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## Trump Won't Lead On Civil Asset Forfeiture, So Congress Will Have To Push Him

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In a White House meeting with county sheriffs from around the nation on February 7, President Trump sided with the law enforcement community in opposing change in the nation's civil asset forfeiture laws. Here is the transcript of that meeting, and the president's flippant attitude (he joked about destroying the career of a state senator in Texas who had proposed a bill to reform civil asset forfeiture) and eagerness to stay in the good graces of the sheriffs are very bad news.

Shortly after the election, I wrote that Trump should become a proponent of civil asset forfeiture and defang this vicious beast. A huge majority of the public thinks that civil asset forfeiture is wrongful, because it so indisputably *is*. Under civil asset forfeiture laws, people who have done nothing illegal and have not even been accused of a crime (much less convicted) have cash, cars, even real estate taken from them, based on nothing more than a law enforcement officer's suspicion that the property might have resulted from or been involved in a crime.

Civil asset forfeiture is a glaring violation of due process of law that creates opponents across the political spectrum.

Nadine Strossen, then-president of the American Civil Liberties Union, attacked it in congressional testimony, declaring that "all civil asset forfeiture schemes violate fundamental constitutional rights, including the right not to be deprived of property without due process of law and the right to be free from punishment that is disproportionate to the offense."

And Adam Bates of Cato Institute recommended that in his final year in office, President Obama should halt the federal government's use of civil asset forfeiture and end its "equitable sharing" program whereby federal and state law enforcement agencies collaborate on the confiscation of someone's property and divide up the spoils. Regarding the magnitude of this, he wrote, "The predatory practice has become so prevalent that in 2014, for the first time on record, law enforcement officers took more money from Americans under federal forfeiture law than burglars stole from their victims."

Civil asset forfeiture is so blatantly unfair and prone to abuse that Institute for Justice attorney Robert Johnson wrote that he was eager to find anyone willing to defend it. Johnson finally heard a feeble defense from Jeff Sessions, our new attorney general and at the time a U.S. Senator. Disturbingly, Sessions' "defense" of civil asset forfeiture amounted to nothing more than an assertion that the law is all right because most of the people who lose property are dope dealers. Even if that were true (and it isn't), it still fails to address the due process problems inherent in these laws.

Trump picked Sessions, so it shouldn't be surprising that they hold similar views. When asked about civil asset forfeiture in the meeting with sheriffs, Trump made them happy by saying that he could see no reason to change a law they like.

To that, Washington Post columnist George Will retorted, "There is no reason for the sheriffs to want to reform a racket that lines their pockets. For the rest of us, strengthening the rule of law and eliminating moral hazard are each sufficient reasons."

That's the key thing – civil asset forfeiture enables police departments to pad their budgets by seizing property, selling it, and keeping the proceeds. The Institute for Justice's exemplary study "Policing for Profit" is loaded with revealing quotations by law enforcement officials on the way they see civil asset forfeiture.

For example, Columbia, Missouri Chief of Police Kenneth Burton said, "We usually base it on something that we can't get in the budget, for instance. We try not to use it for things that we need to depend on because we need to have those purchased. It's kind of like pennies from heaven – it gets you a toy or something that you need is the way we typically look at it to be perfectly honest."

That's the moral hazard Will noted. Civil asset forfeiture tempts law enforcement into behaving differently than it otherwise would – going after lucrative targets that might lead to "a toy" rather than going after the most significant crime.

While it's very disappointing to find that President Trump is inclined to automatically side with law enforcement on civil asset forfeiture, *it really is not his decision to make*. Laws are supposed to be made or changed by *Congress*, not by presidential order.

A bill that has gotten bipartisan support in Congress is the Fifth Amendment Integrity Restoration Act. The key provisions of the bill are to abolish the "equitable sharing" program, raise the standard of proof needed before federal agents can seize private property from the flimsy "preponderance of the evidence" to the more demanding "clear and convincing" standard, and to place the burden of proof on the government to show that the owner actually used the property or knowingly consented to its use by another in the commission of a crime.

Congress should pass that bill and put it on the president's desk. Whether he signs it or not would tell the public a lot about his priorities. Does he care more about protecting innocent people against an abusive system of (to use Frederic Bastiat's useful term) legal plunder, or about buttering up a potent special interest group?