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### **An Ancient Right Jeopardized: U.S. Supreme Court Limits State Forfeiture Actions With Unanimous Decision In Indiana Case**

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In recent years, state and local governments strapped for cash have looked to civil *in rem* forfeitures as a funding mechanism. The theory is that property used in connection with the commission of a crime can be seized and forfeited as an instrumentality of the crime through a civil forfeiture proceeding. On Feb. 20, 2019, the U.S. Supreme Court issued a unanimous decision that may limit this practice.

In *Timbs v. Indiana*, the Supreme Court held that protection against excess fines set forth in the Eighth Amendment of the U.S. Constitution applies to state and local governments and that civil *in rem* forfeitures can be considered excessive fines under that amendment. This case is significant because it may jeopardize asset-forfeiture programs that help fund local law enforcement across the country.

The facts of the case are straightforward and typical of civil forfeiture cases – though the opinion does provide an interesting history lesson on the origins of one of our fundamental constitutional rights. Tyson Timbs pleaded guilty in Indiana state trial court to dealing in a controlled substance and conspiracy to commit theft. The state trial court sentenced him to one year of home detention and five years of probation, including a court-supervised addiction-treatment program. Timbs was also required to pay fees and costs totaling \$1,203. The maximum fine for Timbs' drug conviction was \$10,000.

At the time of his arrest, local police seized Timbs' Land Rover SUV, which he had recently purchased for more than \$42,000 with funds he

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inherited from his father. The state began a civil forfeiture action, claiming that the vehicle was used to transport heroin and therefore subject to forfeiture.

The trial court found that Timbs used the vehicle to transport illegal drugs, facilitating the commission of a crime. However, the court denied the forfeiture, citing the Eighth Amendment and observing that the vehicle's value exceeded four times the maximum fine Timbs faced in connection with his criminal conviction. The forfeiture, therefore, violated the protections of Eighth Amendment.

The state of Indiana appealed, and the Indiana Court of Appeals affirmed the trial court. However, when the Indiana Supreme Court heard the case, it reversed, holding that the Eighth Amendment's Excessive Fines Clause only applies to the federal government and not the states. Following the Indiana Supreme Court's decision, the U.S. Supreme Court agreed to hear the case.

Writing for the unanimous U.S. Supreme Court, Justice Ginsburg quickly dispatched all of Indiana's arguments, pointing out that the safeguards set forth in the Bill of Rights apply equally to state governments if they are "fundamental to our scheme of ordered liberty, with deep roots in our history and tradition." To show that the Excessive Fines Clause is such a fundamental safeguard, Justice Ginsburg provided a history lesson, tracing the right against the imposition of excessive fines back to the Magna Carta through the turbulent 17th Century English Stuart monarchies to colonial America and the Bill of Rights.

Justice Thomas issued a concurring opinion that provides an even deeper historical analysis. He traced the right against excessive fines further back in history to the reign of Henry I, more than 100 years before the Magna Carta. He also expounded on how excessive fines were used in the post-Civil War South as an attempt to re-impose slavery.

Justice Gorsuch also issued a short concurring opinion, reflecting a scholarly effort to improve the legal analysis of fundamental constitutional rights, explaining that the Eighth Amendment applies to the states by virtue of the Privileges and Immunities Clause of the Fourteenth Amendment.

The entire [opinion](#) is worth a read by anyone interested in history.

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