



Civil forfeiture often punishes the innocent

Legislation, courts should limit scope of offensive violation of legal rights

August 6, 2017

If there were any truth to political labeling, a self-proclaimed conservative would be someone you would expect to favor limited government power and to uphold the U.S. Constitution, the American legal system and the personal rights of all citizens.

Unfortunately, in the world of modern politics, that clearly isn't the case.

U.S. Attorney General Jeff Sessions, who would have us believe he is a conservative, has made it clear in recent weeks that he fully supports the concept of civil asset forfeiture and hopes to see that vile process used with increasing frequency during his tenure as the nation's top law enforcement officer. On this particular issue, if not others, he seems to have the support of the president.

That's too bad.

Civil asset forfeiture is perhaps the ultimate despotic power play. Simply put, it is the concept that the government can take from you what is yours if it suspects you obtained it illegally. To do so, it does not have to charge you with any crime, issue a criminal indictment or bother with the pesky notion of prosecution and conviction. And there doesn't really have to be evidence of any sort of wrongdoing.

If the government thinks that suitcase full of cash hidden in the back of your closet came from some criminal enterprise, or that there's some nefarious illegality involved in the way you deposit money in your bank account, it can take the money and never make any effort to prove you did anything illegal. If you're lucky, after months or years of effort and paying for costly legal help, you may be able to get some of it back. And you may not.

Last [Sunday in The Times](#), we chronicled one of the most egregious examples of government run amok with the story of Andrew Clyde, an Athens gun store owner who had nearly \$1 million seized from his bank account in 2013 because the government concluded he had to be making the money illegally. There were no criminal charges, no proof, no time wasted in a trial, no worries about the Fifth Amendment of the U.S. Constitution — just take the money for the government's use and see if the innocent American citizen can figure out how to get it back.

Six months later, after having to borrow money to keep his business open, Clyde was able to recover \$900,000 of the \$950,000 the government seized. The remaining \$50,000 has never made its way back to his bank account.

Sadly, Clyde's story is just one of hundreds. Federal and state authorities seize billions of dollars every year through the civil asset forfeiture process. Billions, not millions.

Worse, in a classic conflict of interest, much of the money seized eventually makes its way back to the agencies that confiscate it, providing even more incentive for agents of the government to continue this abusive practice.

Last month, Sessions made it clear that he plans to ramp up the civil asset forfeiture process, negating some minimal restrictions on seizures the previous administration in Washington had enacted. Sessions has been vocal in his support for increasing the amount of government-sanctioned theft that will take place under the guise of civil asset forfeiture.

There is some hope the renewed attention being paid to a practice that dates back to the 1700s will result in a groundswell of opposition. A survey conducted by the Cato Institute found that 84 percent of Americans oppose civil asset forfeiture, and some lawmakers, at both the state and national level, are trying to build momentum to stop the practice.

One of those is our own U.S. Rep. Doug Collins, who is co-sponsoring a bill that will tighten restrictions on the government's ability to take your property without accusing you of doing anything wrong. Similar efforts are also under way at the state level all across the nation.

Since 2014, more than 20 states have passed laws to limit the process, but until change comes at the federal level, local law enforcement can often sidestep state laws by turning over seized assets to federal agencies — then wait for a benevolent Uncle Sam to return a portion of the seized assets to their departments.

In Washington, a bipartisan group of congressman, including Sen. Rand Paul, introduced legislation in the spring to limit the government's ability to use civil asset forfeiture, and at the same time to make it easier for those whose assets have been seized to get their property back.

Fox News quoted U.S. Rep. Keith Ellison, D-Minn., a sponsor of the bill, as saying "Every year the government takes in billions of dollars in property from those suspected of being criminals — and every year, much of that property turns out to belong to innocent people who have little recourse once their belongings have been seized."

A recent review of civil asset forfeitures by the IRS looked at 454 contested cases. In those cases, it found that 80 percent of the money that had been seized should be returned to those from whom it was taken.

Supreme Court Justice Clarence Thomas has openly addressed the issue. "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," he wrote.

Unfortunately, those abuses are not only likely to continue, but can be expected to escalate given Sessions' commitment to civil asset forfeitures. Until Congress and state legislatures change the law in a meaningful way, or the U.S. Supreme Court rules it to be unconstitutional, the assets of every American remain at risk.

And that whole "innocent until proven guilty" concept you learned about once upon a time in civics class? It's about as hollow as a politician's promise as long as civil asset forfeiture remains the law of the land.