

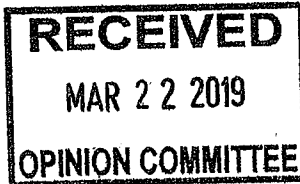


TEXAS HOUSE *of* REPRESENTATIVES

James White

*House District 19
Jasper, Newton, Hardin, Polk, Tyler*

CORRECTIONS
CHAIR



REDISTRICTING

JUDICIARY &
CIVIL JURISPRUDENCE

March 15, 2019

Attorney General Ken Paxton
Office of the Attorney General
PO Box 12548
Austin, TX 78711

RQ-0277-KP

FILE# ML-48520-19
I.D.# 48520

General Paxton,

Recently, the United States Supreme Court delivered a 9-0 ruling in *Timbs v. Indiana* (2019)¹. In this case, the Court heard arguments on the applicability of the Eighth Amendment's excessive fines clause to state and local governments in the context of asset forfeiture. Unanimously, the Court ruled that the Eighth Amendment's prohibition of excessive fines is an incorporated protection applicable to the states under the Fourteenth Amendment.

In summation, in 2012, Tyson Timbs of Indiana received a cash sum of money from his father's life insurance company upon his father's death. Mr. Timbs used about \$42,000 to purchase a Land Rover. Due to the emotional strain of his father's death, Timbs, a former drug addict, succumbed to another episode of drug addiction and expended a substantial remaining sum of his insurance proceeds on illegal drug purchases. He even participated in drug sales to support his habit. This led to Timbs' eventual arrest in November 2013, when he sold an estimated \$225 of controlled substances to a team of undercover law enforcement officers.

Subsequently, Tyson Timbs pleaded guilty to the charges, and the court sentenced him to a year of house arrest, five years of probation, and a fine of \$1,200. Timbs paid the fine. However, the state used their forfeiture law to confiscate the Land Rover as a civil action, because Timbs used the vehicle to transport the illegal drugs. In response, Timbs filed suit against the state. He argued that the seizure of the vehicle violated the Eighth Amendment's prohibition against excessive fines. Initially, a Grant County Superior Court judge ruled in Timbs' favor because the value of the Land Rover was over four times the maximum penalty (\$10,000) that the state could

¹ https://www.supremecourt.gov/opinions/18pdf/17-1091_5536.pdf



TEXAS HOUSE *of* REPRESENTATIVES

James White

House District 19
Jasper, Newton, Hardin, Polk, Tyler

CORRECTIONS
CHAIR

REDISTRICTING

JUDICIARY &
CIVIL JURISPRUDENCE

have fined him and thirty times over the fines he paid. The Indiana Court of Appeals agreed with this ruling on appeal from the state.

Eventually, the Supreme Court of Indiana reversed the lowered appellate court's decision. Strangely, the highest court in Indiana ruled that the Eighth Amendment only applies for federal actions and does not prohibit state or local laws from imposing excessive fines, and that the U.S. Supreme Court had yet to issue any decision that incorporated the excessive fees clause of the Eighth Amendment to the states.

Obviously, this development set the stage for *Timbs v. Indiana* (2019). Unanimously, the U.S. Supreme Court issued a ruling stating that the Fourteenth Amendment incorporated the Eighth Amendment's protection from excessive fines against the states. Justice Ruth Bader Ginsburg wrote the opinion of the Court. On p. 2-9, Justice Ginsburg thoroughly outlined how "the Eighth Amendment's Excessive Fines Clause is an incorporated protection applicable to the States under the Fourteenth Amendment's Due Process Clause."

Nevertheless, The Texas Constitution begins, "That the general, great and essential principles of liberty and free government may be recognized and established, we declare . . .² Then the Constitutional Convention delves into an American tradition, stemming from its English traditions, of celebrating and listing rights that government has the responsibility to defend, not give, because the people, the ultimate sovereign, already have these rights and constitute government for the purposes of defending these liberties.³

One of these constitutional protections, Section 13, involves excessive fines:

"Sec. 13. EXCESSIVE BAIL OR FINES; CRUEL OR UNUSUAL PUNISHMENT; OPEN COURTS; REMEDY BY DUE COURSE OF LAW. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law."

