



Thomas Lucente: New Ohio law will curb policing for profit

Thomas J. Lucente Jr.

January 8, 2017

Gov. John Kasich was busy last week when he signed 28 bills into laws on Wednesday.

He signed such things as a bill to allow free beer samples; a bill to create more memorial highways and special license plates; and a bill designating the week before Thanksgiving Day as Ohio Public Education Appreciation Week.

He also signed some serious bills as well, such as the Michael Louis Palumbo, Jr. Act, which says that if a firefighter is disabled as a result of cancer, then that cancer was presumably job-related; Annie's Law, which is meant to increase the use of ignition interlock devices and combat repeat drunken-driving offenders; and a much-needed bill updating and modernizing some aspects of the state's probate and estates laws.

The most important one, though, is one that received very little media attention: House Bill 347.

The new law makes it harder for the government to use civil asset forfeiture to seize private property from those who may or may not have committed a crime.

Civil asset forfeiture is perhaps one of the most un-American procedures in use today. It is an inherently abusive practice that should be abolished. Legalized theft, essentially.

It permits government agents to seize property from someone merely suspected of committing a crime. Usually no conviction is needed, no charges need to be filed, and acquittal of any charges does not mean return of the property.

Further, the person whose property is seized often bears the burden of proof in any proceedings to stop the seizure. For example, let's say the police seize your car and claim they believe you used the car to commit a crime. They don't have to ever charge you for that crime. And if you want to keep your car, you have to take the police to court and then prove you did not commit a crime.

So much for innocent until proved guilty.

Nor is there protection for innocent third parties. In one case, the feds tried to seize a family-owned motel worth millions because some guests had violated drug laws while renting rooms.

See the problem?

Most of you do. A Cato Institute survey last month showed 84 percent of Americans oppose police seizing “a person’s money or property that is suspected to have been involved in a drug crime before the person is convicted.” Further, 76 percent said local police departments should not be permitted to keep the assets seized.

Unfortunately, the state’s new law does not abolish civil asset forfeiture.

Still, it should do a good job of curbing much of its abuse and taking the profit motive from local police departments.

The new law will generally require a criminal conviction before seizing property under \$15,000. When property is seized, the new law shifts the burden of proof from the property owner to the government and increases the level of proof required before seizing property.

One other important aspect is that it eliminates the profit motive.

Agencies often get to keep part of the booty they loot from citizens.

Additionally, the federal government has a program that gives 80 percent of seized assets to the local agency in a program known as equitable sharing. So Ohio police departments would bypass stricter, and less profitable, state laws on forfeiture and seize the property for the federal government. Doing this, local police agencies netted \$140 million between 2000 and 2013.

The new law nearly closes this equitable-sharing loophole so police agencies in Ohio cannot transfer seized property valued under \$100,000 to the feds.

In addition to the profit motive, there are constitutional problems with civil asset forfeiture besides the obvious violation of property and due process rights.

There is a separation of powers problem. The power of the purse held by the legislature is supposed to be a check on executive branch misconduct. Legislatures are supposed to determine budgets and priorities for police agencies, but this disappears when police officials can self-fund by stealing money directly from the citizenry.

There are federalism problems as well when police agencies can get a better deal from the feds and therefore bypass the sovereignty of state legislatures to regulate their own police forces.

Reform is long overdue. Often, simply having a large amount of cash is reason enough for the police to seize that money and, in the process, fatten their budgets.

The reform measure is also timely given that President-elect Donald Trump’s nominee for Attorney General, U.S. Sen. Jeff Sessions of Alabama, is apparently a fan of civil asset forfeiture.

While this law does not abolish civil asset forfeiture, it is a step in the right direction and should go a long way in curbing its obvious abuses.