

Petitioner Brief - Chiang & Lu

To be in the Supreme Court of the United States

April Term, 2019

TYSON TIMBS, PETITIONER

V.

STATE OF INDIANA, RESPONDENT

PETITIONER'S OPENING BRIEF

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Oral Argument: https://www.youtube.com/watch?v=3JHXn8_apcI



QUESTION PRESENTED

Whether the Eighth Amendment's 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?

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STATEMENT OF THE CASE

In 2013, Tyson Timbs purchased a Land Rover for \$42,058.30. He was later charged with two counts of dealing a controlled substance (heroin) and one count of conspiracy to commit theft. Timbs pleaded guilty to one count of felony dealing and one count of felony conspiracy to commit theft, agreeing to pay police costs of \$385, an interdiction fee of \$200, court costs of \$168, a bond fee of \$50, and a \$400 fee for undergoing a drug-and-alcohol assessment with the probation department. The State also made a motion for the seizure of Timbs' Land Rover. The trial court denied the state's action, but the Indiana Supreme Court concluded that the Excessive Fines Clause does not bar the state from forfeiting Timb's vehicle, because the United States Supreme Court has not yet incorporated the Excessive Fines Clause to the States under the Fourteenth Amendment.

STATEMENT OF THE ARGUMENT

It is crucial that we return to the original understanding of the Fourteenth Amendment and incorporate the Excessive Fines Clause of the Eighth Amendment through the Privileges and Immunities Clause, as was intended. The divergence of the Slaughter-House ruling laid an unreliable foundation for preventing state abridgment of the inalienable rights of persons of the United States. The Due Process Clause has emerged as a poor substitute for the means intended for incorporating constitutional rights. In order to ensure a clear and guaranteed understanding of people's civil liberties, it is necessary to overturn the decision of Slaughter-House and incorporate the constitutionally-enumerated protection from excessive fines against the states using the Privileges and Immunities Clause.

ARGUMENT 1: The intention of the Privileges and Immunities Clause was to incorporate constitutionally enumerated rights such as the Excessive Fines Clause

In order to understand the proper application of the Privileges and Immunities Clause, we must first examine the context and intentions with which the Fourteenth Amendment was written. The amendment was proposed during the Reconstruction era in an attempt to protect fundamental civil rights and liberties of newly emancipated African Americans from state abridgment. According to proceedings of Congressional debates as noted in the *Congressional Globe*, James Bingham, framer of the Fourteenth Amendment, proposed the amendment with the intention that "The Congress shall have power to make all laws which shall be necessary and proper to secure to the citizens of each State all privileges and immunities of citizens in the several States." Cong. Globe, 39th Cong., 1st Sess. 1088 (1866). Ratified 2 years later, §1 of the Fourteenth Amendment states:

"No *State* shall make or enforce any law which shall *abridge the Privileges and Immunities* of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law" (U.S. Const., amend. XIV) (emphasis added).

The very text of the ratified amendment clearly preserves Bingham's intentions, stating that the privileges and immunities of citizens of the United States are protected from *state* abridgment. An examination of the historical use and the ratifying masses' understanding of the terms

“privileges” and “immunities” equates the terms with people’s rights, as implied in a Maryland law that Justice Thomas cites in his concurring opinion in *McDonald v. Chicago*:

“All the Inhabitants of this Province being Christians (Slaves excepted) Shall have and enjoy all such *rights liberties immunities priviledges and free customs* within this Province as any naturall born subject of England hath or ought to have or enjoy in the Realm of England” Md. Act for the Liberties of the People (1639), in *id.*, at 68 (emphasis added).

Similarly, the Articles of Confederation declared that

“The free inhabitants of each of these States, paupers, vagabonds and fugitives from justice excepted, shall be *entitled to all privileges and immunities* of free citizens in the several States” (Articles of Confederation, art. IV) (emphasis added).

Since the emergence of the American identity, the terms “privileges” and “immunities” have been equated with citizens’ rights. The men voting for the ratification of the Fourteenth Amendment likely understood that the Privileges and Immunities Clause would incorporate constitutional rights, just as framer James Bingham had intended. As Justice Thomas explains in his *McDonald v. Chicago* concurrence, “§1 was understood to enforce constitutionally declared rights against the States, and they provide no suggestion that any language in the section other than the Privileges and Immunities Clause would accomplish that task.” 561 U.S., at 833.

