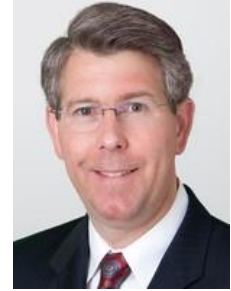


# Impact Of Justices' Excessive Fines Ruling Will Vary By State

By **Vince Farhat and Kristin Asai** (April 16, 2019)

On Feb. 20, 2019, the U.S. Supreme Court issued its decision in *Timbs v. Indiana*,<sup>[1]</sup> in which it unanimously ruled, for the first time, that the Eighth Amendment's excessive fines clause is applicable to the states through the Fourteenth Amendment's due process clause. The *Timbs* decision puts all U.S. states and cities on notice that their asset forfeiture rules and other fine regimes must comply with the Eighth Amendment. As such, *Timbs* potentially provides a new basis for individuals or companies to challenge fines that are grossly disproportionate to the behavior at issue or actual financial harm caused.



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## Summary of Decision

As part of an arrest on minor drug-related charges, the police seized Tyson Timbs' Land Rover SUV, which he purchased for \$42,000. Timbs later pled guilty and received a probationary sentence that required him to pay fines, fees, and costs. Following his guilty plea, the trial court held a hearing on the state of Indiana's separate civil suit for forfeiture of the SUV based on the allegation that the vehicle had been used to transport heroin. The trial court denied the request, concluding that although the SUV had been used to facilitate violation of a criminal statute, the SUV's value was more than four times the maximum \$10,000 monetary fine assessable against Timbs, and was therefore grossly disproportionate to the gravity of his offense. The court of appeals affirmed, but the Indiana Supreme Court reversed on the basis that the excessive fines clause does not apply to state action.



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The U.S. Supreme Court unanimously reversed the Indiana Supreme Court. In an opinion by Justice Ruth Bader Ginsburg, the court held that the excessive fines clause in the Eighth Amendment applies to the states through the Fourteenth Amendment, like the proscriptions of "cruel and unusual punishment" and "[e]xcessive bail." Thus, any state and municipal forfeiture must comply with the Eighth Amendment's prohibition against excessive fines, whether in cash or in kind, as punishment for some offense. Justice Neil Gorsuch filed a concurring opinion and Justice Clarence Thomas filed an opinion concurring in the judgment.

A wide range of organizations — including the ACLU, U.S. Chamber of Commerce, Heritage Foundation and the American Bar Association — supported the outcome in the *Timbs* decision, an indication that asset forfeiture reform enjoys support across the political spectrum.

## State-by-State Implications

The *Timbs* decision makes clear that any forfeiture action or related statutory scheme — whether by federal, state or municipal governments — can be challenged under the Eighth Amendment's proportionality requirement. Specifically, any forfeiture can now be struck down as unconstitutional if it is grossly disproportional to the gravity of a defendant's offense.<sup>[2]</sup>

*Timbs* will likely trigger years of litigation, as the ruling ripples through law enforcement actions in all 50 states under their varied forfeiture regimes. Adding to the prospect of future litigation, the *Timbs* decision itself does not provide specific guidance on how lower

courts should decide if a financial penalty is so excessive as to violate the Eighth Amendment. Thus, Timbs' relative future impact will depend in large part on the specific contours of each state's forfeiture and fine laws.

Some states already have greater protections in place for property owners facing forfeiture actions. For example, the West Coast has been ahead of the curve in applying the Eighth Amendment's protections to its state civil forfeiture statutes. Therefore, the initial impact of Timbs may be more limited in jurisdictions like Oregon, Washington and California. But law enforcement agencies in many other states will be addressing the proportionality issue for the first time given the decision in Timbs.

Notably, the defendant in Timbs pled guilty and received a probationary sentence that required him to pay fines, fees and costs. However, often law enforcement agencies will seize assets of the accused without an actual underlying conviction, pursuing "in rem" actions against the property rather than the property owner. Timbs gives property owners a new basis to challenge disproportionate in rem forfeiture actions.

Even before Timbs, states along the West Coast were already moving in the direction of reforming their forfeiture laws to rein in perceived abuses by local law enforcement. As noted above, for example, as far back as 2012, Oregon courts started applying a grossly disproportional standard to certain forfeiture actions. Specifically, the Oregon Court of Appeals held that the Eighth Amendment's grossly disproportional standard applied to the state's forfeiture of a defendant's lottery winnings obtained from a lottery ticket she purchased with a credit card she was not authorized to use.[3]

Similarly, Washington courts began using a modified proportionality analysis for any forfeitures that were not solely remedial in nature, which required a court to consider: (1) the nature and value of the property; (2) the effect of forfeiture on the owner and innocent third parties; (3) the extent of the owner's involvement in the crime; (4) whether the owner's involvement was intentional, reckless, or negligent; (5) the gravity of the type of crime, as indicated by the maximum sentence; (6) the duration and extent of the criminal enterprise, including in a drug case the street value of the illegal substances; and (7) the effect of the crime on the community, including costs of prosecution.[4]

California has taken a different approach. In 2016, then-Gov. Jerry Brown signed into law Senate Bill 443, legislation intended to limit what some considered to be civil asset forfeiture abuse in the state of California. S.B. 443 requires a conviction in many cases before state and local law enforcement agencies are authorized to permanently keep civil forfeiture assets. Therefore, if property is to be seized by California law enforcement agencies, the property in many cases will need to be from individuals who already have been convicted of a crime — and even under those circumstances, the forfeiture itself must be proportional under Timbs.

The impact of Timbs will vary greatly depending on the specifics of each state's forfeiture and fine laws. Regardless, individuals and businesses subject to any kind of forfeiture action or large fine should carefully consider whether the financial penalty proposed by the government agency accurately reflects the gravity of the offense at issue. If the fine or forfeiture does not comply with that standard, Timbs now provides the basis to avoid such disproportionate penalties.

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[1] *Timbs v. Indiana*, 586 U. S. \_\_\_\_, 139 S. Ct. 682 (2019).

[2] See *United States v. Bajakajian*, 524 U.S. 321, 334 (1998) (discussing excessiveness of federal civil forfeiture).

[3] *State v. Goodenow*, 251 Or. App. 139, 152, 282 P.3d 8, 17 (2012).

[4] See *Tellevik v. Real Prop. Known as 6717 100th St. S.W. Located in Pierce Cty.*, 83 Wn. App. 366, 374-75, 921 P.2d 1088, 1093 (1996)