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## SCOTUS Ruling That Eighth Amendment's Excessive Fines Prohibition Applies To States Could Provide New Weapon To Consumer Financial Services Providers

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Earlier this week, the U.S. Supreme Court ruled in [Timbs v. Indiana](#) that the prohibition on excessive fines in the Eighth Amendment of the U.S. Constitution is incorporated against the States by the Fourteenth Amendment. Although it involved [a civil asset forfeiture](#) of a vehicle arising from the petitioner's criminal conviction, the decision could provide a new weapon for consumer financial services providers facing fines and penalties sought by State attorneys general and regulators.

The Eighth Amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." In its decision, the Supreme Court cited language from its 1998 decision which held that in rem forfeitures are fines for purposes of the Eighth Amendment. In that decision, the Court wrote that the phrase "nor excessive fines imposed" in the Eighth Amendment prohibition "limits the government's power to extract payments, whether in cash or in kind, 'as punishment for some offense.'"

Since the Supreme Court did not reach the question of whether the forfeiture resulted in an excessive fine that violated the Eighth Amendment, the decision does not discuss the standards for determining whether a particular fine is unconstitutionally excessive. It should be noted, as the Supreme Court did in its opinion, that "all 50 states have a constitutional provision prohibiting the imposition of excessive fines either directly or by requiring proportionality." While such state provisions would be available to a consumer financial services provider, they might not be interpreted in a manner that is as protective as the Eighth Amendment prohibition. (Perhaps that is the reason that the petitioner in *Timbs* did not challenge the forfeiture under the Indiana Constitution.)

Accordingly, the Supreme Court's decision now gives providers a potential second line of attack when facing fines and penalties sought by State attorneys general and regulators.

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