

# THE NATIONAL LAW REVIEW

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## Supreme Court Applies Excessive Fines Clause to States

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The Supreme Court today held the Eighth Amendment's Excessive Fines Clause applies to the states. A wide variety of groups from the American Civil Liberties Union to the Chamber of Commerce of the United States supported the result.

### Background

The defendant in the underlying matter was an individual who pleaded guilty in Indiana state court to dealing in a controlled substance and conspiracy to commit theft. He was sentenced to one year of home detention, five years of probation including an addiction treatment program, and fees and costs totaling \$1,203. Subsequently, the State engaged a private law firm to forfeit civilly the Land Rover SUV seized at the time of arrest. The vehicle had recently been purchased for \$42,000 with the proceeds of a life insurance policy. The trial court denied the requested forfeiture, observing that the purchase price of the vehicle was more than four times the maximum monetary fine of \$10,000 assessable against him for his conviction. The State appealed, and the Indiana Supreme Court held the Eighth Amendment constrains only federal actions.

### The Decision

The United States Supreme Court reversed and remanded in *Timbs v. Indiana*. In [the opinion](#) for a unanimous court, Justice Ginsburg found the protection against excessive fines "has been a constant shield throughout Anglo-American history," as "exorbitant tolls undermine other constitutional liberties" such as political speech. Justice Thomas concurred with the result but wrote that the Privileges and Immunities Clause rather than the Due Process Clause made the fines clause applicable to states. Justice Gorsuch also concurred, writing that he did not need to resolve that question to agree with the result.

### Implications

Both individuals and corporate entities will benefit from the Court's decision. The American Civil Liberties Union, cited in the decision, raised the concern that "governments nationwide increasingly depend heavily on fines and fees as a source of general revenue." As the Chamber of Commerce of the United States of America noted in its amicus brief, the failure of some state and local governments to apply the Eighth Amendment's restriction drives up costs for businesses. According to the Chamber of Commerce, "state and local prosecutors have sought to extract grossly disproportionate fines from disfavored or unpopular parties - like large corporations - who presumably have the resources to pay, rather than seeking sanctions in proportion to the harms caused by their actions." The Chamber of Commerce described instances of states retaining private counsel to pursue "aggressive claims" against corporations that led to substantial monetary recoveries (although some of these verdicts were later overturned). Additionally, businesses faced the prospect of "multiple fines by different government actors for the same conduct." The Chamber of Commerce gave the example of a company that paid a \$124 million civil penalty in South Carolina after settling with the federal government for \$2.2 billion.

### Similar Concerns in Justice Manual

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The Court's opinion should help individuals and companies avoid fines that are grossly disproportionate to the behavior at issue or actual financial harm caused. The U.S. Department of Justice's Justice Manual reflects a similar concern. A new section to the Manual at [1-12.100](#), added less than a year ago, reminds Department attorneys involved in investigations or proceedings involving multiple Department components, or other federal, state, or local enforcement authorities, of their "ethical obligation not to use criminal enforcement authority unfairly to extract, or to attempt to extract, additional civil or administrative monetary payments." The new provision, along with the Court's decision in *Timbs*, should provide individuals and businesses some comfort.

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