

# In the U.S. Supreme Court

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**Tyson Timbs**

**V.**

**State of Indiana**

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**Brief for Respondent**

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**Question Presented:** Whether the Eighth Amendment Excessive Fines Clause should be incorporated through the Due Process Clause of the Fourteenth Amendment or the Privileges or Immunities Clause of the 14th Amendment?

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*McDonald v. City of Chicago*, 561 U.S. 742, 767 (2010)  
*Ingraham v. Wright*, 430 U.S. 651, 670 n.39 (1977))  
Upjohn Co. v. United States, 449 U.S. 383, 386 (1981).  
Mapp v. Ohio, 367 U.S. 643, 656–57 (1961)

**Secondary Sources**

Brief of petitioner  
Brief of respondent

**Statement of the Facts**

In May of 2013, Tyson Timbs was arrested at a traffic stop and charged with two counts of felony dealing and one count of conspiracy theft. Timbs took a plea on one count of felony dealing and one count of conspiracy theft. Timbs was sentenced to six years, five of those year were suspended. Timbs also agreed to pay a fee of approximately \$1200.

The state shortly after sought civil forfeiture of his Range Rover, worth \$42,058.30. In the trial court found that the forfeiture was prohibited by the eighth amendment, prohibition against excessive fines and the forfeiture was grossly discriminatory to the offense.

**Case Proceedings**

The trial court denied the state's action and order the Range Rover to be released immediately and the court of appeals affirmed the trial court's ruling. The supreme court of Indiana reversed the lower court's' rulings under the reasoning that the US supreme court has never clearly established that the 8th amendment was not incorporated to the states due the 14th amendment.

### **Question Presented**

Whether the Eighth Amendment Excessive Fines Clause should be incorporated through the Due Process Clause of the Fourteenth Amendment or the Privileges or Immunities Clause of the 14th Amendment?

### **Argument**

**Argument one: there is no historical evidence that deals with in rem forfeiture to where it makes it the same as a fine.**

Resolution of the certified question before the court will not be resolved the more specific controversy in this case. The question not only doesn't mention in rem forfeiture but also in the petitioner brief virtually all of the historical evidence that is presented doesn't deal with civil in rem forfeiture. None of the historical evidence presented by petitioner is applicable to the instart case. And because a forfeiture and a fine are different from each other as well as the fact that this case involves a forfeiture rather than a fine, "The only relevant question is whether the Constitution—specifically, the Excessive Fines Clause, via the Fourteenth Amendment—imposes a proportionality requirement on the State's in rem forfeiture of his Rover." "is fundamental to our scheme of ordered liberty, or as we have said in a related context, . . . is deeply rooted in this Nation's history and tradition." *McDonald v. City of Chicago*, 561 U.S. 742, 767 (2010) See *C.R.M. v. State*, 799 N.E.2d 555, 558 (Ind. Ct. App. 2003); see also *Anonymous*

*Case, 1 Gal. 23 (1812) (Story, J.)* “The Court has never applied a purported constitutional limitation against the States after finding that it fails the “fundamental . . . or . . . deeply rooted” test.” *McDonald, 561 U.S. at 767. In McDonald.* Whether it would be unconstitutional for the state to hypothetically charge Mr. Timbs \$40,000 in criminal fines for the crime is irrelevant. “The validity of the forfeiture therefore turns not on Timbs culpability but on the Rover’s—whether it was used to transport drugs for the purpose of drug dealing. See Ind. Code § 34-24-1-1. Additionally, Indiana courts determine which—or how much—property goes to the State by considering the property’s involvement in the crime, not the crime severity. *Id.*” and in the case presented before the court today, Mr. Timbs did use his Range Rover when he committed the crime, whether if it was transporting the drugs, or selling them near his Range Rover, Mr. Timb's Range Rover was involved in the crime. So if the court were to look at all the facts as a whole, when the state tried to get Timbs to forfeit his Range Rover, it was valid because the Range Rover was involved in the crime.

**Argument two: that the excessive fines clause should only be applied through the due process clause of the constitution.**

The Court should apply the excessive fines clause only through the due process clause of the fourteenth amendment because applying it through the privileges and immunities clause would be problematic. Because this case involves a forfeiture, the court must determine whether the excessive fines clause restricts a state’s use of forfeiture. *McDonald* uses “The Selective Incorporation test” determines if something should be incorporated by the due process clause. The tests asks whether it is “fundamental to *our* scheme of ordered liberty, or... whether this right is deeply rooted in this nation’s history and tradition.” The court should examine the in rem forfeitures on a right-by-right or clause-by-clause basis, rather than personal fines by using

historical evidence to show American legal traditions have applied requirements for in rem forfeiture and have failed under Mr. Timbs efforts. *See McDonald*, 561 U.S. at 767. “The applicability of the Eighth Amendment always has turned on its original meaning, as demonstrated by its historical derivation.” *Id.* at 264 n.4 (quoting *Ingraham v. Wright*, 430 U.S. 651, 670 n.39 (1977)). *See McDonald*, 561 U.S. at 844–50 (Thomas, J., concurring in part and concurring in the judgment); *id.* at 838 when cross applying today’s case with the case of *Upjohn Co. v. United States*, 449 U.S. 383, 386 (1981).

In that case *Upjohn* has the right to own a gun, however, he can’t use the gun for illegal purposes, and in today's case, Mr. Timbs used the Range Rover to distribute illegal goods, revoking his right to be in possession of the car. (“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)). “to decide concrete cases and not abstract propositions of law.” *Upjohn Co. v. United States*, 449 U.S. 383, 386 (1981). [to keep and bear arms for self-defense] among those fundamental rights necessary to our system of ordered liberty.” *Id.* at 767–78. See also, e.g., *Mapp v. Ohio*, 367 U.S. 643, 656–57 (1961) See 406 U.S. at 373 (Powell, J., concurring in the judgment) (explaining that “[t]he question . . . is whether unanimity is in fact so fundamental to the essentials of jury trial that this particular requirement of the Sixth Amendment is necessarily binding on the States under the Due Process Clause of the Fourteenth Amendment”).

### **Conclusion**

To conclude, there is no historical basis citing that in rem forfeiture and fines hold the same weight and when incorporating in rem forfeiture under the due process clause, it is not classified as a fundamental right. Also, by ruling in favor of the State, this court would be setting

a precedent that when you violate the constitution, there will be punishments and repercussions that may seem to be taking away a constitutional rights, but in all actuality, this is a consequence of what happens when you abuse the constitution and it's rights.

**Prayer**

We respectfully pray that the court reverse and remand the decision of the lower court and rule in favor of the respondents.