



Black Caucus Rips Rand Paul for Opposing AG Nominee Lynch

By Jack Kenny

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The Congressional Black Caucus lit into Senator Rand Paul (shown) Thursday after the Kentucky Republican and likely 2016 presidential contender announced he would vote against confirmation of Loretta Lynch for attorney general. Paul said Lynch's answers to questions about civil asset forfeiture law and other issues convinced him the nominee "rides roughshod" over constitutional liberties.

"Senator Paul is using the issue of civil forfeitures to block a well-qualified federal prosecutor from heading the Department of Justice," Chairman G.K. Butterfield (D-N.C.) said in a statement issued by the CBC. "The Congressional Black Caucus recognizes Senator Paul's unfounded argument as nothing but an excuse to keep an African American legal scholar from holding this high position, and we directly call on him and Republicans to allow the nomination of Loretta Lynch to proceed to an up or down vote in the Senate," he added.

Lynch, currently the U.S. Attorney for the Eastern District of New York, is President Obama's choice to succeed Eric Holder as the nation's top law-enforcement official. Paul, appearing Wednesday night on the Fox News Channel program *On the Record with Greta Van Susteren*, raised the civil forfeiture issue in explaining his opposition. Federal and state laws allow law-enforcement officials to seize property they claim was involved in the commission of a crime, even if no charges are ever brought against the owner of the property. The procedure is often used in connection with suspected drug trafficking or money laundering, and bank deposits, cars and even homes have been taken without proof the owners were involved in the alleged crimes.

"You don't have to be convicted. You don't even have to be charged," Paul told Van Susteren. "They can take your possessions."

At the confirmation hearing of the Senate Judiciary Committee hearing last week, Senator Mike Lee (R-Utah) questioned Lynch about civil forfeiture.

Sen. Lee: Do you think it's fundamentally just and fair for the government to be able to seize property from a citizen without having to prove that the citizen was guilty of any crime, and based solely on a showing that there was probable cause that that property was in some way used in connection with a crime?

Atty. Lynch: Senator, I believe that civil forfeiture — civil and criminal forfeiture — are very important tools of the Department of Justice, as well as our state and local counterparts through state laws, in essentially managing or taking care of the first order of business, which is to take the profit out of criminal activity. With respect to civil forfeiture, certainly as implemented by the Department of Justice, it is done pursuant to supervision by a court, it is done pursuant to court order, and I believe the protections are there.

Under forfeiture law, citizens may seek recovery of their property in court. Often the cost of lawyer and court fees exceed the value of the seized property, rendering the legal option moot.

"It turns justice on its head," Paul said. "Instead of being innocent until proven guilty you are guilty until proven innocent."

Paul is the first non-member of the Judiciary Committee to announce his opposition to the nomination. Three Republicans on the committee — John Cornyn of Texas, Jeff Sessions of Alabama, and David Vitter of Louisiana — have also announced they will vote against confirmation. All three object, as does Paul, to Lynch's defense of President Obama's executive orders on immigration. Two other Republicans on the committee, Orrin Hatch of Utah and Jeff Flake of Arizona, have said they'll support the nomination. South Carolina Republican Lindsey Graham has hinted he will back Lynch, Newsmax reported.

Critics of civil forfeiture dispute Lynch's claim that "the protections are there" for those who are innocent of wrongdoing. They point to the much-publicized case of Bi-County Distributors, a family-owned Long Island company that sells cigarettes and candy to convenience stores. Because the company regularly made bank deposits of less than \$10,000, it was suspected of the crime of "structuring" the deposits to avoid the reporting requirements of the Bank Secrecy Act. The IRS, working with Lynch's office, took hold of the company's bank account.

"Without so much as a criminal charge," wrote Adam Bates for the libertarian Cato Institute, "the federal government emptied the account, totaling \$446,651.11." The non-profit Institute of Justice challenged the action, and the money was returned just one week before Lynch's confirmation hearing, nearly three years after it was taken.

"The Hirsch brothers and their business survived, but just how many law-abiding small businesses can afford to give the government a 33-month, interest-free loan of nearly half a million dollars?" Bates asked.

The Washington Post reported last September that the value of properties taken in civil asset forfeitures by the federal Department of Justice nearly doubled in an inflation-adjusted dollar count, from \$508 million in 2008 to \$1.1 billion in 2013. The seizures come in amounts both large and small, Paul noted.

"The government takes your cash — \$1,000, \$500, whatever it is," he said. "This program predominantly has targeted black individuals, poor individuals, Hispanic individuals." Poor families in the inner city are often hurt the most, Paul said, adding a comment that raised the ire of the Congressional Black Caucus: "I wish [Lynch] had a little more concern for people who live in poverty before taking their stuff."

"Senator Paul also has the audacity to suggest that Loretta Lynch should have more concern for people living in poverty," wrote CBC Chairman Butterfield.

Claiming the seizures violate the Fifth Amendment guarantee that no person shall "be deprived of life liberty or property without due process of law," Paul has joined with Representative Tim Walberg (R-Mich.) to sponsor a bill called the Fifth Amendment Integrity Restoration (FAIR) Act. The bill would take the profit out of civil asset seizures by abolishing the Equitable Sharing Program that distributes the proceeds among local, state, and federal law-enforcement agencies. The equitable sharing, say the sponsors, encourages police to seize property under federal law, which requires less evidence than most state laws do. The bill would also require "clear and convincing evidence," rather than the current requirement of a mere preponderance of evidence, that the property qualifies for forfeiture. It would also require clear and convincing evidence that the owner of the accused property is responsible for the allegedly criminal use of it.

The act would limit forfeiture for "structuring" only when the owner "knowingly" sought to avoid bank reports of "funds not derived from a legitimate source." And it would require courts in forfeiture cases to provide legal representation to all who can't afford it.

Following the television interview Wednesday night, Paul issued a statement citing additional reasons for opposing Lynch. "She remains non-committal on the legality of drone strikes against American citizens, while I believe such strikes unequivocally violate rights granted to us by the Sixth Amendment," the senator said. "Mrs. Lynch also supports President Obama's calls for executive amnesty, which I vehemently oppose. The Attorney General must operate independent of politics, independent of the president and under the direction of the Constitution. I cannot support a nominee, like Mrs. Lynch, who rides roughshod on our Constitutional rights."