



Asset forfeiture becomes a federal power grab

Jenna Moll

July 28, 2017

President Donald Trump has expressed his "disappointment" with Attorney General Jeff Sessions in regards to the Russian election interference investigation.

But Trump has far more reasons to be disappointed in his appointee.

The President has made his appreciation for reducing the scope of the federal government clear, from his early July weekly radio address where he pressed Congress to take action on health care legislation by taking "something away from the federal government and getting it back to the states, who can better provide and who know better what to do," to his speech to the National Governors Association, saying, "We're also going to do whatever we can to restore the authority of the states...you can control it better than the federal government because you're right on top of it."

Unfortunately, Trump's Department of Justice is flouting his very clear and consistent directive to reduce federal government overreach and empower the states.

U.S. Attorney General Jeff Sessions recently announced policy changes to expand the use of adoptive forfeitures.

These adoptive forfeitures are undertaken with the clear intention to circumvent state laws governing forfeiture, overriding the will of the people and state lawmakers and imposing the federal government's will on the states.

For years now, the use of forfeiture has steadily and subversively expanded beyond its original (and constitutional) focus. What was once used to divest convicted criminals of their profits from crime, to inhibit them from benefiting from their harms, is now used by the government to take ownership of property from innocent citizens.

Every day, untold amounts of cash, cars, real estate, and even personal property is taken from individuals that face no criminal charges.

Instead, they face a Byzantine civil court system, without the aid of an attorney, and are forced to try and prove their property innocent against the full force and weight of the government. Even David got a slingshot in his struggle against Goliath.

Americans are rightly outraged by this practice. And they overwhelmingly don't support civil asset forfeiture. According to a poll by the Cato Institute, 84 percent of Americans don't support the practice.

And across the country, state after state has enacted forfeiture reforms in state legislatures with overwhelming bipartisan support.

These reforms have maintained the use of forfeiture against convicted criminals, while reducing the number of innocent citizens who have their property taken by the government.

Now, Trump's federal government is overriding the states, executing a federal power grab, and delivering a message to the states that the federal government knows best, and will ignore state laws whenever it wishes.

After a presidential election that, to many Americans, hinged on Trump's efforts to reduce federal government overreach, as well as his willingness to listen to and respect the will of the people, this is a devastating development.

Fortunately, some legislators anticipated the nature of the federal government to continually disappoint, and included language in their legislation to maintain respect for state law within their respective borders.

In Pennsylvania, liberty-loving Republican state Senator Mike Folmer wrote a section into his bill that prohibits state agencies from referring Pennsylvania's property to the federal government and seeking an adoptive forfeiture.

That bill passed 194-0 out of the Pennsylvania House of Representatives.

In Ohio, Republican State Representative Rob McColley worked to include language in Ohio's forfeiture reform bill that prohibited referrals to the federal government for forfeiture unless the value exceeds \$100,000.

That bill passed unanimously out of Ohio's Senate.

And in Arizona, Republican Representative Eddie Farnsworth stood up for his state and passed legislation that, in part, prohibits Arizona's property from being referred to the federal government for forfeiture unless the federal government was involved or a violation of a federal law is alleged.

Further, forfeitures resulting from joint investigations may only be referred to the federal government if the value exceeds \$75,000.

That measure passed the Arizona state Senate unanimously.

It is unfortunate that these elected policymakers had to include this sort of language. It is a sad day when the federal government's power is so unchecked and aggressively overwhelming that a

state has to take steps to codify the supremacy of its own laws and restrictions on the federal government in a policy area reserved for the states.

I believe Trump when he says that he wants to curtail overreach by the federal government and restore the authority of the states.

But to make good on this campaign promise of his, he must stop the Department of Justice from taking away this authority from the states, which know better what to do with property rights in their own states.

He must order his agency to stop imposing its will on state and local governments.

And he must ensure the Department restores the authority of the states to manage and regulate forfeitures within their borders.

And until that happens, elected legislators in states across the country will be forced to continue to play defense against federal government overreach and protect property rights in their states.

Fortunately, as we've seen in Pennsylvania, Ohio, and Arizona, they will have unanimous votes of approval from their colleagues and nearly every voter on their side.

Those that try to stand up for federal overreach will have no one.