

**IN THE
INDIANA SUPREME COURT**

Case No. 27S04-1702-MI-00070

Tyson Timbs,)	On remand from the
Appellant,)	United States Supreme Court
)	
v.)	U.S. Supreme Court No. 17-809
)	
State of Indiana,)	Trial Court Case No.
Appellee.)	27D01-1308-MI-92

**MOTION OF *AMICUS CURIAE* FOUNDATION FOR MORAL LAW
TO APPEAR AND FILE BRIEF IN SUPPORT OF APPELLANT, TYSON TIMBS**

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MOTION TO APPEAR AND SUBMIT *AMICUS CURIAE* BRIEF

The Foundation for Moral Law, Inc. (“the Foundation”), hereby files this motion for leave to file an *amicus* brief in the matter of *Timbs v. Indiana*, Case No. 27S04-1702-MI-00070, pursuant to Rule 41, Ind. R. App. P. On March 27, 2019, this Court issued an invitation to the parties that had filed *amicus* briefs before the United States Supreme Court to file *amicus* briefs to the Indiana Supreme Court on remand. The Foundation received that invitation, since it had filed a brief before the U.S. Supreme Court in this matter, and hereby moves to submit an *amicus* brief in response to the Court’s invitation.

The Foundation claims an interest in this litigation because it believes that life, liberty, and property are gifts from God and that the United States Constitution should be interpreted strictly as intended by its Framers. The Foundation believes that the Excessive Fines Clause applies to this case because the forfeiture of Timbs’s vehicle was a grossly disproportional punishment to crime with which he was charged. Believing that the right to property is a God-given right, the Foundation believes that Timbs’s vehicle should not be taken away from him so easily. The accompanying *amicus* brief would be helpful to the Court because it discusses the history relevant to the constitutional inquiry in this case and demonstrates how civil forfeiture operates as a punishment and therefore wrongly comingles civil and criminal law.

Respectfully submitted this 23rd day of May 2019,

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IDENTITY AND INTEREST OF AMICUS CURIAE¹

Amicus Curiae Foundation for Moral Law (“the Foundation”), is a national public-interest organization based in Montgomery, Alabama, dedicated to the defense of God-given liberties and the strict interpretation of the Constitution as written and intended by its Framers.

The Foundation has an interest in this case because the practice of civil forfeiture has been abused to wrongfully deprive people of their God-given right to property and to wrongfully punish people through the intermingling of criminal and civil law. In addition, the Foundation believes the history and practice of civil forfeiture clearly demonstrates that the practice is punitive in nature and therefore constitutes a fine. When, as here, it is excessive, a civil forfeiture is an excessive fine.

SUMMARY OF ARGUMENT

Mary Misdemeanor is charged with a minor drug offense. She pleads guilty, or is found guilty, pays a fine, and receives a suspended sentence. Not a pleasant experience, she thinks, but at least it's over with, and perhaps justice was done. Case closed, move on.

¹ The Foundation submits this amicus brief pursuant to Indiana Appellate Rule 41 at the invitation of the Indiana Supreme Court, Order Inviting Amicus Curiae Briefing filed March 27, 2019, issued because the Foundation had submitted an amicus brief to the U.S. Supreme Court in *Timbs v. Indiana*, 139 S.Ct. 682 (2019). No party or party’s counsel authored this brief in whole or in part, or contributed money that was intended to fund its preparation or submission; and no person other than the *amicus curiae*, its members, or its counsel, contributed money that was intended to fund the preparation or submission of this brief.

But then she is shocked to find out that her case isn't closed after all. Because she transferred the marijuana in her home, or transported it in her car, now the government is taking her home or car through something called "civil forfeiture." She calls her court-appointed attorney who informs her he can no longer represent her because she is not entitled to court-appointed counsel in a civil proceeding. And he further informs her that not only can the government take this "second bite out of the apple"; they don't have to give her the presumption of innocence or the other protections that apply in the criminal process.

"But when I pleaded guilty and received my sentence," she says, "I thought that was the end of it." "No," the attorney says, "this is independent of your criminal case. In fact, the state could take your home through civil forfeiture even if the jury had found you innocent, or even if no charges had been filed against you at all."

"But what about the Bill of Rights?" Mary asks. The attorney answers, "That won't help. This is a civil forfeiture, not an excessive fine. It is not implicit in the concept of ordered liberty."

"Not implicit in what?" By this time Mary is incredulous, wondering whether those words in the Pledge she had always recited, "with liberty and justice for all," were nothing but a meaningless sham.

