

US Supreme Court

Case: *Timbs v. Indiana*, 586 U.S. ____ (2019)

Date: February 20, 2019

Votes: Unanimous

Opinion: RBG (Roberts, Breyer, Alito, Sotomayor, Kagan, Gorsuch, Kavanaugh)

Concurrences: Gorsuch, Thomas

Tags: Eighth Amendment, civil *in rem* forfeiture, Excessive Fines Clause, Fourteenth Amendment, Due Process Clause, incorporated protection, state v. federal, Land Rover

Question(s) Presented: Does the Excessive Fines Clause apply to the States under due process?

Holdings: “The Eighth Amendment’s Excessive Fines Clause is an incorporated protection applicable to the States under the Fourteenth Amendment’s Due Process Clause.” (Syll. 1) (*Indian Supreme Court’s decision is vacated and the case is remanded.*)

Rationale:

- Historical and logical case for concluding that the 14th Am. incorporates the Excessive Fines Clause

Facts: Tyson Timbs pled guilty to drug dealing and conspiracy to commit theft; was sentenced to home detention and probation, with fees totaling \$1203. Police had seized his Land Rover, purchased for about \$42K with insurance money. State charged that vehicle had been used to transport heroin, and tried to keep it via civil forfeiture. Trial court denied forfeiture as a violation of the Excessive Fines Clause.

Legal History, Prior Appeals & Trial Court Input:

- **Trial Court:** guilty plea for drug dealing, conspiracy to commit theft. State sought possession of Land Rover through civil forfeiture. Court refused on 8th Am. grounds.
- **Court of Appeals of IN:** Affirmed trial court’s ruling.
- **IN Supreme Court:** Reversed, holding that “the Excessive Fines Clause constrains only federal action and is inapplicable to state impositions” (2).

Attorneys’ Arguments:

- **Indiana:** it’s not about incorporating the Excessive Fines Clause, it’s about civil *in rem* forfeitures, which are not necessarily covered by the clause (“the Clause’s specific application to such forfeitures is neither fundamental nor deeply rooted,” RBG at 7).
 - **Response:** This isn’t the question even. You should have brought this up at the prior level. This “reformulation [of the QP] would lead us to address a question neither pressed nor passed upon below.” (8)

Appeals to Statute & Precedent & Etc.:

- **Eighth Amendment of Constitution:** *"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."*
- **Blackstone:** "[N]o man shall have a larger amercement imposed upon him, than his circumstances or personal estate will bear"
- ***Barron ex rel. Tiernan v. Mayor of Baltimore*, 7 Pet. 243 (1833):** Bill of Rights applied only to Federal Government at the start.
- ***Apodaca v. Oregon*, 406 U.S. 404 (1972):** sole exception to the incorporation of the Bill of Rights—jury unanimity is required in federal, but not state, criminal proceedings.
- ***Ingraham v. Wright*, 430 U.S. 651, 664 (1977):** the clauses of the 8th Am. place "parallel limitations" on criminal law enforcement
- ***Browning-Ferris Industries of Vt., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 263 (1989):** the clauses of the 8th Am. place "parallel limitations" on criminal law enforcement
- ***Harmelin v. Michigan*, 501 U.S. 957, 979, n.9 (1991):** improper imposition of fines "out of accord with the penal goals of retribution and deterrence" (Scalia).
- ***Austin v. United States*, 509 U.S. 602, 609-610 (1993):** Excessive fines clause: "civil *in rem* forfeitures fall within the Clause's protection when they are at least partially punitive" (federal context).
- ***United States v.ajakajian*, 524 U.S. 321, 327-328 (1998):** Excessive fines clause "limits government's power to extract payments, whether in cash or in kind, 'as punishment for some offense.'" (quoting *Austin v. U.S.*) (n.15—takes no position on whether fines should be proportional to a person's income.)
- ***McDonald v. Chicago*, 561 U.S. 742, 767 (2010):** Eighth Amendment safeguards; historical basis for incorporation of the Bill of Rights—rights that are "fundamental to our scheme of ordered liberty" and "deeply rooted in this Nation's history and tradition." Incorporated protections apply "identically to both the Federal Government and the States" (at 766, n. 14).

Relevant U.S. & other History:

- **1215: Magna Carta:** protected offenders from disproportionate economic sanctions
- **1641: The Grand Remonstrance:** Complaints against punitive fines levied by Stuart kings on political opponents
- **1689: English Bill of Rights:** almost exactly our 8th Amendment language.
- **1776: VA Declaration of Rights:** adopted same language
- **1787: Constitutions of 8 states** prohibited excessive fines
- **1791: Bill of Rights:** At ratification, applied only to federal gov't.
- **Reconstruction Amendments:** Bill of Rights apply to the States, with only a handful of exceptions
- **When Fourteenth Amendment ratified (1868):** 35 of 37 States "expressly prohibited excessive fines" (5), but abuses had continued despite those laws:

- **Black Codes (1865-66)** to subjugate newly freed slaves and maintain the prewar racial hierarchy. Among these laws' provisions were draconian fines for violating broad proscriptions on 'vagrancy' and other dubious offenses." (5)
- **Today: All 50 States' constitutions**

Dicta:

- "Like the Eighth Amendment's proscriptions of 'cruel and unusual punishment' and '[e]xcessive bail,' the protection against excessive fines guards against abuses of government's punitive or criminal-law-enforcement authority." (2)
- "If a Bill of Rights protection is incorporated, there is no daylight between the federal and state conduct it prohibits or requires." (3)
- "Exorbitant tolls undermine other constitutional liberties. Excessive fines can be used, for example, to retaliate against or chill the speech of political enemies." (6)
- "In considering whether the Fourteenth Amendment incorporates a protection contained in the Bill of Rights, we ask whether the right guaranteed—not each and every particular application of that right—is fundamental or deeply rooted." (9)

Concurrence: Gorsuch

- Okay, but..."the appropriate vehicle for incorporation may well be the Fourteenth Amendment's Privileges or Immunities Clause, rather than, as this Court has long assumed, the Due Process Clause." (10) But it isn't really important here, and I just wanted to have a concurrence, so I wrote this paragraph.

Concurrence with judgment: Thomas

- Okay, but...the Court should have gone the route of the Privileges & Immunities Clause, not the Due Process Clause. As I said in *McDonald v. Chicago* (2010, concurrence), and here, I'll quote myself a bunch so you get what I mean. It's really hard to distinguish fundamental Constitutional rights from nonfundamental rights, and "due process" protection doesn't help clarify things. Judges can define this very narrowly or so broadly the phrase is meaningless (see, e.g., *Obergefell*).
- "[Petitioner's] claim has nothing to do with any 'process' 'due' him. I therefore decline to apply the 'legal fiction' of substantive due process." (16)
- Also I can do the history thing better than RBG.

Commentary:

- **From ACLU Amicus brief 7:** "Perhaps because they are politically easier to impose than generally applicable taxes, state and local governments nationwide increasingly depend heavily on fines and fees as a source of general revenue." (quoted p.7)

Legal Writing Notes

- A 1989 case is cited, with the explanation that it is quoting a 1977 case. Why not just cite to the 1977 case? (It doesn't seem to be incorporating a quote into original material, but just quoting directly.)
- **Page spread pin cite:** "327-328"
- **Note citation:** space between "n." and number: "at 766, n. 14"
- In Thomas's concurrence, he cites Foner like this after quote #1:
E. Foner, Reconstruction: America's Unfinished Revolution 1863-1877, p.199 (1988).
(Note absence of italics or publication info.)
After quote #2: ***ibid.***
After quote #3: ***Id.*, at 200.**