IN THE SUPREME COURT OF

THE UNITED STATES

No.17-1091

Timbs, Petitioner

V.

Indiana, Respondent

Brief for the Respondent

Alexis Phan

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Restitution of the facts:

Tyson Timbs purchased a Land Rover for $42,058 in January of 2013; and regularly drove it between Marion and Richmond, Indiana. During this time he used his vehicle to buy and transport heroin, which led a confidential police informant to investigate him. The informant learned that Timbs was involved in a drug trafficking ring, and that he was able to buy heroin from him.Therefore the police set up a drug purchase, and was able to buy heroin for 225 dollars. This setup happened three times, however after the third buy the police placed Mr. Timbs under arrest. The State ending up charging Timbs with two counts of dealing a controlled substance, and one count of conspiracy to commit theft. He plead guilty in 2015 and was sentenced to one year in home detention and five years on probation. After this he accepted the police cost fees which added up to be 1203$. However after the criminal charges were brought for, a private law firm filed a civil suit against Mr. Timbs.

Issue Presented Before the Court:

Whether the Eighth amendments Excessive Fines Clause should be incorporated through the Due process Clause of the Fourteenth Amendment or the Privileges and Immunities clause of the 14th amendment.

Argument:

I.The Court should not revisit whether incorporation should occur via the Privileges and Immunities Clause

As the Petitioner also recognizes, the incorporation doctrine has long "been built upon the substantive due process framework," McDonald, 561 U.S. at 812 (Thomas, J., concurring in part and concurring in the judgment)). Timbs suggests that the Fourteenth Amendment's Privileges and Immunities Clause provides an alternative basis for incorporating the Excessive Fines Clause against the States, but he does not have the Court depart from its "long established and narrowly limited" incorporation doctrine. McDonald, 561 U.S. at 791 (Scalia, J., concurring). The Court should not use this case to rebuild the incorporation doctrine on a new foundation.

First, there is no reason for the Court "to reconsider" incorporation via the Privileges and Immunities Clause, "since straightforward application of settled doctrine suffices to decide [this case]." The Petitioner does not argue that considering incorporation under the Privileges and Immunities Clause would meaningfully change the analysis here. And there is no reason to believe it would.

In McDonald, a recent case concerning incorporation, Justice Thomas concluded that "as the Court demonstrates, there can be no doubt that § 1 was understood to enforce the Second Amendment against the States." (citing the opinion of the Court) Therefore the Privileges and Immunities Clause incorporates the right to bear arms for self-defense on the same historical evidence discussed in the Court's Due Process Clause analysis. Under both the Due Process Clause and the Privileges and Immunities Clause, the imposing of a requirement to States' forfeitures turns on whether historical evidence shows widespread acceptance and recognition of the importance of this rule.

Second, changing the basis of the incorporation doctrine, after the court has considered incorporation of nearly every provision in the Bill of Rights, could create a many unpredictable consequences and generate confusion among lower courts and state and local governments. Such a change is not only unnecessary as a matter of doctrine, but is also irrelevant here.

The Court should continue to apply the standard it has "well established" over numerous cases, McDonald, 561 U.S. at 750, and ask whether a proportionality requirement for forfeitures is a "fundamental" and "deeply rooted" feature of our country's legal tradition, id. at 767.

II. When reviewing previous precedent, forfeitures were not subject to the excessive fines proportionality requirement.

The understanding of forfeitures explains why the Excessive Fines clause does not apply to this case. As previous nineteenth century treaties have stated, forfeitures are not penalties, the excessive fine clause only applies to a "punishment for some offense". *Austin, 509 U.S. at 610 (quoting Browning-Ferris, 492 U.S. at 265).* According to Austin, the court does not need to interpret the Excessive Fines clause that allows state forfeitures. In Austin the court "limited [its] review to the question 'whether the Excessive Fines Clause of the Eighth Amendment applies to forfeitures of property under 21 U.S.C. §§ 881(a)(4) and (a)(7)," two provisions of a federal forfeiture statute. *United States v. Ursery, 518 U.S. 267, 281 (1996)*. Austin held only that the Excessive Fines Clause applies to forfeitures under these two specific provisions. Austin v. United States, 509 U.S. 602, 604–05 & n.1 (1993). When looking at the historical previously mentioned, this court should not hold states forfeitures. Austin began from the presumption that "[t]he Excessive Fines Clause limits the government's power to extract payments, whether in

cash or in kind, 'as punishment for some offense.'" *Id. at 609–10 (quoting Browning-Ferris Indus. of Vt., Inc. v. Kelco Disposal, Inc., 492 U.S. U.S. 257, 265 (1989))*.

The Court need not—and in light of the historical record, should not—extend the holding of Browning-Ferris Indus. to state forfeitures. More important, the Court's subsequent decisions have undermined Austin's reasoning. Austin began from the presumption that "[t]he Excessive Fines Clause limits the government's power to extract payments, whether in cash or in kind, 'as punishment for some offense.'" Id. at 609–10 (quoting Browning-Ferris Indus. of Vt., Inc. v. Kelco Disposal, Inc., 492 U.S. U.S. 257, 265 (1989)). It therefore framed the question as whether a forfeiture under the federal statutes at issue "is punishment." Id. at 610 (emphasis added). And in answering this question, the Court relied heavily on its decision in United States v. Halper, 490 U.S. Austin quotes Halper's definition of "punishment," the term on which Austin's entire analysis turns: " a civil sanction that cannot fairly be said solely to serve a remedial purpose, but rather can only be explained as also serving either retributive or deterrent purposes, is punishment, as we have come to understand the term." *Austin, 509 U.S. at 621*. Austin therefore made Halper's definition of "punishment" the foundation of its conclusion, but the Court soon demolished this foundation.

Conclusion:

Overall, the court should not revisit whether incorporation should occur from the Privileges and Immunities Clause. Additionally, when reviewing previous precedent forfeitures were not subject to the excessive fines proportionality requirement.