In this brief the Foundation hopes to give voice to Mary's concerns. Civil forfeiture is punishment and thus comes under the Excessive Fines Clause of the Eighth Amendment, a clause that, as the U.S. Supreme Court held in this case on

February 20, 2019, is fully as implicit in the concept of ordered liberty as the Cruel and Unusual Punishments Clause and the Excessive Bail Clause, and therefore, consistent with the way the Court has incorporated other rights, it should be applied to state and local governments.

The Foundation will further argue that civil forfeiture is violation of property rights and an improper comingling of civil law and criminal law, two realms of justice that should be kept separate and distinct.

ARGUMENT

When organizations as diverse and polarized as the Southern Poverty Law Center and the Foundation for Moral Law file amicus briefs supporting the same side in the same case, that case must be unusual. But the much-abused practice of civil forfeiture has raised concerns among conservative constitutionalists, civil libertarians, advocates for the poor and disadvantaged, and many others.

The reason is clear: Civil forfeiture, both in theory and in practice, violates fundamental rights enshrined in the Constitution.

I. The Excessive Fines Clause of the Eighth Amendment applies to the states.

There is no need to belabor this point, as the U.S. Supreme Court answered this question directly in its opinion by which it remanded this case to this Court. Although Justice Thomas said in an opinion concurring in the result that the incorporation of the Excessive Fines Clause is based upon the Privileges and Immunities Clause of the Fourteenth Amendment rather than upon the Due Process Clause, and while Justice Gorsuch in a concurring opinion suggested the

same theory in more tentative terms, all Justices agreed that the Excessive Fines Clause applies to the States.

The Foundation will therefore address whether civil forfeitures constitute fines under the Excessive Fines Clause. We contend that it does.

The Framers placed the Excessive Fines Clause, the Cruel and Unusual Punishment Clause, and the Excessive Bail Clause in an amendment by themselves, separate from the others, for a reason: They deal with outcomes rather than processes, ends rather than means.

Provisions of the Fourth, Fifth, and Sixth Amendments dealing with search and seizure, grand jury indictment, double jeopardy, self-incrimination, public trial, trial by jury, confrontation, and right to counsel relate processes and means -- no one can be punished unless and until these procedures have been followed.

But the provisions of the Eighth Amendment deal with ends -- punishment itself. Punishment may not be cruel and unusual, and if the punishment is a fine, that fine may not be excessive. The Excessive Bail Clause is in this category as well, because bail involves the actual payment of money as a condition for being free prior to conviction.

These three clauses also stood together in the English Bill of Rights of 1689:

And excessive bail hath been required of persons committed in criminal cases to elude the benefit of the laws made for the liberty of the subjects;

And excessive fines have been imposed;

And illegal and cruel punishments inflicted;

And several grants and promises made of fines and forfeitures before any conviction or judgment against the persons upon whom the same were to be levied;

All which are utterly and directly contrary to the known laws and statutes and freedom of this realm;...²

One might distinguish between forfeiture of contraband, which the defendant had no right to possess, and forfeiture of a vehicle, a home, a place of business, or the tools of one's trade. The early common law seems very concerned that a defendant not be fined in such a way that he is deprived of the means of carrying on his trade and supporting his family;³ the common term was *salvo contenmento suo* ("saving his contenment" or livelihood).⁴ In the case at hand, Timbs was deprived

² English Bill of Rights (1689); reprinted in John Eidsmoe, *Historical and Theological Foundations of Law* (Nordskog 2016) III:1085.

³ W. Cleon Skousen, *The Making of America: The Substance and Meaning of the Constitution* (National Center for Constitutional Studies 1985, 2007), 711: "Excessive fines are described in the Magna Charta as those penalties which constitute a forfeiture, or deprive a man of his ability to earn a living or pursue his calling and business." Cf. Magna Charta §§ 20, 21, 22, 30, 37, 52, 55, 56, 57.

