



FYI: TIMBS v. INDIANA

The United States Supreme Court holds that the Eighth Amendment's Excessive Fines Clause is applicable to the States and to civil in rem forfeitures.

In *Timbs v. Indiana*, No. 17–1091 (Feb. 20, 2019), Indiana Sought civil forfeiture of Timbs' Land Rover SUV, charging that the vehicle had been used to transport heroin. Timbs had purchased the vehicle for \$42,000; money he received from an insurance policy when his father died. Observing that Timbs had recently purchased the vehicle for more than four times the maximum \$10,000 monetary fine assessable against him for his drug conviction, the trial court denied the State's request. The vehicle's forfeiture, the court determined, would be grossly disproportionate to the gravity of Timbs' offense, and therefore unconstitutional under the Eighth Amendment's Excessive Fines Clause. The Court of Appeals of Indiana affirmed, but the Indiana Supreme Court reversed, holding that the Excessive Fines Clause constrains only federal action and is inapplicable to state impositions. The Supreme Court granted Timbs' petition for writ of certiorari.

The Court noted that the question presented is whether the Eighth Amendment's Excessive Fines Clause an "incorporated" protection applicable to the States under the Fourteenth Amendment's Due Process Clause? The Court found because the Clause is fundamental to our scheme of ordered liberty and deeply rooted in our nation's history and tradition, it is so incorporated.

Nevertheless, Indiana argued, the Clause does not apply to its use of civil in rem forfeitures because the Clause's specific application to such forfeitures is neither fundamental nor deeply rooted. However, the Court noted, it held in *Austin v. United States*, 509 U.S. 602 (1993), that civil in rem forfeitures fall within the Clause's protection when they are at least partially punitive. And, although *Austin* arose in the federal context, the protection applies identically to both the federal government and the states. And regardless of whether application of the Excessive Fines Clause to civil in rem forfeitures is itself fundamental or deeply rooted, the Court stated that its conclusion that the Clause is incorporated stands.

The Court's decision in *Timbs* should not have any effect on Georgia law. Relying on *Austin*, our Supreme Court held in 1994 that the prohibition against excessive fines of the Eighth Amendment applies to civil in rem forfeitures. *Thorpe v. State of Georgia*, 264 Ga. 712 (1994). Trial courts are required to use the three-part "gross disproportionality" test found in *Howell v. State*, 283 Ga. 24 (2008) for deciding if a forfeiture is unconstitutional under the Eighth Amendment.