Upon establishing this deep-rooted understanding of “privileges” and “immunities,” both textualist and originalist evaluations of the Privileges and Immunities Clause confer to the federal government the power to protect all persons from state infringement on their constitutionally protected rights. As such, the Clause explicitly and directly gives Congress the power to apply United States citizens’ civil rights and liberties to all persons in the country and against any state government. With this understanding of §1’s intended purpose, the Privileges and Immunities Clause would apply the Eighth Amendment’s Excessive Fines Clause as a constitutionally protected right against the states, thereby prohibiting Indiana’s disproportionately large seizure of Timbs’ Land Rover.

ARGUMENT 2: Slaughter-House Cases’ deviation from the Fourteenth Amendment’s intentions laid an unreliable foundation for incorporation

In the *Slaughter-House Cases*, 83 U.S. 36 (1873), a narrow 5-4 ruling in the Supreme Court established that *only* rights which “owe their existence to the Federal government, its national character, its Constitution, or its laws,” 83 U.S., at 78, could be protected from state abridgement under the Privileges and Immunities Clause. *Slaughter-House*’s interpretation of the Privileges and Immunities Clause ran counter to the Fourteenth Amendment’s original intentions of the incorporation of constitutional rights against state intrusion.

Three years after *Slaughter-House*, this Court explicitly established in *United States v. Cruikshank*, 92 U.S. 542 (1876), that the First and Second Amendments were not privileges of United States citizenship, arguing that their inalienable nature led them to precede the very existence of the United States government as a mechanism to protect them. The Court established a standard that a right thought to exist as natural law was not “in any manner dependent upon [the Constitution] for its existence.” 92 U.S., at 553. As such, precedent bars the Privileges and Immunities Clause from protecting the most fundamental rights and instead, as Justice Thomas explains in his concurrence of *McDonald v. Chicago*, 561 U.S. 742 (2010), “prevents state abridgement of only a handful of rights ... that are not readily described as essential to liberty.” 561 U.S., at 341.

This paradoxical reasoning left protection of fundamental rights from state intrusion to the Due Process Clause of §1. The concept of using the Due *Process* Clause for substantive rights is a contradiction within itself, and we must question the very nature of the Due Process Clause’s ability to guarantee these rights in the first place. As Justice Thomas writes in his concurring opinion of *McDonald v. Chicago*, 561 U.S. 742 (2010),

“The notion that a constitutional provision that guarantees only ‘process’ before a person is deprived of life, liberty, or property could define the substance of those rights strains credulity for even the most casual user of words” 561 U.S., at 811.

Furthermore, the flaws of Due Process incorporation extend to the very standards with which Due Process protections are incorporated. Using the Due Process Clause, *Palko v. Connecticut*, 302 U.S. 319 (1937), established that the Fifth Amendment’s protection against double jeopardy was “not of the very essence of a scheme of ordered liberty.” 302 U.S., at 325. The decision was later overturned by *Benton v. Maryland*, 395 U.S. 784 (1969), which incorporated protection against double jeopardy under the standard that protection against double jeopardy is “fundamental to the American scheme of justice.” 395 U.S., at 796.

Similarly, *Prudential Ins. Co. v. Cheek*, 259 U.S. 530 (1992), declared that “Neither the Fourteenth Amendment nor any other provision of the Constitution of the United States imposes upon the states any restrictions about ‘freedom of speech’ or the ‘liberty of silence.’” 259 U.S., at 666. Only 3 years later, *Gitlow v. New York*, 268 U.S. 652 (1925), incorporated the protection of free speech under the statement that the freedoms of speech and press are “fundamental personal rights and ‘liberties’ protected by the due process clause of the Fourteenth Amendment from impairment by the States.” 268 U.S., at 666.

While the purpose of stare decisis is to ensure stability within the court system, rulings relying on the path of Due Process incorporation have been anything but consistent. The Court's inability to clearly define the "fundamental" rights under the Due Process Clause undermines the entire process of incorporation. Continuing on this path of Due Process incorporation simply ensures more inconsistent standards and rights. How can the Court ensure persons within the United States their fundamental rights if the Court itself has not come to a consistent understanding of what "fundamental" means?

A stretch of both the text and history of the Due Process Clause guarantees with questionable authority the ambiguous protection of "fundamental" rights. A solution to this problem is to return to the original intention of the Fourteenth Amendment, which would incorporate constitutionally enumerated rights to the states and back its protections with the authority of both the Constitution's text and history.

We can look to the Court's ruling on *Smith v. Allwright*, 321 U.S. 649 (1944), for insight on how to approach this situation. The Court declared:

"When convinced of former error, this Court has never felt constrained to follow precedent. In constitutional questions, where correction depends upon amendment and not upon legislative action this Court throughout its history has freely exercised its power to reexamine the basis of its constitutional decisions. This has long been accepted practice." 321 U.S., at 665.