⁴ Nicholas M. McLean, "Livelihood, Ability to Pay, and the Original Meaning of the Excessive Fines Clause," *Hastings Constitutional Law Quarterly* 40:4 (2013) 833 at 835. See also, *The Treatise on the Laws and Customs of the Realm of England Commonly Called Glanvill* (circa A.D. 1188) 114 (G.D.G. Hall ed. 1965): "Amercement by the lord king ... means that he is to be amerced [fined] by the oath of lawful men of the neighborhood, but so as not to lose any property necessary to maintain his position." Likewise, Professor R.H. Helmholz compared the Magna Carta to the *Decretum Gratiani* (circa A.D. 1140) and concluded that according to both the *Decretum* (canon law) and the Magna Carta (common law), "the seed, animals, and tillage necessary for the livelihood of *rustici* [lower-ranking country tenants] were given special protection against incursion under the *ius commune* [common law]." R.H. Helmholz, *Magna Carta and the Ius Commune*, 66 U. Chi. L. Rev. 297, 329 (1999). Sir Edward Coke suggested that the principle of livelihood-protection in assessing amercements finds its origin in pre-Roman British law.

of his vehicle, a vehicle that could be his means of earning a living or his means of going to and from his place of work. As Timbs said,

Without my car, it is incredibly difficult to do all the things the government wants me to do to stay clean, like visit my probation officer, go to AA, and keep my job. Right now I'm borrowing my aunt's car to go to work so we can pay the bills, and she has to take a bus back and forth to her kidney-dialysis appointments. Fighting to stay clean is hard enough, but doing it without my vehicle has been even harder. ... They knew my vehicle wasn't bought with drug money. I've already been punished. So what they're doing amounts to punishing me a second time, and way out of proportion to the crime that I committed.⁵

Blackstone discussed the "reasonableness of fines" and said concerning *salvo contenmento*:

A rule that obtained even in Henry the Second's time, and means only that no man shall have a larger amercement imposed upon him than his circumstances or personal estate will bear: saving to the landholder his contenment, or land: to the trader his merchandise; and to the countryman his wainage, or team and instruments of husbandry.

....

[I]t is never usual to assess a larger fine than a man is able to pay, without touching the implements of his livelihood, but to inflict

Edward Coke, *The Second Part of the Institutes of the Laws of England* (1628) (London, E. & R. Brooke 1797) 132.

⁵ Tyson Timbs, quoted by Scott Bullock and Nick Sibilla, "The Supreme Court Resuscitates the Eighth Amendment: The Justices Strike a Blow Against Policing for Profit", *The Atlantic* March 13, 2019, <https://www.theatlantic.com/ideas/archive/2019/03/unanimous-supreme-court-decision-policing-profit/584506/>

Timbs' vehicle was purchased with proceeds from life insurance resulting from his father's death.

corporal punishment, or a stated imprisonment, which is better than an excessive fine, for that amounts to imprisonment for life.⁶

Because forfeitures are assessed, in this case and generally, without regard to proportionality, ability to pay, or interference with the defendant's ability to continue his livelihood, they are "excessive" under the Eighth Amendment.

II. Civil forfeitures operate as punishments.

Regardless of what they are called, forfeitures involve ends, not means, as they constitute deprivation of criminal defendants (and sometimes unindicted persons or other completely innocent persons) of their property. The Supreme Court has recognized that both criminal forfeitures and civil forfeitures constitute fines for the purposes of the Excessive Fines Clause; see *Austin v. United States*, 509 U.S. 602 (1993) (civil forfeiture), and *Alexander v. United States*, 509 U.S. 54 (1993) (criminal forfeiture). In *Austin* the Court noted that various provisions of the Fifth and Sixth Amendments expressly applied only to criminal proceedings, but

The text of the Eighth Amendment includes no similar limitation. ... Nor does the history of the Eighth Amendment require such a limitation. ...Section 10 of the English Bill of Rights of 1689 is not expressly limited to criminal cases either. The original draft of Sec. 10 as introduced in the House of Commons did contain such a restriction, but only with respect to the bail clause: "The requiring excessive Bail of Persons committed in criminal Cases, and imposing excessive Fines, and illegal Punishments, to be prevented." 10 H. C. Jour. 17 (1688-1689). The absence of any similar restriction in the other two clauses suggests that they were not limited to criminal cases. In the final version, even the reference to criminal cases in the bail clause was omitted. See 1 W. & M., 2d Sess., ch. 2, 3 Stat. at Large 440, 441 (1689) ("That excessive Bail ought not to be required, nor excessive Fines imposed; nor cruel and unusual Punishments inflicted"); see also L. Schwoerer, *The Declaration of Rights, 1689*, p.

⁶ 4 William Blackstone, *Commentaries* (Univ. of Chi. Press ed. 1979) 372-73.

88 (1981) ("But article 10 contains no reference to `criminal cases' and, thus, would seem to apply . . . to all cases").

Austin, 509 U.S. at 608-09.

