

THE SUPREME COURT OF
THE UNITED STATES OF AMERICA



TYSON TIMBS,

Petitioner,

V.

STATE OF INDIANA,

Respondent



Brief for the Petitioner

QUESTION PRESENTED

Whether the Eight Amendment's Excessive Fines Clause is incorporated against the States under the Fourteenth Amendment?

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STATEMENT OF THE CASE

In June of 2013, Mr. Tyson Timbs was arrested and charged with two counts of dealing a controlled substance and another one of conspiracy to commit theft. Mr. Timbs had been under investigation for his illegal dealings and was finally caught after the police set up two controlled drug purchases. Mr. Timbs pled guilty to one of the charges in 2015 and in exchange, the state dropped the remaining charge. After complying with the fines and punishment given by the court, Mr. Timbs faced a lawsuit in which the state forced Mr. Timbs to forfeit his vehicle. The trial court found that the seizure of the vehicle excessive, and ordered for it to be released. The Indiana Supreme Court ruled however that the Excessive Fines Clause was inapplicable because it is yet to be incorporated.

STATEMENT OF THE ARGUMENT

The Privileges or Immunities Clause of Article IV was included to protect citizens from the discrimination of states. The question presented to us today has a very simple answer. The Eighth Amendment's Excessive Fines Clause should be incorporated through and only through the Privileges or Immunities Clause of the 14th Amendment. A State should never deprive a citizen of its fundamental rights.

ARGUMENT NUMBER ONE: Precedent is not sufficient to justify the infringement of citizen's rights.

The application of amendments to states has always been a topic of controversy but was first outlined in the infamous **Slaughterhouse Cases** in **1873**. The rulings were significant because the Supreme Court interpreted the scope of the **14th Amendment** and its application. Justice Samuel Miller expressed a distinction between **Article IV** and the 14th amendment and declared that Article IV protects the rights of state citizenship and the **14th Amendment** protects rights of national citizenship.

The next time a court made a major decision was in **Chicago, B. & Q. R. Co. v. Chicago, 166 U.S. 226 (1897)** Chicago case was decided in 1897 meaning long before the court began to focus on selective incorporation of the Bill of Rights through the Due Process Clause of the 14th amendment. The case addresses the Due Process Clause of the 14th Amendment but not the Takings Clause of the 5th Amendment. The precedent expresses the need for strict interpretation for the application to be valid. Similar to this finding was the court's decision in

United States v. Halper, 490 U.S. 435 (1989). In the past the Supreme Court has specified that the Bill of Rights protections can apply to defendants in purely civil proceedings when the government is the plaintiff.

While the issue focused on a whole different amendment, it is important to note how Halper looked at the case. Halper was important because it established a precedent for the Bill of Rights' protections to be applicable when addressing forfeiture. In **United States v. Milbrand, 8 F.3d 841(1995)** the court acknowledged that Halper was applicable to civil forfeitures but that the punitive element must be determined in a case by case analysis. That is the same standard we should adopt today. The state contends that because there hasn't been a decision to prevent it from overstepping its boundaries, that there shouldn't be a problem. However there are many problems here. Just because you can do something, does it mean that it is the right thing to do.

ARGUMENT NUMBER TWO: The 10th amendment does not supersede the 8th amendment

The **Incorporation Doctrine** has been used on several occasions to ensure that the rights granted to us by the constitution are applicable and protected. So much, that all but two amendments from the Bill of Rights have been incorporated; the **9th** and **10th amendment**. Sure, the State could attempt to argue that the ones that have been incorporated haven't been incorporated completely. We are not denying that fact. However, this court needs to understand that while the **8th amendment** hasn't fully been incorporated, the **10th amendment** may never be incorporated. Simply because the state cannot have the power to exercise control over matters with a federal jurisdiction.

In rem forfeitures are blatant abuse of authority that completely tear apart the original intent of the framers when writing the constitution. In **Browning-Ferris Industries v. Kelco Disposal, 492 U.S. 257 (1989)** the Supreme Court ruled that the "Eighth Amendment's prohibition of unreasonable fines does not apply to punitive-damage awards in civil cases when the United States is not a party". Before reaching that conclusion the court expressed concern over the amount of power the government could hold in cases alike. Just a year earlier, the court in **United States v. Tax Lot 1500, 861 F.2d 232, 234 (9th Cir. 1988)** said that "Legal niceties such as in rem and in persona mean little to individuals faced with losing important and/or valuable assets." Essentially the court understood the significance the decision could have in

future cases. They were uncomfortable with the state attempting to use the lack of restriction to justify the unjust seizure of private property like in our case.

It is very important to note that unlike the aforementioned presiding cases, there is a significant difference in our case today. As the court clarified in **Browning-Ferris**, the 8th Amendment's Excessive Fine Clause was inapplicable because the United States were not a party. This time they are. Which brings us back to the original question; should the Eight Amendment's Excessive Fines Clause be incorporated against the States under the Fourteenth Amendment? The court from Browning- Ferris would say yes your honors and this court should do the same. The Privileges or Immunities Clause of the 14th Amendment is very clear when it says- "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." Meaning, that whenever the citizen's rights are at large jeopardy because of the state, the court must uphold the citizen's fundamental rights.

