Alabama civil asset forfeiture faces constitutional challenges as lawmakers ponder reform

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Halima Culley's 23-year-old son Tayjon was arrested on Feb. 17 in Satsuma during a traffic stop in which police seized 21 grams of marijuana – less than an ounce -- and her 2015 Nissan Altima.

Tayjon's case has since been disposed. He pleaded guilty to misdemeanor marijuana possession and was sentenced by a Mobile County judge to two years of probation plus fines, court costs and 25 hours of community service.

But Halima Culley's car hasn't been returned, and her tale is the latest to be introduced into a federal class-action lawsuit questioning the constitutionality of Alabama's civil asset forfeiture system.

Under Alabama law, a law enforcement officer can seize property if there is probable cause to believe it is tied to criminal activity. The owner then has to enter civil court to litigate the permanent loss of the property, even if it wasn't used by anyone connected to the property's use was convicted.

Alabama law awards 100 percent of the proceeds of successful forfeitures to the policing agencies doing the seizing and the prosecutors handling the cases. Critics of the law believe this creates a powerful incentive to utilize civil forfeiture as an extra revenue source.

In 43 states, police and prosecutors can keep anywhere from half to all of the proceeds they take in from civil forfeiture—a clear incentive to police for profit. Mississippi, for instance, doles out 80% of of forfeitures to local police agencies. North Carolina mandates that all forfeited properties go to public schools.

Culley's civil action was filed Sept. 23 in U.S. District Court for the Southern District of Alabama in Mobile. Her attorney, Allen Armstrong of Birmingham, also represents a client in a similar suit filed earlier this year involving a 2012 Chevrolet Sonic confiscated during a drug trafficking arrest in Leesburg.

In that earlier case, the Chevrolet's owner -- Lena Sutton -- wasn't in the car nor was she allegedly aware it would be used in connection with drug activity.

“It’s our hope local governments will think before they unconstitutionally seize property or that these governments be held accountable,” said Armstrong. “We may have to sue every municipality engaging in this practice on a class-wide basis, but it also (could) become a mass tort.”

He added, “We have so many police departments policing for profit. We have to end up suing everyone of them if they continue this unlawful practice.”

Constitutional or lacks merit?

Critics of the litigation, which include the Alabama District Attorneys Association, believe that such cases are part of a strategy to persuade a federal judge to invalidate Alabama law.

Culley’s lawsuit filed in Mobile names Alabama Attorney General Steve Marshall, Mobile County District Attorney Ashley Rich and the city of Satsuma as defendants.

Rich’s office deferred comments to the attorney general. Marshall is reviewing the lawsuit, according to a spokesman who provided no further comment.

Joseph “Jay” Minus, the attorney representing Satsuma, declined to talk about the specifics of the lawsuit other than to say it was a challenge to Alabama law “as opposed to the conduct of the city.”

He said, “It’s a constitutional challenge to the statute. Not what the city officers did or did not do.”

Barry Matson, executive director with the District Attorney’s Association, and Patrick Lamb, general counsel with the Alabama Office of Prosecution Services, both said that the lawsuits lack merit. Chief among their complaints is that the lawsuits are being filed in federal, not the state judicial system where the criminal cases originated.

Marshall’s office, in a brief filed in July in the Sutton case, requested a federal judge dismiss the lawsuit, alleging “federal court interference in an ongoing state court proceeding.”

Said Matson, “Why not file it in a circuit court where the goal is to get the vehicle back? Or is the goal to push an agenda? I think that is what they are wanting to do.”

Marshall’s office also takes issue with Sutton’s claims that she has been unable to recover her car. His office alleges that Sutton has taken neither the legal steps needed to expedite a hearing nor those necessary to regain her car.

‘Policing for profit’?

But Armstrong says that “policing for profit” at any level is wrong and that law enforcement “should not go after people” whenever they aren’t being accused of a crime.

He said that in Culley’s case, that the small amount of marijuana in possession of her adult son was “not anywhere near the $13,000 to $20,000” value of her Nissan.

Hailma Culley, according to court records, is a resident of Rockdale County, Ga., and has been "deprived of her car" since it was seized. "It's excessive compared to the crime that was committed," he said.

The lawsuit seeks to have a judge declare Alabama's civil asset forfeiture to be a violation of the Constitution's Eighth Amendment that protects against excessive fines imposed by the government.

The lawsuit also claims that Alabama's law, and its enforcement, violate the due process clause of the Fifth and Fourteenth Amendments, and violates the Fourth Amendment by opening the way to illegal searches.

The case claims a conspiracy on the part of the city of Satsuma to violate Culley's rights, on grounds that the city, upon seizing her car, contacted the District Attorney's Office and began to institute civil forfeiture action.

The lawsuit is a class-action case, Armstrong said, because it can include "anyone who has had their property seized" in Satsuma, a city of about 6,150 residents in Mobile County.

"We have filed on behalf of anyone who has had their property seized and has not been charged with a crime and probably won't ever be charged with a crime and will not be charged with a crime because they were not involved whatsoever," said Armstrong.

