



# Are Excessive Fines Fundamentally Unfair?

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*UPDATE 2/20/2019: Today, the U.S. Supreme Court [held](#) in *Timbs v. Indiana* that the Eighth Amendment's Excessive Fines Clause is incorporated in the Due Process Clause of the Fourth Amendment and is therefore binding on the States.*

*The original post from September 12, 2018, follows below.*

The U.S. Supreme Court has agreed to consider the question of whether it is constitutionally unfair for a state to impose an excessive fine. More precisely, it granted [certiorari](#) in *Timbs v. Indiana* to consider whether the Fourteenth Amendment's Due Process Clause, which applies to the states, incorporates the Eighth Amendment's Excessive Fines Clause. The [standard](#) for incorporation is whether the protection in question "is fundamental to our scheme of ordered liberty." The Indiana Supreme Court believed that only the U.S. Supreme Court may answer that question. And so, the Indiana court [reversed](#) a lower court [determination](#) that the Excessive Fines Clause precludes the state's confiscation of a drug dealer's Land Rover.

The facts are undisputed. Tyson Timbs bought a new Land Rover with the proceeds of a life insurance policy. He drove it on interstate trips to pick up the heroin he sold. Upon discovery of his activities, the police arrested Timbs; seized the Land Rover; charged him with controlled substance violations; and sought to forfeit the Land Rover. After Timbs plead guilty to a drug-dealing count, the trial court sentenced him to a year of community corrections and five years on probation. Nevertheless, the trial court [refused](#) to order the forfeiture of the Land Rover. To do so, it concluded would be grossly disproportionate to Timbs' offense and consequently would violate the Excessive Fines Clause. While a divided panel of the Indiana Court of Appeals [agreed](#), the Indiana Supreme Court [did not](#). The U.S. Supreme Court has consented to consider the issue.

The state's task before the U.S. Supreme Court might seem formidable. The Supreme Court has declared that most of the protections of the Bill of Rights are incorporated through the Fourth Amendment's Due Process Clause and thus are binding on the states. In its most recent incorporation case, the Court [noted](#) that the only two explicit exceptions come from decisions that "predate the era of selective

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incorporation.” Moreover, for reasons other than incorporation, the Court has explained that the Fourteenth Amendment’s Due Process Clause “prohibits the imposition of grossly excessive or arbitrary punishments on a tortfeasor” in the form of punitive damages. And, the test the Court uses for the Eighth Amendment’s Excessive Fines Clause, gross disproportionality, mirrors the test it uses for the Eighth Amendment’s incorporated Cruel and Unusual Punishment Clause.

The Indiana Supreme Court, however, pointed out that the U.S. Supreme Court has been somewhat ambivalent about the incorporation status of the Eighth Amendment’s Excessive Fines Clause. In *Browning-Ferris Industries v. Kelco Disposal, Inc.*, it declined to address the issue. In *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, the Court suggested that the Excessive Fines Clause had been incorporated. In *McDonald v. Chicago* a few years later, the Court identified the clause as one that had not been incorporated.

Even if it decides that the Excessive Fines Clause is incorporated, the Court might decide that the Timbs forfeiture would not constitute an excessive fine. The lower Indiana courts concluded that confiscation of the Land Rover would constitute an excessive fine because its value was four times more than the maximum fine for the drug dealing charge for which Timbs was convicted. The U.S. Supreme Court’s starting spot to determine whether a particular punishment is grossly disproportionate for purposes of the Cruel and Unusual Punishment Clause is to compare the punishment imposed to the punishments available in other jurisdictions for the same offense. Had Timbs been turned over to federal authorities for prosecution, the maximum fine for his forfeiture-triggering felony of conviction would have been \$250,000, that is, more than five times the value of the Land Rover. The U.S. Supreme Court might conclude that the Excessive Clause is incorporated, but that the forfeiture of the Land Rover is not grossly disproportionate to the offense and the maximum penalty it might have carried.

The extent to which the Court describes the outer bounds of the Excessive Fines Clause will inform Congress as to its authority to set maximum fines for federal criminal offenses.