ARGUMENT NUMBER THREE: Property is a fundamental right that has been defined and granted protection

The case at hand today is much bigger than just a protection from an excessive fine. Mr. Timbs property rights are being completely trampled over. In the past, the court has opted not to weigh in on the value of the asset of the thing being seized compared to the gravity of the offense charged. The state believes that its strongest argument is the lack of precedent and the court's similar rulings under completely different circumstances. It is very wrong. There is a precedent with a clearly outlined definition.

Article IV and its Privileges or Immunities Clause was included by Hamilton to ensure that the fundamental rights of all citizens across the country were protected regardless of their location; whether it be permanent or temporary. The court in **Corfield v. Coryell, 6 F. Cas. 546 (1823)** carefully outlined these fundamental rights. The court found that -"Protection by the government; the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety; subject nevertheless to such restraints as the government may justly prescribe for the general good of the whole."

Herein lies the problem, there was no need to take an additional measure against Mr. Timbs when he had already complied with the punishment the court had decided. Forfeiture has been defined by Black's Law Dictionary as an "involuntary relinquishment of money or property as a consequence of a breach or nonperformance of some legal obligation or the commission of a crime." A consequence is a punishment, a punishment that Mr. Timbs had already served. The government seizing Mr. Timbs property is not only plain theft but also a clear infringement of his 5th amendment rights that protect him from double jeopardy. Unlike other cases where there is an issue of material fact to address, Mr. Timbs case is simple. The court in **Austin v. United States, 113 S. Ct. 2801 (1993)** ruled that the fine imposed was indeed punitive and followed the reasoning in the Browning-Ferris case.

The court also made notice of the lack of specificity within the 8th amendment itself. The 8th amendment says-"Excessive bail shall not be required. Excessive fines shall not be imposed. Cruel and unusual punishments shall not be inflicted. All penalties shall be proportioned to the nature of the offense." The court in **Austin v. United States, 113 S. Ct. 2801 (1993)** made sure to clarify that the lack of specification in terms of constitutional protection did not limit it to just actions of criminal nature. The court in Austin understood that one doesn't have to be in a criminal court to be subject to punishment. It reviewed the case and interpreted it through an analysis of the 8th amendment's history and ultimately determined that the seizure of property is punitive.

The government is ultimately left with a very heavy burden to prove. They must prove that the property seized is malicious in nature and that it had to be taken for the well-being of society. They can't your honor. Property is a fundamental right that the government should not and cannot intrude upon unless we allow that to be the case today. Thomas Jefferson wrote once in a letter to Samuel Kercheval- "A right to property is founded in our natural wants, in the means with which we are endowed to satisfy these wants and the right to what we acquire by those means without violating the similar rights of other sensible things." Much of what was an issue in the past is not an issue today. The key focus of this case is property and for those reasons the Excessive Fines Clause should **only** be incorporated through the Privileges or Immunities Clause. Property is not only a privilege and an immunity, but it is also a fundamental right. To

incorporate the 8th amendment through the Due Process Clause would only open the door for the government to take advantage of definitional technicalities to deprive citizens of their rights.

CONCLUSION

In essence if this lower court ruling is not overturned, this court will have established a precedent that allows carte blanche powers to the State government. This goes against the ideals expressed in the Declaration of Independence - liberty as well as rights granted in the Bill of Rights- 1st freedom of Speech, 5th Double jeopardy, and 8th excessive fines, 10th powers of the State as well as completely taking out the 14th equal treatment and due process for all people in our country. We cannot, we should not, and with your approval today we will not tear up the Constitution. Oliver Wendell Holmes once wrote in his poem *Old Ironsides*-“Ay, tear her tattered ensign down! Long has it waved on high, and many an eye has danced to see that banner in the sky. His famous poem a tribute to the ship USS Constitution. Before making a decision, we must ask ourselves are we willing to tear up our beloved Constitution to allow more police power? If we are, are we truly America? Where are our rights now? If we truly have no rights what has happened to the Constitution? What makes governance good is not making intrusive to every citizen but allow each person the ability to enjoy the same freedom. Just because the government can do something, should they do it? If we do not put a halt on this excess right now, what will happen to your and my rights later? Wasn't this the exact same thing that Founding Fathers were worried about and warned us of? Wasn't this the reason why the Bill Of Rights Was passed in 1791 and became part of our Constitution? We should ask what are our priorities? Should we stand today for all people's rights? Should we stand up today to right this injustice? Should we stand up and make our Constitution once again the ensign of our rights and liberty? The court must protect the citizen's fundamental rights now and as it should always.

PRAYER

We pray that after a careful examination of facts and a full consideration of our arguments that the court rules in favor of the Petitioner, Tyson Timbs and overturns the lower court's ruling.