

## Challenging a Fine or Fee Imposed in a Criminal Case as Unconstitutionally Excessive

### THE EXCESSIVE FINES CLAUSE

The Eighth Amendment provides: “Excessive bail shall not be required, **nor excessive fines imposed**, nor cruel and unusual punishments inflicted.”<sup>i</sup>

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### LEGAL STANDARD

The Excessive Fines Clause prohibits fines that are “**grossly disproportional** to the gravity of a defendant’s offense.”<sup>ii</sup> This test balances the **severity of the fine** against the **seriousness of the crime**.

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### SEVERITY OF THE FINE

A fine’s severity must be measured against a defendant’s **ability to pay**.<sup>iii</sup> A \$500 fine may not be severe for someone who makes \$5,000 a month but is very severe for someone who is indigent. Courts should consider (for example) the defendant’s income, whether the defendant receives government assistance, whether the defendant has experienced housing stability, whether the defendant has any dependents, and whether the defendant or the defendant’s dependents have a disability or any chronic illnesses.<sup>iv</sup>

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### GRAVITY OF THE OFFENSE

The gravity of the offense depends on a defendant’s **culpability**—in other words, how blameworthy the defendant is. This depends on *all* the circumstances of the crime—not just what the defendant actually did and what harm resulted, but any mitigating factors involved, including also how and why the defendant ended up engaged in the conduct.<sup>v</sup> So, for example, does the offense relate to circumstances directly caused by poverty? Is the offense perhaps attributable to a defendant’s youth? Did the defendant have no meaningful choice but to commit the offense?

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### DOES THE EXCESSIVE FINES CLAUSE APPLY?

The Excessive Fines Clause applies in **all states** and **cannot be overridden** by state law.<sup>vi</sup>

The Excessive Fines Clause applies to any financial sanction that exists “**in part to punish.**”<sup>vii</sup> This means that monetary penalties that are not labeled “fines”—such as “restitution,” “fees,” “costs,” “surcharges,” or others—can still trigger the Excessive Fines Clause’s protections.<sup>viii</sup>

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## **OTHER PROTECTIONS**

Every state constitution contains a protection against excessive fines like the federal Excessive Fines Clause.<sup>ix</sup> Those state constitutional provisions may be more protective than the federal one.<sup>x</sup> Some states also require consideration of ability to pay before imposing a fine.<sup>xi</sup>

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## **MAKING THE OBJECTION**

“Your Honor, the [total dollar amount] that [client name] is required to pay violates the prohibition against excessive fines under the Eighth Amendment of the U.S. Constitution and [section] of the [state] Constitution. The Excessive Fines Clauses of both the federal and [state] Constitutions prohibit imposing a fine that a person cannot pay. Further, [statute] requires consideration of my client’s ability to pay before imposing a fine.”

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## **MORE QUESTIONS OR NEED HELP?**

Contact Public Justice at [dpp@publicjustice.net](mailto:dpp@publicjustice.net)!

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<sup>i</sup> U.S. Const. amend. VIII.

<sup>ii</sup> *United States v. Bajakajian*, 524 U.S. 321, 334 (1998).

<sup>iii</sup> The Supreme Court has never addressed whether courts should consider ability to pay under the Excessive Fines Clause, but it has strongly indicated that they should. *See* *Timbs v. Indiana*, 139 S. Ct. 682, 688 (2019) (noting that the history of the Excessive Fines Clause protected against fines that deprived individuals of their livelihood). Nearly every state appellate court to consider the question has adopted an ability-to-pay inquiry. *See, e.g.*, *People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.*, 124 P.3d 408, 420–21 (Cal. 2005) (California); *Colo. Dep’t of Labor & Emp’t v. Dami Hosp., LLC*, 442 P.3d 94 (Colo. 2019) (Colorado); *Nez Perce Cnty. Prosecuting Att’y v. Reese*, 136 P.3d 364, 371 (Idaho Ct. App. 2006) (Idaho); *State v. Timbs*, 134 N.E.3d 12, 37 (Ind. 2019) (Indiana); *People v. Antolovich*, 525 N.W.2d 513, 516 (Mich. App. 1994) (Michigan); *State v. Rewitzer*, 617 N.W.2d 407, 415 (Minn. 2000) (Minnesota); *County of Nassau v. Canavan*, 802 N.E.2d 616, 622 (N.Y. 2003) (New York); *State v. Sanford Video & News, Inc.*, 553 S.E.2d 217, 220 (2001) (North Carolina); *State v. Goodenow*, 282 P.3d 8, 17 (Or. App. 2012) (Oregon); *Commonwealth v. 1997 Chevrolet*, 160 A.3d 153, 188 (Pa. 2017) (Pennsylvania); *State v. Taylor*, 70 S.W.3d 717, 723 (Tenn. 2002) (Tennessee); *State v. Real Prop. at 633 E. 640 N., Orem, Utah*, 994 P.2d 1254, 1260 (Utah 2000) (Utah); *City of Seattle v. Long*, 493 P.3d 94, 114 (Wash. 2021) (Washington).