Scrutinizing seizures

The lawsuits come at a time when Alabama lawmakers continue to scrutinize the practice of police seizing property even if the property's owner hasn't committed a crime, as was the case with Culley.

The biggest change in state law is the addition of a new transparency requirement backed by the District Attorneys Association. The law, signed by Gov. Kay Ivey in June, requires all policing agencies to report: the property they seize during arrests, location of the seizures, arrests connected with the seizures, dispositions of the property, and proceeds collected from the property.

The information will be aggregated into a report by the Alabama Criminal Justice Information Center, and released publicly. The first report is due out in early 2020.

"We have nothing to hide," said Matson. "I don't think (the information) will show what they think it will show and that there have been an awful lot of forfeitures filed in Alabama. I don't think it will be the issue that it may have been in other states. But we'll see."

Matson has accused various organizations, particularly Montgomery-based Southern Poverty Law Center, of producing misinformation or overinflating civil asset forfeiture concerns in Alabama.

The SPLC, in conjunction with Alabama Appleseed Center for Law and Justice, released detailed analysis and powerful testimonials from victims of questionable seizures by police in a January 2018 report titled "Forfeiting Your Rights."

Some of those statistics were included in the Sutton and Culley lawsuits. Matson expressed concerns about one particular statistic: In approximately 25% of the 2014 civil forfeiture cases studied by the SPLC, criminal charges were not brought against the property owner.

"We did a rudimentary check and were able to identify a disposition in every case," said Matson. "There were convictions … it was completely inaccurate."

Emily Early, staff attorney with the SPLC, said she was unaware of specific challenges the District Attorneys Association has made against the report. She said that the SPLC's data was based on a review of thousands of case files, all gathered through the state's court system's records.

"The numbers are what they are," she said.

According to the analysis, 70 agencies – including police and sheriff's departments, city governments, district attorneys' offices, etc. – were awarded $2.2 million by the courts in 827 cases. Also seized and awarded to law enforcement agencies were 405 weapons and 119 vehicles.

Alabama's civil asset forfeiture laws are considered among the worst in the nation, according to the Institute for Justice, a libertarian think tank. It graded the laws as a "D-" largely because there's a low bar to forfeit an asset even if no criminal conviction is needed.

Still, the Institute for Justice recognized Alabama as one of 32 states that have adopted some sort of reform since 2014.

Sense of urgency

An overhaul to the process has been slow going in Montgomery as a Republican-dominated Legislature has heard opposition from the District Attorneys Association and groups representing police chiefs and sheriffs.

More attention to the issue has been paid since February's U.S. Supreme Court decision in *Timbs v. Indiana* in which the court ruled that authorities violated the constitutional prohibition on excessive fines when a $42,000 vehicle was seized from a man who pleaded guilty to selling $225 worth of heroin to undercover officers.

Marshall's office, in the Sutton lawsuit, said that the *Timbs* ruling doesn't apply. Sutton's case involves seizing a vehicle that was involved in trafficking methamphetamine. The minimum amount of any fine for trafficking meth is $50,000, according to Marshall's office.

"Although (Sutton) does not allege any facts as to the market value of the 2012 Chevrolet Sonic, she cannot make out a plausible claim that seizure of her vehicle would be 'grossly disproportional to the gravity' of an offense carrying minimum $50,000 fine," the legal brief filed by Marshall's office states.

Still, the Supreme Court ruling and the recent lawsuits could fuel more calls for legislative reform early next year.

Carla Crowder, executive director with Alabama Appleseed, said the Culley case is "yet another outrageous example of why legislative reforms are desperately needed to curb civil asset forfeiture abuses."

"Our hope is that the Alabama Legislature will recognize the obvious injustice here and in scores of other documented cases and not wait on the litigation to work its way through the courts," said Crowder. "We need a law that both requires a criminal conviction before the state can take people's stuff and protects innocent property owners by requiring property be promptly returned unless the government can prove the owner knew it was involved in a crime."

Public opinion shows support toward reform. A 2016 Cato Institute poll showed a whopping 84% oppose civil asset forfeitures. In 2018, a poll commissioned by the Institute for Justice and YouGov showed that 59% oppose civil asset forfeitures while only 25% supported them. The same poll found that 76% of Americans would be more likely to vote for a congressional candidate who supported requirements for a criminal conviction or raise the standard of proof to forfeit property.

State Sen. Arthur Orr, R-Decatur, has been at the forefront of legislation requiring criminal convictions before law enforcement can seize properties and keep it. Legislation seeking an overhaul of the system has stalled twice in each of the last two sessions.

Orr said the lawsuits highlights a sense of urgency for lawmakers.

"I think they definitely show to policy makers in Montgomery that there is potentially a judicial fix for the issue if we don't take legislative action," Orr said. "With the judicial decision, the control of how we tailor Alabama's situation legislatively will potentially be taken out of our hands by a courtroom. We can determine our fate as lawmakers in drafting a revised law of our own choosing and making … (but) if we allow the courts to do it, some of the discretion may be taken out of our hands."