



Written by [Joe Wolverton, II, J.D.](#) on November 29, 2018

Indiana Solicitor General: Cars Can Be Seized if Driver Exceeds Speed Limit

In oral examination, Supreme Court Justice Stephen Breyer got the Indiana solicitor general to admit that he believes it is constitutional for the police to seize someone's car for driving five miles per hour over the speed limit.

Yep. Civil asset forfeiture has become such a boon for state law enforcement that its proponents are admitting to the U.S. Supreme Court that the application of the policy is nearly without limits.



On November 28, the case of *Timbs v. Indiana* was taken up by the U.S. Supreme Court, and the outcome of the case could have far-reaching implications for the practice of seizing the property of those suspected of criminal activity.

As is the case with the law of many states in the union, Indiana authorities may seize a suspect's property, regardless of the ultimate outcome of the case against the accused. In the case being considered by the Supreme Court, a man's property was seized and his life was shattered by Indiana law enforcement's use of civil asset forfeiture against him.

Here's a brief background on the case, as reported by WFYI in Indianapolis:

A Marion resident named Tyson Timbs claims police violated the Eight Amendment's excessive fines clause when they seized his vehicle — worth more than \$40,000 — because he used it to transport a few hundred dollars worth of drugs.

When Tyson Timbs moved to Marion, Indiana a few years ago, he hoped it would be a fresh start. He'd been living in Ohio and struggling with an opioid addiction for years. When his Aunt Wendy got sick, he decided to move to Indiana to help.

"I actually thought, 'Hey, maybe this is going to be the cure to all my problems,'" Timbs says. "Unfortunately I came with me. So, you know, you can't run from yourself."

Marion is a small town, and Timbs soon learned who to go to in order to find the drugs he needed to function. He eventually turned to heroin, using some life insurance money from his father's death to cover the costs of his habit.

Timbs also used more than \$42,000 from the payout to buy a Land Rover. Court documents say he drove the car to Richmond to buy heroin. And, at least twice, he sold heroin. The buyers were informants and an undercover detective. Court documents say Timbs sold a total of just more than \$500 worth of heroin to them.

Police arrested Timbs and took his Land Rover. A couple months after filing felony charges against Timbs, the state started a civil forfeiture case in an attempt to keep Timbs' vehicle.

After pleading guilty to one of the drug charges, Timbs began the process of securing the return of his



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car. He had no idea how long a process that would be and how widespread such abuses are in the rest of the country.

But Timbs was caught transporting drugs, one might say. That's illegal. Where's the harm in taking his Land Rover? First of all, Timbs had not yet been convicted of a crime. The Land Rover is his property, purchased legally, and not even with drug money. But that's not the worst of this situation coming out of Indiana. As mentioned above, and as part of the court transcript below shows, Justice Stephen Breyer got Indiana Solicitor General Thomas Fisher to admit before the Supreme Court that he believes the state *could have* seized Timbs's vehicle even all he was doing was driving five miles per hour over the speed limit:

JUSTICE BREYER: Well, in your view, an in rem civil forfeiture is not an excessive fine, is that right?

MR. FISHER: Yes, that is — that is true.

JUSTICE BREYER: So what is to happen if a state needing revenue says anyone who speeds has to forfeit the Bugatti, Mercedes, or a special Ferrari or even jalopy?

MR. FISHER: There — no, there is no — there is no excessive fines issue there. I — what I will say and what I think is important to — to remember is that there is a constitutional limit, which is the proof of instrumentality, the need to prove nexus.

JUSTICE BREYER: That isn't a problem because it was the Bugatti in which he was speeding.

MR. FISHER: Right.

JUSTICE BREYER: So — so there is all the nexus.

MR. FISHER: Historically —

JUSTICE BREYER: Now I just wonder, what — what is it? What is it? Is that just permissible under the Constitution?

MR. FISHER: To forfeit the Bugatti for speeding?

JUSTICE BREYER: Yeah, and, by the way, it was only five miles an hour —

MR. FISHER: Yeah.

JUSTICE BREYER: — above the speed limit.

MR. FISHER: Well, you know, the answer is yes. And I would call your attention to the —

JUSTICE BREYER: Is it yes?

MR. FISHER: Yes, it's forfeitable.

JUSTICE BREYER: It is forfeitable?

MR. FISHER: Yeah. The Louisa Barber case, one person over the — the passenger limit and the entire ship is forfeit. This is — history shows us in rem forfeiture —

JUSTICE BREYER: So if the airplane is speeding —

MR. FISHER: Well, in rem forfeitures have — have — have always been with us and they have always been harsh.

For those readers unfamiliar with this tyrannical transfer of wealth, a constitutional violation known



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euphemistically as “civil asset forfeiture,” here’s the explanation published by the *Washington Post*:

Since 2008, thousands of local and state police agencies have made more than 55,000 seizures of cash and property worth \$3 billion under a civil asset forfeiture program at the Justice Department called Equitable Sharing.

With this kind of money up for grabs, it is little wonder that the plague of asset forfeiture has spread across the 50 states.

Paul-Martin Foss, president and executive director of the Carl Menger Center for the Study of Money and Banking, an Arlington, Virginia-based think tank dedicated to educating the American people on the importance of sound money and sound banking, exposed the economic and psychological impact such persecution sets in motion:

Hardly a week goes by without a mention of some innocent person who is arrested and/or imprisoned for violating an unconstitutional law, an arcane regulation, or simply being in the wrong place at the wrong time. For completely innocuous conduct, they find themselves at the mercy of an uncaring, unfeeling bureaucratic apparatus that chews them up and spits them out.

Tyson Timbs knows all about such despotic devastation.

Timbs’ attorneys argue that the seizure of their client’s car violated the right to be free from excessive fines, as protected by the Eighth Amendment.

The Eighth Amendment reads: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

“The Excessive Fines Clause is a critical check on the government’s power to punish people and take their property,” is how Wesley Hottot, an attorney with the Institute for Justice, which is representing Timbs, describes the case, as quoted by an article in *Reason*. “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.”

Hottot’s position is grounded in centuries of Anglo-American legal philosophy. Consider this statement by the celebrated Montesquieu of the right of men to be free from excessive fines and the tyranny associated with such:

Let us follow nature, who has given shame to man for his scourge; and let the heaviest part of the punishment be the infamy attending it.

But if there be some countries where shame is not a consequence of punishment, this must be owing to tyranny, which has inflicted the same penalties on villains and honest men.

And if there are others where men are deterred only by cruel punishments, we may be sure that this must, in a great measure, arise from the violence of the government which has used such penalties for slight transgressions.

Montesquieu goes on to warn of the harm caused by such tyrannical seizures of the property of the people, saying, “There remains an evil in the state that has sprung from this severity; the minds of the people are corrupted, and become habituated to despotism.”

It appears, based on [the transcript](#) of the hearing published by the Supreme Court, that Timbs will prevail in his case against the state of Indiana. Comments and questions made by the justices reveal a general repugnance of the abuses of civil asset forfeiture.



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With such statements in mind, it's likely not a question of will civil asset forfeiture abuse be curbed by the high court's decision, but just how punitive their opinion will prove to the practice.

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