of Rights the court had not incorporated under the 14th Amendment.

Justice Ruth Bader Ginsburg authored the opinion, which seven other justices joined. Justice Clarence Thomas agreed with the judgment, but wrote a separate opinion, saying he would have taken a different route to reach the same conclusion.

"In short," Ginsburg wrote, "the historical and logical case for concluding that the Fourteenth Amendment incorporates the Excessive Fines Clause is overwhelming."

"Protection against excessive punitive economic sanctions secured by the Clause is ... both 'fundamental to our scheme of ordered liberty' and 'deeply rooted in this Nation's history and tradition,'" she added, making reference to a standard that the court has used to judge whether a Bill of Rights protection is applicable to the states.

Tyson Timbs poses for a photo outside the U.S. Supreme Court on Nov. 28, 2018. (Photo by Bill Lucia/Route Fifty)

Sarah Seo, a professor at the University of Iowa College of Law who is a legal historian of criminal law and procedure, said she did not expect to see drastic changes overnight due to the ruling.

"The only thing that the court held was that the excessive fines clause is incorporated," she said. "It didn't define what 'excessive' is," Seo added. "That's going to be litigated, and it'll take time."

Eugene Kontorovich, a law professor at George Mason University's Antonin Scalia Law School offered a similar take.

"It's hard to say exactly what the effect is," he said. "The existing standard has not stopped the U.S. government from seizing, you know, a fairly huge amount of stuff."

But Kontorovich explained that the decision does create new opportunities for pushing back against fines and property seizures in court. "There's going to be a lot of challenges," he said.

Government property seizures, fines and fees have drawn criticism from across the political spectrum. For example, the liberal-leaning Southern Poverty Law Center and the libertarian Cato Institute filed a [brief](#) with the Supreme Court last year backing Timbs.

Ilya Shapiro, director of Cato's Robert A. Levy Center for Constitutional Studies, said Wednesday that if he were a general counsel of a municipality or lawyer for a police department, he'd make sure to review practices that might be subject to the excessive fines clause.

He suggested that lawyers offering legal advice would say to "make sure your program is primarily one to keep order and to punish criminals, not to fund yourselves."

"The Supreme Court made clear today unanimously that it is a federal constitutional issue," Shapiro added. "That abuses by local law enforcement could wind up in federal court."

Indiana sought to take Timbs' Land Rover on the grounds that he had used it to transport heroin. He had purchased the vehicle prior to his arrest using proceeds from his father's life insurance policy.

The trial court in the case ruled that the seizure of the sport utility vehicle was "grossly disproportionate" to the gravity of Timbs' offenses and unconstitutional under the Eighth Amendment. The court noted that the Land Rover was worth more than four times the maximum \$10,000 monetary fine Timbs could face for his crime.

Seo pointed out that making an argument in court that the seizure of property amounts to an excessive fine under the Eighth Amendment can become more difficult if the property is closer in value to the monetary fine that could be imposed for a criminal offense.

A divided state appeals court issued a ruling similar to the one from the trial court in Timbs' case.

But the Indiana Supreme Court sided against him and declined to review the vehicle forfeiture based on the excessive fines clause. It said the U.S. Supreme Court "has never held that the States are subject to" the constitutional provision.

Wednesday's ruling vacates that state Supreme Court decision and sends the case back to state court for further proceedings.

"For good reason," Ginsburg wrote, "the protection against excessive fines has been a constant shield throughout Anglo-American history: Exorbitant tolls undermine other constitutional liberties."

Indiana Attorney General Curtis Hill said in a statement that his office appreciated the high court's attention to the issues raised in the case.

"Although we argued for a different outcome," he added, "we respect the Court's decision."

Wesley Hottot, a lawyer with the libertarian-leaning Institute for Justice, who argued for Timbs' before the Supreme Court in November, said in a statement that the ruling "should go a long way to curtailing what is often called 'policing for profit.'"

"Tyson paid his debts to society," Hottot added. "Our hope and goal now is to get back his vehicle from the police."