



Written by [Joe Wolverton, II, J.D.](#) on September 16, 2018

## Supreme Court to Hear Indiana Civil Asset Forfeiture Case

As is the case with the law of many states in the union, Indiana authorities may seize a suspect's property, regardless of the ultimate outcome of the case against the accused.

Within a couple of months, the U.S. Supreme Court will hear the arguments in a case filed by a man whose property was seized and life was shattered by Indiana law enforcement's use of civil asset forfeiture against him.



Here's a brief background on the case, as reported by WFYI in Indianapolis:

A Marion [Indiana] resident named Tyson Timbs claims police violated the Eight Amendment's excessive fines clause when they seized his vehicle - worth more than \$40,000 - because he used it to transport a few hundred dollars worth of drugs.

When Tyson Timbs moved to Marion, Indiana a few years ago, he hoped it would be a fresh start. He'd been living in Ohio and struggling with an opioid addiction for years. When his Aunt Wendy got sick, he decided to move to Indiana to help.

"I actually thought, 'Hey, maybe this is going to be the cure to all my problems,'" Timbs says. "Unfortunately I came with me. So, you know, you can't run from yourself."

Marion is a small town, and Timbs soon learned who to go to in order to find the drugs he needed to function. He eventually turned to heroin, using some life insurance money from his father's death to cover the costs of his habit.

Timbs also used more than \$42,000 from the payout to buy a Land Rover. Court documents say he drove the car to Richmond to buy heroin. And, at least twice, he sold heroin. The buyers were informants and an undercover detective. Court documents say Timbs sold a total of just more than \$500 worth of heroin to them.

Police arrested Timbs and took his Land Rover. A couple months after filing felony charges against Timbs, the state started a civil forfeiture case in an attempt to keep Timbs' vehicle.

After pleading guilty to one of the drug charges, Timbs began the process of securing the return of his car. He had no idea how long a process that would be and how widespread such abuses are in the rest of the country.

For those readers unfamiliar with this tyrannical transfer of wealth, a constitutional violation known euphemistically as "asset forfeiture," here's the *Washington Post's* summary included in another article published in the *Post*:

Since 2008, thousands of local and state police agencies have made more than 55,000 seizures of cash and property worth \$3 billion under a civil asset forfeiture program at the Justice Department called Equitable Sharing.

With this kind of money up for grabs, it is little wonder that the plague of asset forfeiture has



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spread across the 50 states.

Paul-Martin Foss, president and executive director of the Carl Menger Center for the Study of Money and Banking, an Arlington, Virginia-based think tank dedicated to educating the American people on the importance of sound money and sound banking, wrote:

Hardly a week goes by without a mention of some innocent person who is arrested and/or imprisoned for violating an unconstitutional law, an arcane regulation, or simply being in the wrong place at the wrong time. For completely innocuous conduct, they find themselves at the mercy of an uncaring, unfeeling bureaucratic apparatus that chews them up and spits them out.

As with so many of the other ongoing assaults on the vestigial liberty enjoyed by Americans, civil asset forfeiture is justified by its perpetrators as a means of keeping the people safe.

The program has enabled local and state police to make seizures and then have them “adopted” by federal agencies, which share in the proceeds. It allowed police departments and drug task forces to keep up to 80 percent of the proceeds of adopted seizures, with the rest going to federal agencies.

Civil forfeiture procedures are based on the premise that a person’s property can be complicit in the commission of a crime. This is laughable and legally unreasonable. The Constitution was specifically written to protect citizens from this and all other forms of unreasonable searches and seizures (Fourth Amendment), as well as to place due process protections between the governors and the governed (Fifth Amendment).

In the *Timbs* case, *Timbs* is challenging the police’s seizure of his property as a violation of the Eighth Amendment’s protection against excessive fines, as well.

The trial court ruled in *Timbs*’ favor, as did the Indiana Court of Appeals.

The Indiana Supreme Court, however, held a different opinion.

“The Indiana Supreme Court took the state’s appeal and decided, to everyone’s surprise, that the excessive fines clause of the U.S. Constitution does not apply in this state, meaning the state could take *Tyson*’s vehicle,” says Wesley Hottot, an attorney with the Institute for Justice who’s representing *Timbs*, a quoted in the *WFYI* report. “And meaning, in fact, that the state could take any Hoosier’s property for even a minor crime.”

“This case is about more than just *Tyson*’s vehicle,” Hottot says. “This case is about whether 330 million Americans enjoy the protections of the U.S. Constitution.”

And so it is.

When it comes to civil asset forfeiture, the layers of constitutional violations multiply. Americans — who have been denied due process — are subjected to a financially crippling and liberty-depriving process of defending the ownership of their property. Such tyranny is anathema to the rule of law and the protections bequeathed to us by our Founders.

Some conservatives may argue that while it is sometimes misused, the power of civil asset forfeiture should be retained by police in order to punish “drug dealers.”

Unsurprisingly, there is another constitutional problem in that premise, as well.

In the Constitution, the federal government was granted a “few and defined” powers. These powers were listed (enumerated) so as to bind those who would obtain any sort of authority in the manifold



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offices of the federal government.

In *The Federalist*, commonly called *The Federalist Papers*, Alexander Hamilton explained that if the federal government acted outside the scope of its constitutional authority, then those acts were not laws; they were mere usurpations and they deserved to be treated as such.

Although it is unpopular in some conservative circles to talk about, the so-called “war on drugs” is one example of an area where the federal government has absolutely no constitutional authority to act. Americans would go a long way toward eliminating the evil of civil asset forfeiture by demanding that their federal representatives repeal the full panoply of federal drug regulations, including “laws” that incentivize the “policing for profit” that fuels the forfeiture scheme.

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