To argue that civil forfeitures cannot constitute excessive fines is to ignore reality. The forfeited property may be a vehicle or a home that is worth many times the maximum fine for the offense.⁷ It may be a vehicle the defendant has saved for years to buy, that the defendant uses to transport her children to and from school, that the defendant uses in his work, and/or that the defendant has heavily mortgaged.⁸ To charge a person with an offense for which the maximum punishment is, say, six months in jail and a maximum fine of \$500, and then in a separate proceeding force that person to forfeit a vehicle worth maybe \$50,000 or a home worth maybe \$200,000, and dismiss a constitutional challenge by saying this isn't really punishment, shocks the conscience, is contrary to common concepts of fundamental fairness, and violates norms that are implicit in the concept of ordered

⁷ In the case at hand the price of Timbs's vehicle was \$42,000; the maximum fine was \$10,000.

⁸ The rights of mortgagors and mortgagees concerning forfeited property are discussed in Houston S. Park III, *Innocent Mortgagees and In Rem Civil Forfeitures*, 3 U. Miami Bus. L. Rev. 143 (1993), available at: <http://repository.law.miami.edu/umbl/vol3/iss2/4>. For the practical effects and hardships upon mortgagors and mortgagees, even if innocent owners, see Patricia M. Canavan, *Civil Forfeiture of Real Property: The Government's Weapon against Drug Traffickers Injures Innocent Owners*, 10 Pace L. Rev. 485 (1990), available at: <http://digitalcommons.pace.edu/plr/vol10/iss2/12>. Although in most jurisdictions the government would have to use the proceeds of the forfeiture sale to satisfy the lienholder, any remaining balance would normally be the responsibility of the criminal defendant.

liberty. Certainly many if not most criminal defendants would rather pay the criminal penalties than forfeit valuable property to the government.⁹

In *Austin, supra*, the Court recognized that civil forfeitures cannot be considered remedial. They do not protect the public from the instrumentalities of a crime, especially if the "instrumentality" is a home, a business, or a vehicle. Nor do they compensate the government for the cost of law enforcement; civil forfeitures are in no way linked to, tailored to, proportionate to, conditioned upon, or appropriated to such costs. As the Court said in *United States v. Ward*, 448 U.S. 242, 254 (1980), "forfeiture of property...[is] a penalty that ha[s] absolutely no correlation to any damages sustained by society or to the cost of enforcing the law." Purely and simply, civil forfeitures are additional punishments, procured through the civil courts rather than the criminal courts.

Iian D. Jablon argues in the *Southern California Law Review* that civil forfeitures have come into the American system from Roman law in which the distinction between civil and criminal law was often blurred by the lack of a prosecutor, and much of criminal law resembled modern tort law.¹⁰ Because

⁹ In teaching Constitutional Law, to illustrate the relationship between imprisonment and fines, Professor John Eidsmoe has occasionally asked students, "Would you rather pay a \$100,000 fine or serve a day in jail?" (Most choose jail). "\$50,000 or a week?" (Most still choose jail). "\$20,000 versus a month?" (The vote is closer). "\$10,000 versus three months?" (The balance shifts). The point of the exercise is to demonstrate that one cannot say categorically that imprisonment is more "cruel and unusual" than a fine or forfeiture.

¹⁰ Iian D. Jablon, *Civil Forfeiture: A Modern Perspective on Roman Custom*, 72 So. Cal. L. Rev. 247, 252 (1998).

"[h]arsher penalties, such as death and exile, were rare in the Republic and were only announced by the praetors", and because "Imprisonment was virtually nonexistent, as it was not a legal penalty in Rome," forfeiture became a primary means of punishment.¹¹

To compensate for the fact that Roman law did not recognize attempted wrongs as being actionable, the definitions of crimes were often quite broad, which correspondingly broadened the reach of forfeiture. For instance, theft could be committed by mere touching of property and the penalty could be severe. If the theft was *furtum manifestum* (the thief being caught in the act), the penalty was four times the value of the stolen item. If the theft was *furtum nec manifestum* (nonmanifest theft), the penalty was only double the value of the item, probably because of the greater margin for error in convicting a thief who was not caught in the act.¹²

Jablon contends that "Roman forfeiture procedure emerged as an efficient means of deterring wrongdoers, while simultaneously giving aggrieved parties incentive to bring suit."¹³ The purposes of forfeiture that Jablon sets forth -- punishing offenders and deterring potential offenders -- clearly belong to the criminal justice system, demonstrating that civil forfeitures are criminal in nature and therefore constitute fines for purposes of the Excessive Fines Clause.

