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## Jeff Sessions supports states' rights. Except when he doesn't.

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Attorney General Jeff Sessions announced Monday that he wants to see more civil asset forfeiture, the process by which police can confiscate property they suspect is tied to drug crimes. In most cases, some or all of the proceeds from the property seizures then go back to the police agency or prosecutors' office that initiated the forfeiture. In civil asset forfeiture, the property owner doesn't need to be convicted of a crime. The police can seize cash, cars, houses, jewelry and other property based only on loose connections to alleged criminal activity — usually drug crimes. In fact, in a large majority of these cases, the owner is never even charged. It's then up them to go to court to prove their innocence.

Civil asset forfeiture is extremely unpopular. It's unpopular with Republicans and Democrats. It unites groups from the American Civil Liberties Union to the Heritage Foundation. A Cato Institute-YouGov poll taken in December found 84 percent of respondents were opposed to the practice. You'd be hard pressed to find any public policy issue on which a larger share of the public agrees. Mounting opposition to civil asset forfeiture — and the extremely unfair and unjust way it works in practice — has caused legislatures across the country to implement reforms. At least 13 states now require a criminal conviction before police can seize and keep property.

And Sessions wants to undo all of that. Sessions's speech Monday seemed to focus on what are known as adoptive forfeitures. To understand why that's important, we need to back up a bit. This isn't the first time we've seen some momentum for forfeiture reform. The worst excesses of civil asset forfeiture were passed during the drug war hysteria of the 1980s: first at the federal level, then by state legislatures across the country. As stories of forfeiture abuse by police and prosecutors began to make headlines, Congress was moved to pass some reforms, led by the late congressman Henry Hyde (R-Ill.).

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But the reforms were fairly modest. Many states went further. For example, some states prevented police departments and/or prosecutors' offices from keeping the proceeds from civil forfeitures, instead earmarking them for schools, or diverting them into the general fund. Others allowed police or prosecutors to keep a smaller share, required police to show more evidence of

criminality before allowing a forfeiture, or afforded more rights to property owners. The federal government responded with the adoption program. Under this policy, a local police department or prosecutor need only call the local branch of the Bureau of Alcohol, Tobacco, Firearms and Explosives, Drug Enforcement Administration, or other federal law enforcement agency and ask them to join the case. Even minimal federal participation makes the investigation federal, which means the forfeiture policy will now be governed by federal law. The federal agency will then return a large percentage of the federal proceeds back to the local police agency.

The adoption policy is an end-around the state legislatures. It's one thing if an investigation involves significant participation between federal and state or local law enforcement, and that investigation produces forfeiture proceeds to be divvied up. Such investigations comprise a broader class of forfeitures that are known as "equitable sharing" cases. They're still problematic, especially if it's a civil forfeiture that doesn't require the state to produce any actual criminal charges. But adoption cases are much more pernicious. The sole purpose of the adoption policy is to give police agencies a way to ignore state law. It was devised to let local cases become federal cases with little to no involvement from actual federal law enforcement officials.

This is why the Obama administration tried to phase out the program. As I pointed out at the time, then-Attorney General Eric Holder's plan to phase out the adoption policy would affect only about 5 to 6 percent of federal civil forfeiture cases. But it would end the policy in states where the legislature (and, presumably, the people) had tried to pass laws protecting people from unjust forfeitures. That's important. For all the criticisms from police groups and conservatives that the Obama administration didn't respect "states' rights" (I prefer the term "federalism"), this was a policy that did exactly that.

And now Sessions wants to end it. Just to be clear about what this would do: Sessions wants to force federal forfeiture law onto states whose legislatures have explicitly rejected it. And he wants to do this to expand a policy that even conservative groups feel is unfair and unjust, that studies have shown is biased by class and race, and that 80 to 85 percent of Americans oppose.

Sessions claims to be a federalist — an advocate for "states' rights" and local control. But he makes exceptions. What's interesting is when he makes exceptions and when he doesn't. For example, Sessions thinks the Voting Rights Act — which aims to preserve the voting rights of minorities — is intrusive federal meddling. He thinks that Justice Department's investigations into police abuses — which frequently include allegations of racial bias, and tend to be disproportionately directed at minorities — are also intrusive federal meddling. He thinks that requiring states to recognize same sex marriage — a protection for a minority group — is intrusive federal meddling. He feels the same way about adding sexual orientation to the list of categories protected by federal hate crimes laws, and about requiring states to protect transgender students — again, these are all protections for a specific minority group.

So where does Sessions make exceptions to "states' rights"? For starters, he thinks sanctuary cities should be punished for not enforcing federal immigration law, despite the wishes of the people who live in those cities, and despite protests from law enforcement that doing so would

make those cities more dangerous. The people likely to be hassled by Sessions's favored policy here are, of course, also minorities, whether they're citizens, legal residents or undocumented. He has expressed his desire to impose federal law on the states that have legalized recreational marijuana. Though Sessions hasn't yet openly targeted those states, that's likely more for practical reasons than ideological ones. He is on record expressing support for enforcing federal drug laws in those states and reportedly has sought support from members of Congress to target medical marijuana distributors in states where the drug is legal. Marijuana prohibition, like all drug prohibition, also disproportionately targets minority groups. And now, Sessions wants to reinstate the adoption program, which would essentially impose federal civil forfeiture law on states that have explicitly acted to make forfeiture more difficult. Forfeiture too disproportionately affects minority groups.

Of course, there are reasons to support or oppose any one of these policies that have nothing to do with race or bigotry. But it's uncanny how neatly Sessions's support for or opposition to federalism seems to align in opposition to protection for minority groups. When a federal government policy offers more protection for a marginalized group, Sessions sings the praises of local control. When it's the state or local government policy that affords them more protection, Sessions wants to impose federal law.

Perhaps it's all just coincidence. But there's really only one principle that remains consistent through Sessions's various positions on these issues. And it isn't federalism.