



Civil and Criminal Asset Forfeiture Attacked on Grounds of “Excessive Fines”

The Eighth Amendment to the Constitution is quite clear: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

While we have witnessed much discussion over the years about the meaning of “cruel and unusual punishments,” relatively little has been said about “excessive fines.” Yet governments at all levels appear to give little regard to the relationship between some of the outlandish fines imposed and the significance of the crimes.



A case in Indiana is expected to land in the lap of the U.S. Supreme Court soon: the issue of civil or criminal asset forfeiture (CAF) and “excessive fines.”

Under civil forfeiture, a person does not have to be convicted of any crime before his or her property can be taken. This is of course blatantly unconstitutional, since (as stated in the Fifth Amendment) no person shall “be deprived of life, liberty, or property, without due process of law.” Nevertheless, civil forfeiture is used by both federal government officials and local law-enforcement officers to seize property that they simply suspect has been used in wrongdoing — without even having to charge the person with any crime.

In cases of *criminal asset forfeiture*, however, the accused is afforded all the constitutional and statutory procedural safeguards available under criminal law. With criminal forfeiture, the accused must actually be found guilty beyond a reasonable doubt before property is forfeited.

But even in the case of *criminal asset forfeiture*, can the government (at whatever level) simply take property from a person far and above the seriousness of the offense? After all, just what is an “excessive fine?” It must mean something, for otherwise why did James Madison bother to include it in the Bill of Rights?

The case in Indiana involves Tyson Timbs and his sale of four grams of heroin to an undercover law officer. He paid a fine of \$1,200 and served a year of house arrest.

But then, his truck, worth about \$40,000 was confiscated under the idea that it was used to facilitate the drug deal. The truck, a Land Rover LR2, can now be used instead by local police.

The Institute for Justice has taken the case, believing an important constitutional principle is at stake. Its spokesman stated, “This case is about more than just a truck. The Excessive Fines Clause is a critical check on the government’s power to punish people and take their property. Without it, state and local law enforcement could confiscate everything a person owns based on a minor crime or — using civil forfeiture — no crime at all.”

In the case of Timbs, he had paid the criminal fine of \$1,200, and had been punished with a year of house arrest; however, through the use of so-called civil asset forfeiture, the local government decided to take his truck as well. Their argument was, as is the case with all these CAF instances, this was not a



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violation of the prohibition against “excessive fines,” because the civil case was against the truck — not Timbs!

The trial judge called the fine “grossly disproportional,” and an appellate court agreed. But then, the Indiana Supreme Court saw it differently. They argued that state and local authorities do not need to comply with the Eight Amendment to the U.S. Constitution, and its prohibition on “excessive fines,” at least not in the case of civil asset forfeiture.

Sam Gedge, an attorney for the Institute for Justice, said, “This is not just an ominous trend; it is a dangerous one. We hope the Supreme Court takes this issue on, so we can establish that the U.S. Constitution secures meaningful protections for private property and limits the government’s ability to turn law enforcement into revenue generators.”

Writing in *National Review*, Tiana Lowe called civil asset forfeiture (CAF) “essentially government-sanctioned stealing from citizens.” CAF is now so common that in 2014 federal law-enforcement officers actually seized more property of citizens than did burglars.

The late Congressman Henry Hyde also contended that CAF violated the Eighth Amendment, declaring, “There is no proportionality between the crimes alleged and the punishments imposed,” in most cases, citing examples of entire hotels being seized simply because a single room was used, without the knowledge of the owners, for a drug transaction.

Unfortunately, supporters of CAF typically cast any opponents as supporters of drug kingpins. The drug problem is so severe, they argue, that law enforcement simply must have the “tools” to combat the drug lords. But it is unfair to charge those who wish to rein in CAF abuse as favoring criminals, just as it would be unfair to charge those who argue for due process for accused murderers as supportive of homicide.

In the case of Timbs, he pled guilty to breaking the law, and was justly punished. Even in the case of someone selling heroin, the punishment must fit the crime.

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