

## Time to curtail civil forfeiture

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Under federal civil asset forfeiture, local and state law enforcement officers can take your property, including cash, if they suspect said property was somehow connected to a crime.

You may be charged with a crime, or you may not. It doesn't matter, because, as it's technically a civil action, law officials will still take your stuff anyway.

Fortunately, North Carolina has resisted attempts to implement civil asset forfeiture, because, as the John Locke Foundation's Jon Guze pointed out in 2015, the state constitution requires that, "Proceeds of all penalties and forfeitures ... [must] be faithfully appropriated and used exclusively for maintaining free public schools."

In the way the forfeiture program works now, seized assets are transferred to federal prosecutors through an adoption program, though in the end local agencies still keep a hefty share of what they collect.

See how that works?

As Guze, the foundation's director of legal studies, wrote, the feds in the 1970s breathed life into the program to combat the problem of drug trafficking, and it gained even more strength with the Comprehensive Crime Control Act of 1984. In 2012, Guze said, law agencies took in a record \$4.2 billion in forfeiture proceeds.

Late in 2014, Attorney General Eric Holder, who, ironically, for years had overseen the forfeiture program, greatly curtailed the practice.

"With this new policy, effective immediately, the Justice Department is taking an important step to prohibit federal agency adoptions of state and local seizures, except for public safety reasons," Holder said then.

But, as the Trump administration is wont to do, Attorney General Jeff Sessions proposed to eliminate yet another Obama-era policy and aggressively reinstitute the noxious practice.

Congress is getting in Sessions' way.

Tuesday, the U.S. House of Representatives approved three amendments to a large appropriations bill that would effectively defund the forfeiture program.

That's good news. This administration has shown a propensity to pander to police and law enforcement organizations and to revive programs and policies that strengthen law enforcement at the expense of individual rights and liberties.

As an example, in 2015 President Obama, after the events in Ferguson, Missouri, issued an executive order banning the sale of some military equipment to local law enforcement, including armored vehicles and grenade launchers.

The Trump administration, under the guise of protecting officers, repealed the rule and is promoting the idea of sending surplus military equipment to state and local agencies.

The Cato Institute's Adam Bates succinctly denounced the policy.

“Combined with President Trump's recent pardon of [former Maricopa County, Arizona] Sheriff Joe Arpaio (who is no stranger to overly violent militarized raids and was convicted for repeatedly violating people's rights in defiance of a court order), this move sends a strong message that police restraint and accountability are taking a back seat in this administration,” Bates wrote in August.

In 2013 *The New Yorker* published an exceptional piece about civil forfeiture that probably helped push public opinion toward ending the dubious practice.

A result of civil asset forfeiture, the magazine said, “is the rise of improbable case names such as *United States v. One Pearl Necklace* and *United States v. Approximately 64,695 Pounds of Shark Fins*.”

“The protections our Constitution usually affords are out the window,” Louis Rulli, a clinical law professor at the University of Pennsylvania and a leading forfeiture expert, told the writers. “A piece of property does not share the rights of a person. There's no right to an attorney and, in most states, no presumption of innocence. Owners who wish to contest often find that the cost of hiring a lawyer far exceeds the value of their seized goods.”

In 2014, Steve Wilson of *Watchdog.org* reported about the Mississippi city of Richland, which built a new \$4.1 million police station, a top-level training center, and a fleet of black-and-white Dodge Chargers — all paid with money seized during traffic stops of what police say were suspected drug runners on Interstate 20.

Eighty-four percent of Americans oppose civil asset forfeiture, according to a Cato survey, and, says the Institute for Justice, in 2016 both the Republican and Democratic parties condemned civil forfeiture and called for reform. Since 2014, IJ says, 24 states have reformed their forfeiture laws and eight states have enacted safeguards that address adoptions or “equitable sharing,” which should discourage local agencies from seizing property and would be a step toward eliminating corruptive consequences.

U.S. Supreme Court Justice Clarence Thomas has raised constitutional concerns about the policy. In *Lisa Olivia Leonard v. Texas*, as Cato reported, Thomas was critical of the practice.

“Partially as a result of this distinct legal regime, civil forfeiture has in recent decades become widespread and highly profitable,” Thomas wrote. “And because the law enforcement entity responsible for seizing the property often keeps it, these entities have strong incentives to pursue forfeiture.

“This system — where police can seize property with limited judicial oversight and retain it for their own use — has led to egregious and well-chronicled abuses ...

“Whether this Court’s treatment of the broad modern forfeiture practice can be justified by the narrow historical one is certainly worthy of consideration in greater detail.”