² <https://statutes.capitol.texas.gov/Docs/CN/htm/CN.1.htm>

³ <https://statutes.capitol.texas.gov/Docs/CN/htm/CN.PR.htm>



TEXAS HOUSE *of* REPRESENTATIVES

James White

House District 19
Jasper, Newton, Hardin, Polk, Tyler

CORRECTIONS
CHAIR

REDISTRICTING

JUDICIARY &
CIVIL JURISPRUDENCE

Would our Texas courts, local, county, or state, interpret Section 13 of the Texas Constitution as a constitutional guarantee that protects Texans from excessive fines? If not, explain.

Notwithstanding your thoughtful response to the inquiry above, would a Texas court rule that under the Fourteenth Amendment's Due Process Clause that there is an incorporation of the Eighth Amendment's Excessive Fines Clause against Texas? Whether yes or no, please explain.

As indicated at the beginning, this request for opinion highlighted the unanimous nature of the *Timbs* ruling. In concurring, Justice Clarence Thomas expressed his agreement "with the Court that the Fourteenth Amendment makes the Eighth Amendment's prohibition on excessive fines fully applicable to the States." However, Justice Thomas departs from the Court's incorporation logic. Instead, he proceeds along the route "that the right to be free from excessive fines is one of the "privileges or immunities of citizens of the United States" protected by the Fourteenth Amendment."

Notwithstanding your conclusion on Justice Ginsburg's explanation that the Due Process Clause of the Fourteenth Amendment incorporates the Eighth Amendment Excessive Fines Clause against the states, could a court adopt and interpret "that the right to be free from excessive fines is one of the "privileges or immunities of citizens of the United States" protected by the Fourteenth Amendment." Whether yes or no, please explain.

Regardless of your responses above, the Texas Constitution and the U.S. Constitution expressly mentions "excessive fines." **How would a court likely interpret a law that mandates the executive branch to enforce a statute accompanied with an excessive fine?**

Returning to *Timbs*, this 9-0 ruling garnered two concurring opinions along with the majority opinion. Again, the central issue in *Timbs* is the civil asset forfeiture of Tyson Timbs' vehicle. However, Justices Ginsburg, Gorsuch, and Thomas delve into historical commentary, originating from the ancient English era to contemporary times, that provide a myriad of examples of "excessive fines." If the expectation is for a court to interpret the law and say this or that law



TEXAS HOUSE *of* REPRESENTATIVES

James White

*House District 19
Jasper, Newton, Hardin, Polk, Tyler*

CORRECTIONS
CHAIR

REDISTRICTING

JUDICIARY &
CIVIL JURISPRUDENCE

creates an excessive fine, then there should exist some metric to guide courts and maybe even legislatures.

Apparently in the *Timbs* majority opinion, Ginsburg writes that the phrase, “nor excessive fines imposed,” deals with the government’s power limits to assess payments, in cash or in-kind, as punishment for an offense. Not including victim restitution, one would believe that excessive fines could manifest in the form of money or in-kind fine assessments such as community service. **The question still remains what amounts to an excessive fine?**

Ginsburg begins her historical commentary with the Magna Carta and comes to a conclusion that the Magna Carta suggested an economic-based metric of proportionality. That is, the fine should be proportional to the offense to the extent that it does not deprive the justice-involved of his/her livelihood. Ginsburg also notes the 17th century English crown’s use of fines to raise revenue, harass political opposition, and facilitate the deprivation of liberty with incarceration.

With more commitment and fidelity, the English colonists transported the practice of the prohibition of excessive fines to the North American continent. Despite the proliferation of constitutional protections against excessive fines during the early nationhood of the U.S., Justice Ruth Bader Ginsburg discussed how Southern state legislatures enacted Black Codes in the aftermath the Civil War. This perverse legal code imposed burdensome fines on newly freed slaves.

