

THE DAILY CALLER

Red State Forfeiture Bills Signal Bipartisan Push For Justice Reform

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Texas State Representative David Simpson, a Republican, filed a bill last week that would abolish civil asset forfeiture in Texas by requiring a criminal conviction before property can be seized by the state. That bill joins similar pending legislation in Oklahoma, offered by State Senator Nathan Dahm, also a Republican.

Such efforts by Republicans in traditionally “law and order” red states signal a heartening emerging bipartisan consensus on several areas of criminal justice reform. They also serve as another rebuke for the increasingly vilified practice of civil asset forfeiture, in which money and property can be seized from individuals suspected by the police or prosecutors of criminal behavior even when the state lacks sufficient evidence to validate a criminal charge or even an arrest. State and federal governments rake in billions of dollars every year through this little-known and archaic practice.

The argument against civil asset forfeiture is simple: the government should not be allowed to take your money or property unless it can prove the suspected criminal behavior. A recent case in Iowa highlights the need for reform: a man suspected by police of dealing marijuana had more than \$30,000 taken from him at a traffic stop. He was subsequently acquitted of all criminal charges, yet the state courts have ruled that under Iowa’s forfeiture regime the state still gets to keep the money.

Imposing a \$30,000 fine after an acquittal would have been patently unconstitutional. But taking \$30,000 from the man before he’s ever tried is allowed? Reform bills like those in Texas and Oklahoma would end this practice by making the forfeiture action dependent on the government’s ability to secure a criminal conviction. No crime, no forfeiture.

The bills also contain language restricting the authority of state and local law enforcement agencies to participate in the federal government’s equitable sharing program. This language is unfortunately necessary because even in jurisdictions in which the state has abolished civil asset forfeiture, such as North Carolina, the federal government routinely conspires with law enforcement agencies to circumvent state law through equitable sharing. Despite the fluffy pre-school connotations of its name, equitable sharing entails the substitution of permissive federal

forfeiture laws in place of the stronger property protections of the state. The federal government keeps 20 percent of the proceeds in exchange for this legal parlor trick and kicks 80 percent to the state or local law enforcement agency.

Attorney General Eric Holder recently announced reforms to the equitable sharing regime but there are exceptions and potential loopholes. For example, seizures that result from cooperation between federal and state authorities through joint task forces are still eligible for equitable sharing. The ubiquity of these joint task forces throughout the country – the DEA alone administers more than 250 – potentially nullifies the reform. Such joint seizures already make up the vast bulk of equitable sharing forfeitures and it remains to be seen whether that figure will grow under the new guidelines.

It's not all doom and gloom at the federal level, however. The Fifth Amendment Integrity Restoration (FAIR) Act, introduced by Rand Paul (R-KY) in the Senate and Tim Walberg (R-MI) in the House is being considered once again this session. The FAIR Act raises the burden of proof on the government to seize property (from “preponderance of the evidence” to “clear and convincing evidence”), strengthens the ability of owners to assert their innocence, abolishes the aforementioned equitable sharing program, and curbs the profit incentive of law enforcement agencies by mandating that seized funds be deposited into the general fund rather than kept with the Department of Justice.

Short of abolishing civil asset forfeiture at the federal level outright, these are much needed reforms that would go a long way toward restoring some semblance of justice to the forfeiture regime.

However, in light of Department of Justice foot dragging, and with the expected confirmation of Loretta Lynch, herself an advocate and practitioner of civil asset forfeiture, as Attorney General, it is imperative for state legislatures to take the lead in ending this abusive and fundamentally un-American practice.

Writing in favor of asset forfeiture in 2014, State Rep. Simpson said, “Our constitutional restraints on government power are like fences; they keep the honest people honest. Where our fences of presumed innocence and due process have been torn down, we should rebuild them.”

I couldn't have said it better myself. We can only hope such spirit infects more legislators on both sides of the aisle around the country as the need for criminal justice reform becomes increasingly urgent.

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