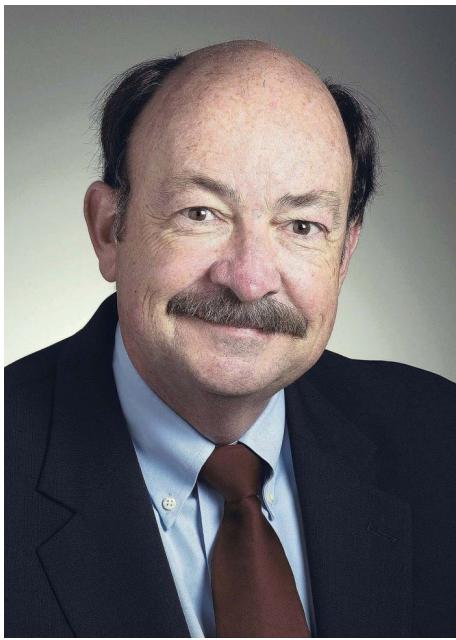


# A win for private-property rights

By John M. Boehnert - March 22, 2019 1:08 am



John M. Boehnert

The U.S. Supreme Court recently issued a resounding victory for private-property rights.

That decision will directly benefit property owners in Rhode Island and throughout the country.

What the court said was there are federal constitutional limitations on the ability of states and municipalities to seize private property as a part of criminal law enforcement.

Most Americans would be surprised to learn that such protections were not already in place.

At issue is the controversial, and widespread, practice of civil forfeiture, where law enforcement officials can seize houses, cars, money or other property, from even innocent owners, on the suspicion that the property was connected to criminal activity.

The case arose when an Indiana resident, Tyson Timbs, was arrested for selling a small quantity of heroin. For his criminal conduct, he was fined \$1,203, far less than the potential maximum fine of \$10,000, and given one year of home confinement and five years of probation.

His lawyers argued that the arrest and conviction served as a wake-up call, that he entered treatment for his drug addiction and held down a job.

But his problems were not over. At his arrest, the police had seized his Land Rover SUV, worth approximately \$42,000. He had purchased the vehicle with proceeds from his father's life insurance policy. The state brought a lawsuit against him for civil forfeiture, to acquire ownership of the vehicle, asserting it had been used to commit a crime – transporting heroin.

## *Civil forfeitures have flourished in recent years.*

In state court, his lawyers argued the Eighth Amendment's prohibition against excessive fines applied and given that the value of the vehicle was more than four times the maximum possible fine of \$10,000 for his offense, such seizure would be an excessive penalty and thus unconstitutional.

Two lower state courts agreed with this argument, but the Indiana Supreme Court said this constitutional protection was not one of the provisions applicable to the states under the 14th Amendment due process clause. Accordingly, there was no federal constitutional protection to prevent the seizure of this vehicle.

The U.S. Supreme Court unanimously reversed the Indiana Supreme Court, holding that the excessive fines provision of the Eighth Amendment is binding on the states and municipalities.

These protections are significant, given the reach of civil-forfeiture activities throughout the country. Consider one hypothetical. A couple near retirement owns a house, which they lease to a young couple. The home is a major part of their retirement savings. Unknown to the owners, their tenants are dealing a low level of drugs from the house. The tenants are arrested and prosecuted. Subsequently, authorities move to seize the title to the house, as it was used as an instrumentality of a crime.

Now the owners have the defense of an unconstitutional, excessive fine to defend their property.

This is not an academic issue, as civil forfeitures have flourished in recent years, particularly because law enforcement agencies often are able to use the proceeds from forfeitures to help fund their law enforcement operations. In other words, there can be a direct incentive on the part of law enforcement agencies to aggressively pursue civil forfeiture, as it can help fund their budgets.

The Institute for Justice, which represented Tyson Timbs before the U.S. Supreme Court, reports that for the 14 states for which they could determine forfeiture revenue for an extended period, total annual forfeiture revenue from these states doubled from 2001 to 2014.

At least now, such forfeiture actions will be subject to federal constitutional protections, and that is a big win for private-property rights.

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