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The Supreme Court's Recent Ruling on Excessive Fines Strengthens Property Rights of the Accused in State Civil Forfeiture Actions

by Michael J. Engle and Adam J. Pettit

On Feb. 20, 2019, in *Timbs v. Indiana* (https://www.supremecourt.gov/opinions/18pdf/17-1091_5536.pdf), 586 U.S. ___, No. 17-1091, the Supreme Court unanimously ruled that the Eighth Amendment's ban on excessive fines applies to the states and their civil in rem forfeitures under the Fourteenth Amendment's Due Process Clause. Under the Eighth Amendment, "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Central to the Court's opinion is the phrase "nor excessive fines imposed," which serves to limit the government's power to extract payments, whether in cash or in kind, as punishment for some offense. The Court unanimously held that the Fourteenth Amendment incorporates and renders this Bill of Rights protection applicable to the states. "If a Bill of Rights protection is incorporated, there is no daylight between the federal and state conduct it prohibits or requires."

In 2015, after pleading guilty to a drug offense, Indiana prosecutors sought civil forfeiture of Tyson Timbs' SUV, charging that it had been used to transport heroin. The trial court denied the request because the \$42,000 SUV was worth more than four times the maximum fine that could be imposed (\$10,000) and requiring forfeiture would be "grossly disproportionate to the gravity" of Timbs' crime and therefore unconstitutional under the Eighth Amendment. An intermediate appellate court upheld that decision, but the Indiana Supreme Court reversed on grounds that the Excessive Fines Clause constrains only federal action and does not apply to the states.

In a 9-0 decision, the Supreme Court strongly disagreed. In an opinion by Justice Ruth Bader Ginsburg, tracing the lineage of the Excessive Fines Clause back to the Magna Carta in 1215, the Court had little difficulty finding that the "historical and logical case" for concluding that the excessive fines ban equally applies to the states is "overwhelming." Indeed, "[p]rotection against excessive fines has been a constant shield throughout Anglo-American history for good reason: Such fines undermine other liberties." When a Bill of Rights protection is incorporated, the protection applies identically to both the federal government and the states.

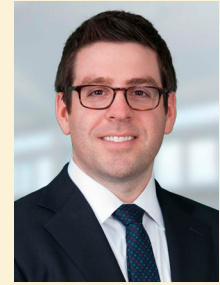
The state of Indiana did not meaningfully challenge the incorporation of the Excessive Fines Clause; rather, it argued that the Clause does not apply to the state's use of civil in rem forfeitures. But the Court held in *Austin v. U.S.*, 509 U.S. 602 (1993), that such forfeitures fall within the Clause's protection when they are at least partially punitive. While the Indiana Supreme Court held that the Clause does not apply to the states at all, it did not address the Clause's applicability to civil in rem forfeitures. Given that, the Court declined the state's invitation to reconsider its unanimous judgment in *Austin*. Moreover, and perhaps

most importantly, the Court held that it doesn't matter whether the particular application of the Excessive Fines Clause to civil in rem forfeitures is itself a fundamental right. Rather, what matters is that the Clause's broader right to be protected from excessive fines is a fundamental right that is incorporated under the Fourteenth Amendment and applicable to the states.

Importantly, the Supreme Court's decision adds a critical layer of protection for property rights of persons accused of white-collar crimes. Under federal and state forfeiture laws, law enforcement and prosecutors can seize a person's property and assets long before there is a guilty plea or conviction. They need only probable cause to believe the assets or property were being used as part of criminal activity, and can then keep the value of the seized property as profit. These forfeiture practices have come under increased scrutiny over the past couple years, and the *Timbs* decision may be the tipping point to effectuate reform of the controversial practice. While it is unclear just how courts will evaluate new challenges to excessive forfeitures under the Eighth Amendment in light of the *Timbs* decision, the Supreme Court's unanimous judgment should make it easier to challenge such excessive forfeitures and deter law enforcement from the seizures in the first place.



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