



Are Excessive Fines Fundamentally Unfair?

Updated February 20, 2019

*UPDATE 2/20/2019: Today, the U.S. Supreme Court **held** in *Timbs v. Indiana* that the Eighth Amendment's Excessive Fines Clause is incorporated in the Due Process Clause of the Fourth Amendment and is therefore binding on the States.*

The original post from September 12, 2018, follows below.

The U.S. Supreme Court has agreed to consider the question of whether it is constitutionally unfair for a state to impose an excessive fine. More precisely, it granted **certiorari** in *Timbs v. Indiana* to consider whether the Fourteenth Amendment's Due Process Clause, which applies to the states, incorporates the Eighth Amendment's Excessive Fines Clause. The **standard** for incorporation is whether the protection in question "is fundamental to our scheme of ordered liberty." The Indiana Supreme Court believed that only the U.S. Supreme Court may answer that question. And so, the Indiana court **reversed** a lower court **determination** that the Excessive Fines Clause precludes the state's confiscation of a drug dealer's Land Rover.

The facts are undisputed. Tyson Timbs bought a new Land Rover with the proceeds of a life insurance policy. He drove it on interstate trips to pick up the heroin he sold. Upon discovery of his activities, the police arrested Timbs; seized the Land Rover; charged him with controlled substance violations; and sought to forfeit the Land Rover. After Timbs plead guilty to a drug-dealing count, the trial court sentenced him to a year of community corrections and five years on probation. Nevertheless, the trial court **refused** to order the forfeiture of the Land Rover. To do so, it concluded would be grossly disproportionate to Timbs' offense and consequently would violate the Excessive Fines Clause. While a divided panel of the Indiana Court of Appeals **agreed**, the Indiana Supreme Court **did not**. The U.S. Supreme Court has consented to consider the issue.

The state's task before the U.S. Supreme Court might seem formidable. The Supreme Court has declared that most of the protections of the Bill of Rights are incorporated through the Fourth Amendment's Due Process Clause and thus are binding on the states. In its most recent incorporation case, the Court **noted** that the only two explicit exceptions come from decisions that "predate the era of selective incorporation." Moreover, for reasons other than incorporation, the Court has **explained** that the Fourteenth Amendment's Due Process Clause "prohibits the imposition of grossly excessive or arbitrary punishments on a tortfeasor" in the form of punitive damages. And, the **test** the Court uses for the Eighth Amendment's Excessive Fines Clause, gross disproportionality, mirrors the test it uses for the Eighth Amendment's incorporated Cruel and Unusual Punishment Clause.

Congressional Research Service

<https://crsreports.congress.gov>

LSB10196

Pocket Constitution



The Declaration of Independence
The Constitution of the United States
The Bill of Rights
Amendments XI–XXVII
Gettysburg Address



TheCapitolNet

TCNFPC.com

The Indiana Supreme Court, however, [pointed](#) out that the U.S. Supreme Court has been somewhat ambivalent about the incorporation status of the Eighth Amendment's Excessive Fines Clause. In *Browning-Ferris Industries v. Kelco Disposal, Inc.*, it [declined](#) to address the issue. In *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, the Court suggested that the Excessive Fines Clause [had been](#) incorporated. In *McDonald v. Chicago* a few years later, the Court identified the clause as one that [had not](#) been incorporated.

Even if it decides that the Excessive Fines Clause is incorporated, the Court might decide that the Timbs forfeiture would not constitute an excessive fine. The lower Indiana courts concluded that confiscation of the Land Rover would constitute an excessive fine because its value was four times more than the maximum fine for the drug dealing charge for which Timbs was convicted. The U.S. Supreme Court's [starting spot](#) to determine whether a particular punishment is grossly disproportionate for purposes of the Cruel and Unusual Punishment Clause is to compare the punishment imposed to the punishments available in other jurisdictions for the same offense. Had Timbs been turned over to federal authorities for prosecution, the maximum [fine](#) for his forfeiture-triggering [felony](#) of conviction would have been \$250,000, that is, more than five times the value of the Land Rover. The U.S. Supreme Court might conclude that the Excessive Clause is incorporated, but that the forfeiture of the Land Rover is not grossly disproportionate to the offense and the maximum penalty it might have carried.

The extent to which the Court describes the outer bounds of the Excessive Fines Clause will inform Congress as to its authority to set maximum fines for federal criminal offenses.

Author Information

Charles Doyle
Senior Specialist in American Public Law

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.

Learn how Capitol Hill really works

All of our programs and any combination of their topics can be tailored for custom training for your organization.

For more than 40 years, TheCapitol.Net and its predecessor, Congressional Quarterly Executive Conferences, have been teaching professionals from government, military, business, and NGOs about the dynamics and operations of the legislative and executive branches and how to work with them.

Our training, on-site and online, and publications include congressional operations, legislative and budget process, communication and advocacy, media and public relations, research, testifying before Congress, legislative drafting, critical thinking and writing, and more.

- **Diverse Client Base**—We have tailored hundreds of custom on-site and online training programs for Congress, numerous agencies in all federal departments, the military, law firms, lobbying firms, unions, think tanks and NGOs, foreign delegations, associations and corporations, delivering exceptional insight into how Washington works.™
- **Experienced Program Design and Delivery**—We have designed and delivered hundreds of custom programs covering congressional/legislative operations, budget process, media training, writing skills, legislative drafting, advocacy, research, testifying before Congress, grassroots, and more.
- **Professional Materials**—We provide training materials and publications that show how Washington works. Our publications are designed both as course materials and as invaluable reference tools.
- **Large Team of Experienced Faculty**—More than 150 faculty members provide independent subject matter expertise. Each program is designed using the best faculty member for each session.
- **Non-Partisan**—TheCapitol.Net is non-partisan.
- **GSA Schedule**—TheCapitol.Net is on the GSA Schedule for custom training: GSA Contract GS02F0192X.

Please see our Capability Statement on our web site at TCNCS.com.

Custom training programs are designed to meet your educational and training goals, each led by independent subject-matter experts best qualified to help you reach your educational objectives and align with your audience.

As part of your custom program, we can also provide online venue, classroom space, breaks and meals, receptions, tours, and online registration and individual attendee billing services.

For more information about custom on-site training for your organization, please see our web site: TCNCustom.com or call us: 202-678-1600, ext 115.



Non-partisan training and publications that show how Washington works.™

PO Box 25706, Alexandria, VA 22313-5706
202-678-1600 • www.thecapitol.net



TheCapitol.Net is on the GSA Schedule for custom training.
GSA Contract GS02F0192X

