

## Jeff Sessions Treads on the Property Rights of Americans

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Earlier this year, Justice Clarence Thomas, perhaps the most conservative jurist on the Supreme Court, attacked a government abuse that shocks many Americans when they first learn about it. In scores of cities and towns, law enforcement simply takes property from citizens, then sells or keeps it. They say that the property is related to a crime. But no one needs to prove that the property owner broke any law. Indeed, there are cases where everyone agrees he or she is innocent. And *still* the stuff is taken!

“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,” Thomas wrote:

According to one nationally publicized report, for example, police in the town of Tenaha, Texas, regularly seized the property of out-of-town drivers passing through and collaborated with the district attorney to coerce them into signing waivers of their property rights. In one case, local officials threatened to file unsubstantiated felony charges against a Latino driver and his girlfriend and to place their children in foster care unless they signed a waiver. In another, they seized a black plant worker’s car and all his property (including cash he planned to use for dental work), jailed him for a night, forced him to sign away his property, and then released him on the side of the road without a phone or money. He was forced to walk to a Wal-Mart, where he borrowed a stranger’s phone to call his mother.

This was highway robbery perpetrated against American citizens by their own government. The official euphemism for the practice: “Civil asset forfeiture.” And egregious abuses have happened in every region of the country. Over the last fifteen years, I have heard these abuses criticized by people from almost every part of the political right. The issue united conservatives at *National Review* and the *Claremont Institute* with *Cato Institute* libertarians and right-wing populists at *Breitbart*.

“Let’s be clear on this one point: Civil asset forfeiture is an evil,” a writer declared in March on the conservative op-ed page of the *Washington Examiner*, even as Sen. Rand Paul and Rep. Tim Walberg introduced reform legislation. “It’s not a pro-police program; it’s a constitutional evil. It gives law enforcement the right to strip Americans who’ve not been convicted of any crime—and in many cases, not even formally charged—of their properties, including cash, cars, homes, airplanes, boats, etc.”

It really is that bad. (And some states have passed reforms for that reason.)

Yet Attorney General Jeff Sessions just pledged to expand it. “Sessions said the Justice Department will issue new directives to increase the federal government's use of civil asset forfeiture,” C.J. Ciaramella reports at *Reason*. “Speaking at a National District Attorneys Association conference in Minneapolis Monday, Sessions said state and local law enforcement could expect changes from U.S. Attorneys in several areas: increased prosecution of gun crimes, immigration offenses, gang activity, and prescription drug abuse, as well as increased asset seizure.”

Former Attorney General Eric Holder had imposed new limits on the federal government’s role in civil asset forfeiture. Those reforms did not go far enough. Now, although the particulars of the new policy have yet to be fleshed out, even those insufficient Obama-era protections for property owners are likely to be undone.

Sessions justified his position by declaring, “No criminal should be allowed to keep the proceeds of their crime.” But no one objects to that principle. As the Institute for Justice, a libertarian public interest law firm that has represented numerous victims of civil asset forfeiture abuse, argued in its sensible call for reform, “law enforcement should be required to convict people before taking their property. Law enforcement agencies could still prosecute criminals and forfeit their ill-gotten possessions—but the rights of innocent property owners would be protected.”

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When President Obama appointed Loretta Lynch to be Attorney General, Marco Rubio declared, “I opposed Loretta Lynch’s nomination because of her failure to identify any limit on the president’s ability to ignore the laws passed by Congress as well as her obvious enthusiasm for civil asset forfeiture, which can deprive innocent people of their property rights without due process.”

Senator Rand Paul stated, “People who are victims of civil forfeiture are often poor, African American or Hispanic, and people who can’t afford an attorney to try to get the money that’s taken from them by the government,” and Breitbartran his argument it as an exclusive. The Heritage Foundation was pro-reform. The American Enterprise Institute too. Earlier this year, Rep. Jim Sensenbrenner introduced reform legislation.

If all of the conservatives who’ve previously expounded on the unjustness of civil asset forfeiture fought to assemble a coalition to stop Attorney General Sessions, they could very likely succeed. After all, lots of ACLU liberals and elected Democrats favor federal reforms as well. I haven’t mentioned that until now because in the era of Donald Trump, a faction on the right seems to hate whatever liberals favor more than they like liberty, and another faction seems willing to defend whatever the Trump Administration does so long as the press is criticizing it.

Can the GOP still marshal enough strength and integrity to do what many of its members long insisted was morally right even when Trump’s team pushes what is wrong? Civil asset forfeiture

is a test. If the right fails it, the government will violate the property rights of more innocents in years ahead. That would be deplorable.