



Civil Asset Forfeiture Viper Bites NC Business Owner Who Now Fights To Get His Money Back

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Although some states have moved to stop the abominable practice of civil asset forfeiture (bravo to [New Mexico](#)), the vicious monster is still alive, still seizing money and property from innocent people, still making them battle through the legal system if they want it back.

Here's a case that ought to send shivers up your spine if you run a business that deals in a lot of cash.

Lyndon McLellan owns a gas station and convenience store in the little town of Fairmont, North Carolina. Last spring, IRS agents came to his store and informed him that they had just seized his bank account, which had more than \$107,000 in it. McLellan was not accused of any crime, but the IRS was suspicious of his bank transactions. Thanks to our "war on drugs," the government insists that we notify it whenever we deposit \$10,000 or more in cash – but if someone regularly deposits significant amounts but less than \$10,000, the IRS calls it "structuring" and thus suspicious.

Without any evidence of illegal activity, the government can seize bank accounts when it observes cash deposits that might be "structuring" and that is just what it did to Mr. McLellan. After grabbing his money last spring, in December the Department of Justice filed a forfeiture complaint in federal court. McLellan will lose all his money unless he is able to defeat the feds in court. (Or he can merely lose half of it if he'll settle – more on that below.)

No American should have to fight a legal battle against the IRS and Department of Justice to get his property back when he has not even been accused of any crime, much less convicted. But for the free legal help Mr. McLellan is getting from the Institute for Justice, he'd probably lose his

savings simply because a small business owner alone has about as much chance of prevailing against the feds as high school football team has against the Green Bay Packers.

What makes this case doubly alarming is that last October, the IRS announced (after lots of bad publicity in cases similar to this one) that it would no longer utilize civil asset forfeiture in cases where there was no evidence that the money in question had been obtained through illegal activity. Apparently, that change in policy has not been communicated to all of its agents, or else the agents who decided to grab McLellan's money deliberately ignored it.

Either way, the IRS looks like an agency that is out of control, operating in disdain of the rule of law.

Things got still more interesting when, in February, North Carolina Representative George Holding (whose district does not include Fairmont) asked IRS Commissioner John Koskinen about the case. Without specifically naming Mr. McLellan, Holding wanted to know if the IRS was still using asset forfeiture where there was no allegation of criminal activity. Koskinen replied, "If that case exists, it's not following the policy."

You might think that federal officials, after hearing that, would be chastened. Not at all. The United States Attorney heading the forfeiture case against McLellan, Steve West, told his lawyer and accountant that he was "concerned" that the case document had been provided to Congress.

Why should any "civil servant" be upset about facts being disclosed to members of Congress? We aren't supposed to have star chamber proceedings in America.

Furthermore, that attorney went on to say, "Whoever made [the document] public may serve their own interest, but will not help this particular case. Your client needs to resolve this or litigate it. But publicity about it doesn't help. It just ratchets up feelings in the agency. My offer is to return 50% of the money. The offer is good until March 30th COB."

How terribly revealing that is. Whether a legal case proceeds should have nothing whatever to do with the "feelings" of the government officials. And offering to give back half of the man's seized wealth if he will just go away quietly is hardly consistent with concern about justice. It is, however, consistent with the "win no matter what" attitude that infects many prosecutors.

(You can read more about the McLellan case in [this release](#).)

Adam Bates of Cato Institute hits the nail on the head when he [writes](#), "Cases like this show that the executive branch, now under a new Attorney General who has her own controversial civil forfeiture history, cannot be trusted to stay its own hand."

Just so.

Perhaps during the upcoming presidential campaign, one or more of the candidates will bring up the alarming erosion of the rule of law as an issue. It should be. Rogue civil asset forfeiture cases are just one aspect of that.

Many otherwise apathetic voters might take an interest in a candidate who said, "If I am elected president, I will make sure that in all departments under my control, officials who violate the rights of peaceful citizens or allow their subordinates to do so, will be fired. Instead of playing golf or taking costly vacations, I will spend my time overseeing and reining in a government that has grown arrogant and power-mad."