<sup>iv</sup> For a more comprehensive list of considerations that indicate a defendant lacks the ability to pay, see FINES & FEES JUSTICE CTR, FIRST STEPS TOWARD MORE EQUITABLE FINES AND FEES PRACTICES: POLICY GUIDANCE ON ABILITY-TO-PAY ASSESSMENTS, PAYMENT PLANS, AND COMMUNITY SERVICE 4 (2020), [https://finesandfeesjusticecenter.org/content/uploads/2020/11/FFJC\\_Policy\\_Guidance\\_Ability\\_to\\_Pay\\_Payment\\_Plan\\_Community\\_Service\\_Final\\_2.pdf](https://finesandfeesjusticecenter.org/content/uploads/2020/11/FFJC_Policy_Guidance_Ability_to_Pay_Payment_Plan_Community_Service_Final_2.pdf). For state-specific resources to measure how much money a person needs to meet basic needs, see Self-Sufficiency Standard, <http://www.selfsufficiencystandard.org/> (last visited June 23, 2021).

<sup>v</sup> *See Bajakajian*, 524 U.S. at 338 (looking to the individualized circumstances of the defendant’s crime).

<sup>vi</sup> *Timbs*. 139 S. Ct. at 689.

<sup>vii</sup> *Austin v. United States*, 509 U.S. 602, 610 (1993)

<sup>viii</sup> *See, e.g., id.* at 619 (forfeiture); *State v. Izzolena*, 609 N.W.2d 541, 548 (Iowa 2000) (restitution).

<sup>ix</sup> Forty-seven states have an express prohibition against excessive fines. ALA. CONST. art. I, § 15; ALASKA CONST. art. I, § 12; ARIZ. CONST. art. II, § 15; ARK. CONST. art. II, § 9; CAL. CONST. art. I, § 17; COLO. CONST. art. II, § 20; CONN. CONST. art. I, § 8; DEL. CONST. art. I, § 11; FLA. CONST. art. I, § 17; GA. CONST. art. I, § 1, ¶ XVII; HAW. CONST. art. I, § 12; IDAHO CONST. art. I, § 6; IND. CONST. art. I, § 16; IOWA CONST. art. I, § 17; KAN. CONST. Bill of Rights. § 9; KY. CONST. § 17; ME. CONST. art. I, § 9; MD. CONST. Decl. of Rights. art. 25; MASS. CONST. pt. 1, art. XXVI; MICH. CONST. art. I, § 16; MINN. CONST. art. I, § 5; MISS. CONST. art. III, § 28; MO. CONST. art. I, § 21; MONT. CONST. art. II, § 22; NEB. CONST. art. 1, § 9; NEV. CONST. art. I, § 6; N.H. Const. pt. 1, art. 33; N.J. CONST. art. I, § 12; N.M. CONST. art. II, § 13; N.Y. CONST. art. I, § 5; N.C. CONST. art. I, § 27; N.D. CONST. art. I, § 11; OHIO CONST. art. I, § 9; OKLA. CONST. art. II, § 9; OR. CONST. art. I, § 16; PA. CONST. art. I, § 13; R.I. CONST. art. I, § 8; S.C. CONST.

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art. I, § 15; S.D. CONST. art. VI, § 23; TENN. CONST. art. I, § 16; TEX. CONST. art. I, § 13; UTAH CONST. art. I, § 9; VA. CONST. art. I, § 9; WASH. CONST. art. I, § 14; W. VA. CONST. art. III, § 5; WIS. CONST. art. I, § 6; WYO. CONST. art. I, § 14. The Illinois and Vermont constitutions impose explicit proportionality requirements on “all penalties” and fines. *See* ILL. CONST. art. I, § 11 (“All penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship.”); VT. CONST. ch. II, § 39 (“[A]ll fines shall be proportioned to the offences.”). The Louisiana constitution prohibits “excessive . . . punishment.” LA. CONST. art. I, § 20.

<sup>x</sup> Many state courts have interpreted their constitutions to be more protective than the federal Cruel and Unusual Punishments Clause. *See, e.g., State v. Roberts*, 142 Wash. 2d 471, 506, 14 P.3d 713, 733 (Wash. 2000).

<sup>xi</sup> For a national survey of state ability-to-pay laws, see *50-State Criminal Justice Debt Reform Builder*, CRIM. JUST. POL’Y PROGRAM, <https://cjdebtreform.org/national-comparison> (last visited June 23, 2021).