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## Supreme Court to consider cases on the seizure of a \$40,000 Land Rover, iPhone apps and a moose hunter

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The Supreme Court will consider in its next term the limits of government power to take cash and other property from criminal suspects in a case involving a low-level drug dealer whose \$40,000 Land Rover was seized.

Soon after Tyson Timbs was arrested for selling heroin worth a few hundred dollars to undercover officers in Indiana, police took his truck.

The high court announced Monday that it would review whether constitutional protections against “excessive fines” restrict states from seizing property in the common, but controversial, law enforcement practice of asset forfeiture.

“This case is about more than just a truck,” said Wesley Hottot, an attorney for Timbs with the Arlington, Va.-based Institute for Justice.

Constitutional limits are “a critical check on the government’s power to punish people and take their property,” Hottot said in a statement. “Without it, state and local law enforcement could confiscate everything a person owns based on a minor crime or — using civil forfeiture — no crime at all.”

Last summer, the Justice Department announced a new federal policy to help state and local law enforcement take property from suspects. The policy reversed restrictions placed on seizures during the Obama administration because of widespread police abuse of the practice.

In the past decade, law enforcement agencies seized cash and property worth \$3 billion under a Justice Department program that allowed local and state police to share proceeds from seizures with federal agencies.

Attorney General Jeff Sessions has defended asset forfeiture as a “key tool that helps law enforcement defund organized crime, take back ill-gotten gains and prevent new crimes from being committed.”

The case involving the seizure of Timbs’s Land Rover is one of five the Supreme Court added Monday to its docket for the next term, which begins in October. Among the other cases the justices accepted is an appeal from Apple of an antitrust lawsuit that accuses the company of monopolizing the market for iPhone apps at a high cost to consumers.

The fight, which threatens to expose not only Apple but also its tech industry peers to new antitrust scrutiny, stems from a lawsuit initiated in California almost seven years ago. Robert

Pepper and three other iPhone-owning plaintiffs allege that Apple has “monopolized” the market for iPhone apps because it has total control over the games, utilities and other offerings that appear in its App Store.

Returning to the high court’s docket is the case of an Alaskan moose hunter and his hovercraft. The Supreme Court ruled in favor of Anchorage businessman John Sturgeon in 2016, but it did not answer the question of whether he would be able to use his hovercraft to travel through shallow rivers within federal land to his favorite hunting spot near the Canadian border.

In asking the high court to reverse the U.S. Court of Appeals for the 9th Circuit, Sturgeon’s lawyers said the most recent ruling is a “crushing blow to Alaska’s sovereignty” and gives the National Park Service “nearly limitless power over these non-federal waters.”

In the Indiana case, Timbs was hooked on hydrocodone, an opioid prescribed for a work-related injury. He turned to heroin when he could no longer find pills on the street and sold the drug to fund his addiction, his lawyers said.

Timbs was arrested after two undercover buys and while he was en route to a third sale. He pleaded guilty, served a year of house arrest and paid \$1,200 in court fees.

A trial court found that Timbs had used the 2012 Land Rover — purchased with life-insurance proceeds from the death of his father — to transport heroin he later sold. But the court said the truck seizure was “grossly disproportional” to his offense. The truck’s value, the court said, was about four times the maximum fine for the drug-dealing charge.

An appeals court agreed that the seizure violated the Eighth Amendment’s ban on excessive fines.

The Indiana Supreme Court reversed, however, saying that the clause in the U.S. Constitution does not apply to the states and that it would “not impose federal obligations.”

Two federal appeals courts and 14 state high courts have said the Eighth Amendment protections apply to the states, according to Timbs’s attorneys. Indiana is in the minority, the lawyers say, along with Montana, Mississippi and Michigan.

The office of Indiana Attorney General Curtis T. Hill Jr. argued in court that the Land Rover’s seizure was not “grossly disproportionate” because of the number of times Timbs used the truck to transport heroin.

The attorney general urged the Supreme Court to wait for another “vehicle” (pun presumably intended) to consider the issue of asset forfeiture. State constitutions already include similar prohibitions against excessive fines, the office said, and the language in the Eight Amendment refers to fines — not forfeiture.

Timbs’s appeal has support from the Southern Poverty Law Center and the Cato Institute, which urge the court to provide a “uniform constitutional safeguard against excessive fines.”

The organizations cite studies showing an “unprecedented rise in fines, fees, and forfeitures” in the past 30 years that have led to increased “poverty, crime, recidivism, and mass incarceration.”