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## Supreme Court Limits Police Powers to Seize Private Property

By Adam Liptak and Shaila Dewan

The Supreme Court ruled on Wednesday that the Constitution places limits on the ability of states and localities to take and keep cash, cars, houses and other private property used to commit crimes.

The practice, known as civil forfeiture, is a popular way to raise revenue and is easily abused, and it has been the subject of widespread criticism across the political spectrum. The court's decision will open the door to new legal arguments when the value of the property seized was out of proportion to the crimes involved.

In this case, the court sided with Tyson Timbs, a small-time drug offender in Indiana who pleaded guilty to selling \$225 of heroin to undercover police officers. He was sentenced to one year of house arrest and five years of probation, and was ordered to pay \$1,200 in fees and fines.

State officials also seized Mr. Timbs's \$42,000 Land Rover, which he had bought with the proceeds of his father's life insurance policy, saying he had used it to commit crimes.

The Supreme Court has ruled that the Eighth Amendment, which bars "excessive fines," limits the ability of the federal government to seize property. On Wednesday, in a 9-to-0 decision that united justices on the left and right, the court ruled

that the clause also applies to the states under the 14th Amendment, one of the post-Civil War amendments.

Justice Ruth Bader Ginsburg, writing for eight justices, said the question before the court was an easy one. "The historical and logical case for concluding that the 14th Amendment incorporates the Excessive Fines Clause is overwhelming," she wrote.

"For good reason, the protection against excessive fines has been a constant shield throughout Anglo-American history: Exorbitant tolls undermine other constitutional liberties," she wrote. "Excessive fines can be used, for example, to retaliate against or chill the speech of political enemies."

Quoting from an earlier decision, she wrote that even absent a political motive, "fines may be employed 'in a measure out of accord with the penal goals of retribution and deterrence,' for 'fines are a source of revenue,' while other forms of punishment 'cost a state money.'"

Justice Ginsburg also wrote that excessive fines have played a dark role in this nation's history.

"Following the Civil War," she wrote, "Southern states enacted Black Codes to subjugate newly freed slaves and maintain the prewar racial hierarchy. Among these

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laws' provisions were draconian fines for violating broad proscriptions on 'vagrancy' and other dubious offenses."

The decision will not halt civil forfeitures, said Wesley P. Hottot, a lawyer with the Institute for Justice, which represented the Land Rover's owner.

"People are still going to lose their property without being convicted of a crime, they're still going to have their property seized," Mr. Hottot said. "The new thing is that they can now say at the end of it all, whether I'm guilty or not, I can argue that it was excessive."

Law enforcement agencies have resisted efforts to curtail civil forfeiture, saying they rely on the proceeds for sorely needed equipment. It is difficult, if not impossible, to calculate the total value of civil forfeitures by local police departments and prosecutors, but a significant portion comes from joint operations with federal law enforcement and is tracked by the Justice Department.

In fiscal year 2018, state and local agencies received \$400 million through this arrangement, known as equitable sharing. The amount varied widely by agency — the Surprise Police Department in Arizona received \$570,000, while the Buffalo Police Department in upstate New York got \$130,000. The New York Police Department took in \$7.8 million.

In Philadelphia, forfeiture proceeds once accounted for 20 percent of prosecutors' budget, while agencies in New York and California tended to take in the highest sums, according to the Institute for Justice.

Investigations across the country have uncovered many examples where the property seized was disproportionate to the crime, taken from innocent citizens or targeted in accordance with law enforcement wish lists. As its name

suggests, a civil forfeiture does not require a criminal conviction or even criminal charges but only proof that the property at issue was used in connection with a crime. Owners who wish to reclaim their property must demonstrate that it was not, or that it was used without their knowledge.

A recent series of articles by the Greenville News examined every civil forfeiture case in South Carolina from 2014 to 2016, finding examples like that of Ella Bromell, a 72-year-old woman who had to fight off the forfeiture of her home after drug dealers conducted transactions on her property, despite Ms. Bromell's multiple attempts to stop them.

In a similar case in Philadelphia, where law enforcement agencies once took in \$5.6 million a year in civil forfeiture, according to the Institute for Justice, a couple's home was seized in 2014 after their son was arrested on charges of making a \$40 drug sale there. A case against the city's forfeiture practices was finally settled last year.

Justice Ginsburg suggested that the effect of the ruling could be limited. "All 50 states," she wrote, "have a constitutional provision prohibiting the imposition of excessive fines either directly or by requiring proportionality." Wednesday's decision may influence how state courts interpret those provisions, and they may use them to scrutinize civil forfeitures more closely.

The Supreme Court had already ruled that most of the protections in the Bill of Rights, which originally restricted the power of only the federal government, also applied to the states under the 14th Amendment.

The court left open the question of whether the seizure of Mr. Timbs's Land Rover amounted to an excessive fine, leaving its resolution to lower courts. But Justice Ginsburg suggested that the penalty

was disproportionate to the offense, writing that the vehicle was worth “more than four times the maximum \$10,000 monetary fine assessable against him for his drug conviction.”

Justice Clarence Thomas agreed with the result in the case, *Timbs v. Indiana*, No. 17-1091, but said he would have gotten to the same place by a different route.

While the majority on Wednesday relied on the due process clause of the 14th Amendment, Justice Thomas said he would have ruled “the right to be free from excessive fines is one of the ‘privileges or immunities of citizens of the United States’ protected by the 14th Amendment.”

The difference between the two approaches was meaningful, he wrote, accusing the Supreme Court of misplaced reliance on the due process clause to establish substantive constitutional rights like ones to abortion and same-sex marriage.

Justice Thomas did not address objections to modern civil forfeiture practices on Wednesday. In a 2017 opinion, though, he wrote that “this system — where police can seize property with limited judicial oversight and retain it for their own use — has led to egregious and well-chronicled abuses.” His opinion cited reporting from *The Washington Post* and *The New Yorker*.

Mr. Hottot, who argued on behalf of Mr. Timbs, said courts alone cannot address the abuses inherent in civil forfeiture.

“Police and prosecutors will continue to engage in this kind of policing for profit unless and until legislatures no longer allow them to keep 100 percent of the proceeds to forfeitures,” he said.

He added that Wednesday’s ruling could nonetheless bring needed scrutiny to the issue.

“Police and prosecutors have no incentive to be reasonable about what they take because they get to keep everything they take,” he said. “Now we know that judges at the end of the process have to evaluate if that’s really justice or not.”