Ginsburg also noted that excessive fines are a mechanism to accomplish means outside the goals of the criminal justice system, deterrence and punishment, to include revenue generation. So therefore, in the majority opinion, we have excessive fines associated with offense proportionality, targeting political opposition, raising revenue, or exacting hostility on minority groups. **Therefore, how is a court likely to rule when faced with fines, and associated fees and surcharges, that are disproportionate to the offense, target political opposition, raise revenue, or exact hostility on minority groups? How would a court likely identify such fines, fees, surcharges? Is there a legal metric that courts use to derive at such findings?**

In his concurring opinion, Justice Clarence Thomas provides similar commentary. For example, Justice Thomas heralds “the longstanding English prohibition on disproportionate fines.” **How**



TEXAS HOUSE *of* REPRESENTATIVES

James White

*House District 19
Jasper, Newton, Hardin, Polk, Tyler*

CORRECTIONS
CHAIR

REDISTRICTING

JUDICIARY &
CIVIL JURISPRUDENCE

would a court recognize a disproportionate fine? Furthermore, in explaining the English lineage of excessive fine prohibitions that extended to the English colonies, Thomas claims that the Virginia Declaration of Rights, a precursor of the American constitutional legacy of celebrating and enumerating individual right in a governing document, contained a legal understanding that the degree of the offense and the defendant's estate or financial worth are the essential elements of fine assessments. **Does Texas and the American colonies share a similar constitutional legacy with the English tradition regarding the prohibition on excessive fines? If not, please explain; however, if so, how would 21st century jurisprudence balance that assessment of a court-involved's individual financial worth and the degree of the offense?**

Interestingly, Justice Clarence Thomas' commentary in his concurring opinion highlighted post-Civil War South as a period of aberration from the constitutional expectation of excessive fines prohibition. Throughout the South, states adopted Black Codes, which sought to maintain that plantation economic system, without legal chattel slavery. These state laws subjected freed blacks, who did not have lawful employment, to fines and incarceration. Of course, with limited means for employment and satisfying and fine assessment, the courts subjected these freed blacks to terms of leased labor. In fact, Justice Thomas notes that these examples of excessive fines informed our inclusion of the Fourteenth Amendment to our Constitution.

This request for opinion carries an abundance of weight. We value liberty in Texas. Whenever our citizens experience an intersection with our criminal justice system, whether a traffic fine to capital punishment, the prospect of some (monetary fine) or ultimate degree (Life) of freedom is at stake. We create governments to maintain civil society in order for individual liberty to flourish. With that, the people legitimate the police power of the state. If ordered liberty is an expectation, we must have a government that has the sufficient powers, to impose punishment to at least deter the encroachments upon civil society by a few at the expense of the majority. On the other hand, we do champion limited government.

In summation, state, county, and local governments throughout Texas enforce and interpret a myriad of fines, fees, and surcharges in lieu of criminal offenses. Presiding officers of our court system and the most subordinate judicial officers in our state have opined in editorials and



TEXAS HOUSE *of* REPRESENTATIVES

James White

House District 19

Jasper, Newton, Hardin, Polk, Tyler

CORRECTIONS
CHAIR

REDISTRICTING

JUDICIARY &
CIVIL JURISPRUDENCE

speeches about fees, fines, and surcharges associated with misdemeanor offenses.⁴ The U.S Supreme Court has spoken convincingly in *Timbs v. Indiana* (2019) on the constitutional application of criminal assessments. Based on the Court's commentary, the excessive fines go beyond one drug addicted young person in the upper midwest facing a criminal conviction and possible civil forfeiture of his vehicle. The issue of excessive fines is central to constitutional government and individual liberty.

For God and Texas,

James White
State Representative
House District 19

⁴ <http://www.txcourts.gov/media/1437101/soj-2017.pdf>;

https://www.washingtonpost.com/posteverything/wp/2016/04/08/why-i-refuse-to-send-people-to-jail-for-failure-to-pay-fines/?utm_term=.709623bd49fe