Although precedent supporting Due Process incorporation has accumulated since the *Slaughter-House* decision, the inherent flaws of the means of incorporation leave the Court unable to aptly protect the rights that the Fourteenth Amendment intended it to. Especially given the deeply divided nature of the 5-4 *Slaughter-House* ruling, the flawed reasoning should not hold weight in preventing the Courts from clarifying the rights that it guarantees its people and returning to the original understanding of the Privileges and Immunities Clause.

ARGUMENT 3: Protection from Excessive Fines is necessary and must be preserved by the states

The need for unwavering protection of constitutionally enumerated rights traces back to United States history before it was even a country. As the question presented is about the Eighth Amendment, we will now accordingly discuss to what extent the history of the issue presented has shaped the general public's understanding of the protections it provides.

People who came to this country hundreds of years ago brought with them a developed understanding that protection against excessive fines was a crucial aspect of democracy. As far back as 1215, we see evidence of concerns about abusing the power of fines, present in checks on King Henry II's power to fine subjects enumerated in the Magna Carta:

“For a trivial offence, a free man shall be fined only in proportion to the degree of his offence, and for a serious offence correspondingly, but not so heavily as to deprive him of his livelihood.” (Magna Carta, §20).

The historical mistrust they held was completely valid, as through history kings have implemented various fines as a way of wielding individual power; as petitioner Timbs noted, “English kings used fines to attack critics and outsourced fining power to allies of the crown.” With this understanding of how the ability to fine bestows great power, it is critical to consider the ramifications of showing negligence in the face of its abuse.

According to the New York City Budget Brief, New York City alone collected \$1.9 billion of just fees and fines in 2015. For nearly all states, these fine collections amount to a significant source of revenue, arousing concerns that the state's financial interests conflict with the interests of protecting the people. In the protection of individual liberties, it is thereby crucial to draw limitations on the states' ability to impose fines beyond the scope of the offense in question.

Unchecked fines undermine public livelihood by creating incentives for abuse and threaten the integrity of the judicial system, such as the revenue-based justice system in Ferguson, Missouri. In 2014, fees and fines comprised of 23% of Ferguson's municipal budget, incentivizing the charging of excessive fees. Ferguson's municipal court was found to prioritize “maximizing revenue” over “administering justice or protecting the rights of the accused,” as established in a 2015 Department of Justice report. Faced with shrinking public funding, state agencies increasingly rely on fees, incentivizing unjust use of power and eroding public trust (National Center for State Courts).

Thus, the Excessive Fines Clause must be incorporated against the states to protect people from these sorts of disproportionate fines. The Supreme Court's standard of “gross disproportionality,” as established in *United States v. Bajakajin*, 524 U.S. 321 (1998), should be applied to the states. In their ruling, the court held “that a punitive forfeiture violates the Excessive Fines Clause if it is grossly disproportional to the gravity of a defendant's offense.” By such a standard, the forfeiture of Timbs' \$42,000 vehicle clearly constituted a “grossly disproportional” fine, as the maximum monetary penalty for Timbs' Class B felony should have been just \$10,000. At over four times the maximum fine, the state of Indiana's seizure of petitioner Timbs' Land Rover clearly constituted a violation of the Eighth Amendment's

Excessive Fines Clause as incorporated against the states.

The State of Indiana has attempted to argue that the civil forfeiture of Timbs' vehicle is a matter of property, not fines, and cannot be held to the same standard as fines under the Excessive Fines Clause. Should this Court uphold the respondent's logic, it would, in turn, provide a clear pathway for future evasion of excessive fines regulations and would undermine the legitimacy of the Excessive Fines Clause's protections against financial loss.

Austin v. United States, 509 U.S. 602 (1993) establishes that civil forfeiture "is a monetary punishment and, as such, is subject to the limitations of the Excessive Fines Clause." 509 U.S., at 602.

The civil forfeiture of Timbs' vehicle is inherently a punitive action and falls under the jurisdiction of the Excessive Fines Clause.

CONCLUSION

Unlike the Due Process Clause, the Privileges and Immunities Clause was meant for incorporating constitutionally enumerated rights such as those of the Bill of Rights. Due Process has led to inconsistent rulings and incredibly inconsistent protection of "fundamental" rights, which the Court has still not clearly defined. Thus, the only clear path to incorporating the Eighth Amendment's necessary protection against excessive fines is under the Privileges and Immunities Clause of the Fourteenth Amendment. The Supreme Court should reverse the ruling of the Indiana Supreme Court, ruling that the forfeiture of petitioner Timbs' vehicle violates the Excessive Fines Clause as incorporated under Privileges and Immunities.