¹¹ *Id.* at 252-53.

¹² *Id.* at 253.

¹³ *Id.* at 251.

III. Civil forfeitures violate property rights.

Civil forfeitures constitute a taking of property, and the Framers held property rights to be sacred. Thomas Jefferson and the Continental Congress said in the Declaration of Independence that this nation is entitled to independence under the "laws of nature and of nature's God" and that all men are "endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness." *The Declaration of Independence* paras. 1-2 (U.S. 1776). As the Virginia Declaration of Rights stated, property was indispensable to the pursuit of happiness:

That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.¹⁴

In a similar vein, the Framers of the Fifth and Fourteenth Amendments spoke of the rights of "life, liberty, or property," because they regarded both as deeply rooted in our history and tradition, implicit in the concept of ordered liberty, and essential to fundamental fairness. Their respect for property rights, like that of John Locke, was based upon the Ten Commandments which protect property rights by forbidding theft ("Thou shalt not steal," Exodus 20:15, Deuteronomy 5:19) and

¹⁴ Virginia Declaration of Rights (drafted by George Mason, ratified unanimously by the Fifth Virginia Convention at Williamsburg June 12, 1776, influential on the Declaration of Independence and the Bill of Rights); quoted by Mary-Elaine Swanson, *John Locke: Philosopher of American Liberty* (Nordskog 2012) 224.

"Thou shalt not covet," Exodus 20:17, Deuteronomy 5:21). In 1982, Congress passed Public Law 97-280 which declared 1983 the "Year of the Bible." Public Law 97-280 state in part, "Whereas Biblical teachings inspired concepts of civil government that are contained in our Declaration of Independence and the Constitution of the United States..."¹⁵

The Framers' high view of property rights is utterly inconsistent with civil forfeiture as it is practiced today.

IV. Civil forfeitures wrongfully comingle criminal and civil law.

In the United States as in most Western societies, law is divided into two distinct categories: criminal law and civil law, a division that goes back at least to the Norman Conquest of A.D. 1066. As *Encyclopedia Britannica* explains,

Criminal law deals with behavior that is or can be construed as an offense against the public, society, or the state -- even if the immediate victim is an individual. ... Civil law deals with behavior that constitutes an injury to an individual or other private party, such as a corporation.¹⁶

In his *Commentaries on the Laws of England*, Sir William Blackstone treated criminal law in a separate volume (Book 4), saying criminal law "treats of public wrongs" while civil law deals with private wrongs.

The purposes of the criminal justice system are to determine guilt and innocence, establish justice by prescribing just punishment, and protect society from crime. The purposes of the civil justice system are to protect the rights of individuals and to provide a remedy for

¹⁵ Public Law 97-280, October 4, 1982.

¹⁶ Brian Duignan, *What Is the Difference Between Criminal Law and Civil Law*, *Encyclopedia Britannica*, <https://www.britannica.com/story/what-is-the-difference-between-criminal-law-and-civil-law> (last visited May 22, 2019).

those who have been wronged (commonly by tort or by breach of contract) by putting those wronged persons in the position they would be in had the tort or breach not occurred.¹⁷

Because civil law and criminal law have distinct purposes and methods of operation, they should be carefully distinguished and not mixed. Writing in the *Yale Law Journal*, Noah M. Kazis explains that

Legal education, courts, and law offices alike treat civil and criminal law separately. Indeed, "every society sufficiently developed to have a formal legal system," from Rome to the present, "uses the criminal-civil distinction as an organizing principle...."

The consistent efforts to locate the tort/crime line reflect an underlying scholarly consensus that we ought to maintain it. Legal-process scholars believed that "a basic 'method' distinguished the criminal law," which included a focus on morally culpable mental states and legislatively detailed crimes, and that any "substantial deviation from that 'method' threatened the criminal law's legitimacy." John Coffee, arguably the tort/crime line's leading contemporary defender, argued that blurring weakens the criminal law's unique role in moral education. Tort law, in contrast, is seen as pricing harms rather than prohibiting them outright. Others have argued that criminal law's harsher punishments as compared to tort's, such as imprisonment and long-term discrimination, require justification. With notable exceptions, most legal scholars agree that the law should "resist the temptation to mix and match doctrines and functions at will."¹⁸

Recognizing this distinction, until 1983 DR7-105(a) of the ABA Model Code of Professional Responsibility provided: "(A) A lawyer shall not present, participate in

¹⁷ Sir William Blackstone, *Commentaries on the Laws of England* (Philadelphia: Robert Bell, 1772), IV:1.

