



## Unanimous Supreme Court: Excessive Fines Unconstitutional

In a decision that might very well signal the death knell to civil asset forfeiture (CAF) — the practice of state, federal, and local officials taking private property without having achieved a conviction for any crime — the Supreme Court ruled 9-0 Wednesday that states and local governments cannot use CAF as a way to raise revenue, if the fine is disproportionate to the severity of the crime.



Justice Ruth Bader Ginsburg wrote the decision. Fellow Justice Clarence Thomas agreed with the result, although he cited different reasons.

The case reached the Supreme Court from Indiana. Tyson Timbs' \$42,000 Land Rover was seized under CAF by the state of Indiana, following his selling \$400 worth of heroin to undercover cops. This was on top of a year of home detention he was given in Indiana and five years of probation. The maximum fine for selling heroin in the Hoosier State is \$10,000.

Ginsburg wrote,

Protection against excessive fines has been a constant shield throughout Anglo-American history for good reason: Such fines undermine other liberties. They can be used, e.g. to retaliate against or chill the speech of political enemies. They can also be employed, not in service of penal purposes, but as a source of revenue.

That appears to be the most important motivation of law-enforcement agencies: a source of revenue. While sold as an effective weapon in “fighting” drugs, since law-enforcement agencies tend to keep all the proceeds from CAF, there simply is a powerful incentive to take cash and property of private citizens, guilty or not. CAF is a controversial legal process in which law-enforcement officers take assets from persons suspected of illegal activity without necessarily even charging the owners with any wrongdoing. Legally speaking, with CAF, the case is between the police and the asset itself, sometime referred to by the Latin term *in rem*, meaning “against the property”; the property itself is the defendant and no criminal charge against the owner is needed. This has led to some odd-sounding cases, such as *The State v. \$12,000 Cash*, or *The State v. A 2014 Toyota Camry*, when the assets are taken from owners without the property owners themselves being charged at all.

Assets have been used by law enforcement for new equipment, parties, and travel expenses to seminars in places such as Hawaii and Las Vegas. In Fulton County, Georgia, forfeiture money has gone for steak dinners and lavish parties. Once a police chief even purchased a tanning bed for his wife using forfeiture funds.

In the case of Timbs, the Eighth Amendment to the U.S. Constitution was at issue, which reads in part, “Excessive bail shall not be required, nor excessive fines imposed.”

When Timbs' case went before a trial judge in Indiana, the judge ruled that taking the SUV was grossly



Written by [Steve Byas](#) on February 21, 2019

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disproportionate punishment, and an Indiana appellate court agreed. But then, the Indiana Supreme Court held that the Eight Amendment's ban on excessive fines did not apply to the states. Most of the provisions of the Bill of Rights, designed by James Madison, were meant to restrict the power of Congress. One only has to read the first words of the First Amendment, which begins, "Congress shall make no law..." to understand the meaning.

However, in the last several decades, the federal courts have begun interpreting the 14th Amendment, under what is called the "incorporation doctrine," as having applied the Bill of Rights of the U.S. Constitution to the states and local governments, as well as the federal government. Oddly, the Supreme Court has used a doctrine of "selective incorporation," whereby the justices can decide which amendments do apply to the states and local governments, and which do not. For example, the requirement that a person be indicted by a grand jury before being put on trial by a petit jury has been held to not apply to state and local prosecutors.

During oral arguments last November, Justice Neal Gorsuch asked the Indiana solicitor general, Thomas Fisher, if the state could seize an automobile if the driver was going only five miles over the speed limit. Fisher responded that state officials could do that, if they wished.

In the *Timbs* case, the Eighth Amendment's prohibition against "excessive fines" was the issue, as *Timbs* was actually convicted of a crime. But what about Americans who have not been convicted of any crime? What if a citizen was traveling with \$4,000 in the car with him, so as to buy a car from an individual, and is stopped by a law-enforcement officer for speeding? Under CAF, the officer could see the cash, and decide that he must be going to buy drugs, or has just sold some drugs, and proceed to seize the cash. At that point, the driver would have to hire a lawyer to get his money back — an expense that might very well exceed the value of the cash seized. This explains why many citizens choose not to take their case to court — it would cost more to get the money back than the value of the cash.

Justice Thomas, in a separate opinion, added that the right to be free of excessive fines "is one of the privileges or immunities of citizens of the United States protected by the Fourteenth Amendment."

CAF also appears to violate the Fourth Amendment's prohibition of unreasonable search and seizure and the Fifth Amendment's prohibition against taking property "without due process of law." In other words, a prohibition against the government taking property from a person unless that person has been convicted of a crime, beyond reasonable doubt.

The hostility shown by the Supreme Court toward CAF indicates that a future case could very well terminate civil asset forfeiture altogether.

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