



Supreme Court to Consider Case on State Seizure of Property

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The U.S. Supreme Court on Monday agreed to consider a case that could clarify the constraints that state and local governments must adhere to when imposing fines or seizing property.

Timbs v. Indiana concerns the clause of the Constitution's Eighth Amendment prohibiting “excessive fines” against criminal defendants, and whether it applies to not only the federal government, but to states and local criminal justice systems as well.

Indiana's Supreme Court, along with courts in a handful of other states have indicated that they see this issue as unresolved.

State and local “civil asset forfeiture” policies, along with stout fines for minor infractions have drawn scrutiny in recent years. And groups ranging from the U.S. Chamber of Commerce to the Southern Poverty Law Center have urged the Supreme Court to consider *Timbs*.

In the U.S., 10 million people hold criminal debt amounting to over \$50 billion, according to a brief the liberal-leaning Southern Poverty Law Center and the libertarian Cato Institute filed jointly in March.

“Unchecked fines, fees, and forfeitures pervert the goals of criminal justice,” the brief says. It adds that this trend “especially harms vulnerable populations who are living at or below the poverty line, and may actually increase poverty, crime, and mass incarceration.”

Tyson Timbs, the central figure in the *Timbs* case, pleaded guilty in Indiana to drug and theft-related charges. He had completed two heroin sales worth \$225 and \$160 to undercover police and was arrested in May of 2013 while driving to complete a third deal.

The prior winter, Timbs had bought a 2012 Land Rover LR2 using \$41,558 in proceeds from his father's life insurance policy, according to court documents filed on his behalf.

A trial court sentenced Timbs to one year of home detention and five years probation and he agreed to pay police \$1,203 in investigation costs and other fees tied to his case.

But the state also went after the Land Rover, seeking to have it “forfeited.” The trial court deemed this forfeiture “grossly” disproportionate in comparison to Timbs’ offenses and unconstitutional under the Eighth Amendment. A state appeals court issued a similar ruling.

The Indiana Supreme Court, however, sided with the state. It declined to review the vehicle forfeiture based on the excessive fines clause and said that the U.S. Supreme Court “has never held that the States are subject to” the constitutional provision.

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Timbs’ petition to the U.S. Supreme Court says the state Supreme Court ruling deepens an existing conflict over whether the excessive fines clause applies to states. It also contends that the state Supreme Court ruling conflicts with U.S. Supreme Court precedent.

At least two circuit courts, and 14 state high courts apply the clause, Timbs' petition says. But it adds that courts in Montana, Mississippi, Michigan, along with Indiana, have held it does not constrain states.

“Whether the Excessive Fines Clause applies to the States is an important and recurring issue. It is important in all 50 States (and countless localities), which levy fines and forfeit property on a daily basis,” the court filing says.

“It is important to the many Americans every year targeted for punitive economic sanctions by state and local authorities.”

The state cites evidence that Timbs transported heroin in the Land Rover and points to an Indiana state law that permits the state to seize vehicles used to carry illegal drugs.

But a key part of Indiana’s unsuccessful argument against the Supreme Court taking the case was that it is a “flawed vehicle” for clarifying how the excessive fines clause applies to states because discussion about the clause was limited during prior court proceedings.

“The Court would be better served to wait for a case where the incorporation issue was litigated from the beginning,” the state said.

(“Incorporation” here refers to the “incorporation doctrine,” under which the first 10 constitutional amendments are made applicable to states through the 14th Amendment's “due process clause”.)

The state went on to say that another flaw with the Timbs case is that it involves civil asset forfeiture, as opposed to a fine, and that “the Court would need also to determine whether the Excessive Fines Clause restricts States’ use of civil asset forfeitures specifically.”

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Putting off the decision, Indiana's brief added, poses little risk of harm because every state constitution already prohibits excessive fines.

Others don’t see it that way for a variety of reasons.

“The disproportionality in this case is not unique,” the U.S. Chamber of Commerce says of *Timbs* in a brief it submitted to the U.S. Supreme Court. “Across the country, state and local prosecutors are targeting large and small businesses for similar treatment.”

The Chamber adds: “Often, state and local prosecutors have pursued excessive sanctions for the government’s financial benefit, rather than to mete out justice fairly.”

One of the higher profile examples of questionable fine and forfeiture practices emerged in Ferguson, Missouri following a controversial fatal shooting in 2014 of an unarmed black 18-year-old, Michael Brown, by a police officer. The incident led to protests and unrest.

A subsequent report the U.S. Department of Justice issued in 2015 found that the city budgeted for sizable increases in municipal and traffic fines and fees each year, exhorted police and court staff to deliver those increases, and closely monitored whether they were achieved.

One woman whose case was described in the report owed \$151, plus fees, for a single parking violation. While struggling with homelessness and financial problems she was charged with seven “failure to appear” offenses for missing court dates and fine payments.

Over a seven-year period she was arrested twice and spent six days in jail. She also paid \$550 to the court as a result of the initial parking infractions, but still owed \$541.