¹⁸ Noah M. Kazis, *Tort Concepts in Traffic Crimes*, 125 *Yale L. J.* 4 (2016), <https://www.yalelawjournal.org/comment/tort-concepts-in-traffic-crimes>. (Internal citations omitted).

presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter.”

Ethical Consideration 7-21 of the Model Code further explained:

The civil adjudicative process is primarily designed for the settlement of disputes between parties, while the criminal process is designed for the protection of society as a whole. Threatening to use, or using, the criminal process to coerce adjustment of private civil claims or controversies is a subversion of that process; further, the person against whom the criminal process is so misused may be deterred from asserting his legal rights and thus the usefulness of the civil process in settling private disputes is impaired. As in all cases of abuse of judicial process, the improper use of criminal process tends to diminish public confidence in our legal system.

After the Model Code was withdrawn in 1983, the new ABA Model Rules of Professional Conduct, the ABA Standing Committee on Ethics and Professional Responsibility issued Formal Opinion 92-963 which explained that DR 7-105 was not carried forward because the Model Rules provide adequate safeguards against improper threats, and DR 7-105 was redundant and/or overbroad.¹⁹ However, many states have carried forward the DR-7-105 prohibition into their professional responsibility codes; these include Alabama, Connecticut, Georgia, Hawaii, Idaho, Louisiana, New Jersey, South Carolina, Tennessee, Vermont, and Wyoming. California, Colorado, and Maine have similar rules.²⁰

Just as it is improper to use the criminal process to pursue a civil end, so it is even more egregious to use the civil process to pursue a criminal end. And that is

¹⁹

<https://www.americanbar.org/newsletter/publications/youraba/201205article11.html>

²⁰ *Id.*

precisely what civil forfeiture is all about -- using the civil justice system to further punish a criminal defendant.

The Foundation believes using civil forfeiture to pursue criminal justice ends is especially egregious because it imposes punishment upon a criminal defendant without affording that defendant the protections of the criminal justice system. The many rights afforded the criminal defendant include the right to be free from unreasonable search and seizure, protection against self-incrimination, protection against double jeopardy, public trial by jury, the right to confront and cross-examine witnesses, the right to counsel, the presumption of innocence until proven guilty beyond a reasonable doubt, and many others.

By contrast, civil forfeiture processes afford none of these protections. The government's burden is at most preponderance of evidence, and sometimes less than that, because sometimes the defendant must bring legal action to recover his property and bears the burden of proof himself. In many jurisdictions he must bring the action within a very short period of time and must provide his own counsel and bear all of the expenses of the civil action. And the civil forfeiture is not necessarily the result of a criminal conviction; a civil forfeiture action may occur before, during, or after the criminal case, or even in the absence of a criminal case. The government may pursue a civil forfeiture even if the defendant has been acquitted, the charges have been dismissed, or even if the government has not brought any criminal charges at all. Furthermore, the government may bring the civil forfeiture action even if the property belongs to someone other than the

criminal defendant (a spouse, parent, neighbor, or friend), regardless of whether that person had any involvement in or even knowledge of the alleged crime.²¹

Subjecting people to these types of punishments not only violates the Excessive Fines Clause of the Eighth Amendment; it also violates the Due Process Clause of the Fourteenth Amendment, because it deprives a person of property without the kind of due process that is necessary for an action with such dire consequences. See Justice Thomas dissent in *Leonard v. Texas*, 137 S.Ct. 847 (2017).

Conclusion

It is time to stop pretending that civil forfeitures are not punishment. The man on the street knows that instinctively, and the courts have come to recognize it as well: civil forfeiture simply gives the government a second opportunity to inflict punishment on the defendant, this time without having to provide the protections of the criminal justice system.

If the laws of the criminal justice system do not provide sufficient punishment for certain crimes, then the legislature can change those laws to make criminal punishments more severe -- provided the requirements of due process are met through the protections of the criminal justice system. But this Court should not allow state and local governments to circumvent the requirements of due process by punishing through this system that is wrongly called "civil" forfeiture.

²¹ *Forfeiture - The Distinction Between Criminal and Civil Forfeiture*, Law Library – American Law and Legal Information, <http://law.jrank.org/pages/1230/Forfeiture-distinction-between-criminal-civil-forfeiture.html> (last visited May 22, 2019).

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WORD COUNT CERTIFICATE

I verify that the motion and brief contain 4,763 words, excluding the words exempted by Rule 44(C), Ind. R. App. P.

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