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Respondent's Brief- Cook and Winter

To be in the Supreme Court of the United States

October Term, 2018

TYSON TIMBS, PETITIONER

V.

STATE OF INDIANA, RESPONDENT

RESPONDENT'S BRIEF

Grace Cook & Emma Winter

Counsel for Respondent

Question Presented:

Tyson Timbs had used a newly purchased Land Rover to transport heroin. When he was arrested in 2013, he was charged with two counts of dealing a controlled substance and one count of conspiracy to commit theft. In 2015, Mr. Timbs pleaded guilty to one count of felony dealing and one count of felony conspiracy to commit theft. The remaining charge of dealing was dropped by the state in exchange for the plea. The state later filed a civil case against Mr. Timbs in order to forfeit his vehicle. While the forfeiture was denied at a bench trial, the Indiana Supreme Court declared that the forfeiture was legal as the Excessive Fines Clause of the Eighth Amendment has not yet been applied to the states.

The question before this honorable court is whether the Excessive Fines Clause found in the Eighth Amendment should be incorporated through the Due Process Clause of the Fourteenth Amendment or the Privileges or Immunities Clause of the Fourteenth Amendment.

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Palko v Connecticut, 302 U.S. 319 (1937)

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“Chicago, B. & Q. R. Co. v. Chicago, 166 U.S. 226 (1897).” *Justia Law*, supreme.justia.com/cases/federal/us/166/226/.

SULLIVAN, E. THOMAS, and TONI M. MASSARO. “DUE PROCESS EXCEPTIONALISM.” *Irish Jurist (1966-)*, vol. 46, 2011, pp. 117–151. *JSTOR*, www.jstor.org/stable/44027090.

Statement of Argument

Privileges and immunities is not the correct avenue to incorporate the excessive fines clause due to the original intent of the 14th amendment. When created, this amendment was made to protect the citizenship of newly freed African American people. There was no intent to secure the liberties of the general public. However, the due process clause extends its protections to all citizens and has become the path through which Amendments in the Bill of Rights have been incorporated to apply to the States. An example of one such right is enumerated in the excessive fines clause of the Eighth Amendment. Following this amendment, the civil forfeiture of Mr. Timbs’ Range Rover is illegal. The value of the car far exceeds the maximum statutory fine set for his criminal convictions and can thus be defined as an excessive fine. Clearly, the excessive fines clause of the Eighth Amendment needs to be incorporated and the Due Process Clause of the Fourteenth Amendment is the correct way to apply the protections of the Excessive Fines Clause to the States.

Argument

The forfeiture of Mr. Timbs' Range Rover is clearly unconstitutional under the Excessive Fines Clause of the Eighth Amendment. While currently, this protection only applies at a federal level, the egregiousness of this seizure goes to prove that it must be incorporated to apply to the states. The maximum statutory fine set for Tyson Timbs' Class B felony on the day he was arrested was \$10,000. The value of the Range Rover was more than four times this amount at a value of \$42,058.30 at the time of purchase.

It has long been acknowledged that protection against excessive fines is very important. In the English Bill of Rights of 1689, the authors lamented that "excessive fines have been imposed" and stated that this, along with other grievances, was "utterly and directly contrary to the known laws and statutes and freedom of [England]". This history further proves that the protection of the citizen against excessive fines is fundamental to a "scheme of ordered liberty", the standard for incorporation set in *Palko v Connecticut*, and thus must be incorporated.

Originally the Bill of Rights was only intended to be used as a protection against the federal government. In order to run a successful nation both federalists and anti federalists had to make compromises to make the nation what it is today, and one of those things was the bill of rights. The state governments felt that they needed protection against federal government. But the question soon rose, who will protect the people? Through the Slaughterhouse cases, the Supreme Court decided to incorporate the Bill of Rights to the states by using Due Process. This incorporation was vital to the "scheme of ordered liberty" to the legal system we know today. There needs to be a balance between societal order and personal freedom. It is vital that we incorporate using Due Process because it ensures fair treatment throughout trial.

The origin of Due Process can be traced back to the time of Grecian Democracy and the findings of philosopher, Aristotle. The stem of Due Process is defined as "equality of laws to all manner". This was known as Rule of Law and it was a vital part of Grecian democracy. It was known that "The principle of rule of law was more important to the Greeks than democratic gov"(Sullivan E. Thomas). One of the main influences for our modern day democracy valued the same fairness that is stated in the

definition of Due Process. It is critical that we uphold this value that is deeply rooted in the history of Democracy. Another place we see these values is in the Magna Carta. Almost 400 years before Englishmen came to America, the ancestors of the British created this document to establish peace within the kingdom. In the Magna Carta it says “No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgement of his equals or by the law of the land.”. Here the Magna Carta is incorporating out ideals of the 8th amendment with the philosophy of Due Process. While I know that we do not live in the medieval era or ancient Greece, it is important to know where our ideas of law stemmed from. Due Process has been embedded into our history for as far back as books will take us. Without Due Process citizens of the United States would have no protection, and Mr. Timbs would be excessively fined.

While there is an argument to use Privileges and Immunities, based on the intent with which the clause was written it is not a valid argument. Privileges and Immunities was written after the abolishment of slavery and made to protect the rights of the new citizens. While there is the argument for protection of all citizens, it just establishes the requirements of being a citizen. Juis Soile- being born on American soil makes you a citizen And Jus Sanguinis- Having American blood makes you a citizen. This is all the Privileges and Immunities clause was meant to do. However Due Process clearly states the protection of a citizen from the law.

The case that established the incorporation of the bill of rights through Due process is the Slaughterhouse case. This case first appeared when an animal slaughter company was being monopolized by the Louisiana state government. The business filed a lawsuit saying that this abridged their “Privileges and Immunities”. But since this had nothing to do with the questioning of citizenship the court ruled against the Plaintiff. Slaughterhouse then established that we must use Due Process for incorporation, not Privileges and Immunities. With the clear history of incorporation via Due Process it would make no sense to incorporate the 8th amendment via Privileges and Immunities.

Why do something one way for almost 100 years just to change it now? We would have to re-incorporate the Constitution to the states via privileges and immunities which would take almost a century to complete

In the case of Chicago vs. Burlington Railroad it is established that the supreme court has higher authority over any state court and can re-examine any decision made by the state via Due Process. The railroad company had land taken away from them and they petitioned for compensation. They originally got one dollar which they then appealed to the Illinois Supreme Court because they didn't think it was enough money. However the United States Supreme Court re-examined the case and decided it was just compensation. So in Mr. Timb's case, theoretically, the Supreme Court could reverse the decision of the state of Indiana.

Conclusion:

In the case *Timbs v Indiana*, the court should rule in favor of the respondent due to the overwhelming amount of evidence that the eighth amendment should be incorporated using Due Process. There is no doubt on either side that this is an excessive fine and that it is in violation of the 8th amendment, but to incorporate it we must use Due Process. While the language around Privileges and Immunities seems like it would support the legal right of the citizen, it does not. The Privileges and Immunities clause was created to protect race minorities. Also why would we switch to a new system of incorporation when we have been using Due Process for about 100 years. All in all the most logical solution to this case is to incorporate the 8th amendment using Due Process.