Timbs v. Indiana: Excessive Fines Clause Applies to the States

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The Supreme Court decided Timbs v. Indiana yesterday, holding that the Eighth Amendment's Excessive Fines Clause is an incorporated protection applicable to the states under the Fourteenth Amendment. What does the decision mean for North Carolina?

In *Timbs*, an Indiana state court defendant pleaded guilty to drug and theft crimes. He was ordered to pay costs and fees of $1,203. The State also brought a civil suit for forfeiture of his $42,000 Land Rover, alleging that it was used to facilitate the crime. The court hearing that suit agreed that the car had been used in the crime, but decided that forfeiture of a $42,000 SUV would be "grossly disproportionate to the gravity of Timbs's offense, and hence unconstitutional under the Eighth Amendment's Excessive Fines Clause." Slip op. at 2. The Indiana Supreme Court reversed—but not because it disagreed that the forfeiture was excessive. Rather, the court reversed because the trial court decision was premised on the Excessive Fines Clause of the United States Constitution. And that clause, the state high court said, had not been incorporated to the states and thus constrained only federal actions. *Id.*

The Supreme Court of the United States granted certiorari.

A unanimous Court (unanimous in the result, at least) concluded that the Excessive Fines Clause is incorporated to the states. Writing for the court, Justice Ginsburg worked her way from Magna Carta to today to demonstrate that the prohibition on excessive fines is "fundamental to our scheme of ordered liberty." **The need to be vigilant against excessive fines is especially important, she wrote, because they aren't self-limiting: "fines are a source of revenue[, whereas] other forms of punishment cost a State money."** Slip op. at 6 (quoting Harmelin v. Michigan, 501 U.S. 957 (1991)). And so, the Court held, the clause is incorporated.

The Court didn't engage with Indiana's argument that the clause, if incorporated, would still not apply to a civil property forfeiture like the one at issue in Timbs's case. Indiana did not make that argument below, and so the issue was not properly before the Court. But the fact that Timbs's case involved a civil forfeiture gave the Court an opportunity to remind everyone that, that under existing precedent, the federal Excessive Fines Clause does apply to civil in rem forfeitures when they are at least partially punitive. Austin v. United States, 509 U.S. 602 (1993).

Given the case's procedural posture, the Court also didn't have to reach the ultimate question of whether a $42,000 forfeiture was grossly disproportionate for a crime punishable by a $10,000 maximum fine. (For what it's worth, nobody seemed to bat an eye at the other $1,203 of costs and fees.)

Justice Thomas concurred in the result, but wrote a separate opinion saying he would have held the ban on excessive fines was incorporated through the Fourteenth Amendment's Privileges or Immunities Clause, not its Due Process Clause. Justice Gorsuch wrote a similar concurrence, although he joined the opinion of the Court in full.

So what is the significance of *Timbs* going forward?

Well, first of all, it's not every day that a provision in the Bill of Rights is incorporated against the states. Selective incorporation has been a long arc. Disagreement on the theory and policy behind it has divided some of our nation's

most respected judges and lawyers. It gets to fundamental questions of federalism, and the extent to which we trust the states to advance individual rights—or create "opportunity for reforms in legal process designed for extending the area of freedom." Adamson v. California, 332 U.S. 46, 67 (Frankfurter, J., concurring).

Despite its historical significance, *Timbs* may not be all that helpful to many criminal defendants. After all, all 50 states already limit excessive fines in their own constitutions—including North Carolina. N.C. Const., Art. I, sec. 27. And North Carolina's courts have already used the federal constitutional framework when applying our state excessive fines provision. *See* State v Sanford Video & News, Inc., 146 N.C. App. 554 (2001) ("As the wording of the clause under our North Carolina Constitution is identical to that of the United States Constitution, our analysis is the same under both provisions."). Indeed, in the North Carolina cases where defendants have raised excessive fines challenges under both the state and federal constitutional provisions, the court appears to have considered both challenges simultaneously and identically. *See id.*; *see also* State v. Zubiena, __ N.C. App. __, 796 S.E.2d 40 (2016).

Sanford Video & News is worth a closer look to see that analysis in action. In that case, the court of appeals upheld a $50,000 fine imposed as the punishment for a corporation convicted of Class H disseminating obscenity. The court concluded that the fine was not "grossly disproportionate" under the test set forth by the Supreme Court in *United States v. Bajakajian*, 524 U.S. 321 (1998) (holding a $357,144 forfeiture grossly disproportionate to the defendant's crime of attempting to leave the United States without reporting more than $10,000 in currency, and therefore unconstitutional), when the crime was a felony, and one through which the defendant corporation obtained money (for selling two adult magazines to an undercover officer). *Sanford Video & News*, 146 N.C. App. at 559. The court also noted that the fine was not excessive compared to the financial resources of the corporation. *Id.* at 559–60 ("With its financial resources, a lesser fine may have been seen as an "acceptable price" of conducting business and therefore not a deterrent."). So, the case applies a federal Eighth Amendment framework in a way that sets a pretty high bar for gross disproportionality.

Even if *Timbs* doesn't amount to a revolution in excessive fines jurisprudence, there is surely language in the case—from a unanimous Court—that defendants may find helpful in all sorts of challenges to monetary obligations. *E.g.*, Slip op. at 6 ("Exorbitant tolls undermine other constitutional liberties. . . . Even absent a political motive, fines may be employed in a measure out of accord with the penal goals of retribution and deterrence . . . .") (citation omitted)). And the case will certainly be leveraged in civil asset forfeiture cases—which are not as much of a fixture in North Carolina as they are in some states, but they do exist, as Jeff discussed here, and Shea discussed here.

At a minimum the case brings additional attention to fines and fees, an important issue for which momentum for reform appears to be building. It's one of the topics of discussion at the School of Government's upcoming Criminal Justice Summit in March. And I'll be hosting a fines and fees workshop at the School at the end of May.