

Nick Sibilla: Next attorney general should rein in civil forfeiture

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January 7, 2017

Without having to secure a criminal conviction, or even charge someone with a crime, law enforcement agencies have seized cash, cars, even bank accounts, from tens of thousands of innocent Americans.

Empowered by “civil forfeiture,” the federal government can confiscate someone’s property if they merely suspect it’s linked to criminal activity. Yet despite popular outrage, the Obama administration refused to meaningfully curb the program.

Now Sen. Ben Sasse, as a new member of the Senate Judiciary Committee, can play an important role to end this abusive practice.

On January 10, the Senate Judiciary Committee will begin its hearings to confirm Sen. Jeff Sessions as the next Attorney General. This hearing is an important opportunity to learn more about Sen. Sessions’ views on civil forfeiture and the need for reform.

For starters, it is vital to know if Sessions will continue widely lauded limitations on a federal forfeiture program called “equitable sharing.” Under this program, state and local law enforcement agencies can team up with federal authorities to forfeit property in exchange for up to 80% of the proceeds. As The Washington Post revealed in a blockbuster exposé on the program, law enforcement agencies seized \$2.5 billion in cash from nearly 62,000 people. Incredibly, all of those cash seizures were conducted “without search warrants or indictments.”

Partly in response to the Post’s reporting and a growing public outcry, in January 2015, then Attorney General Eric Holder sharply curtailed “adoptions,” one of the most abusive types of equitable sharing. Although this policy change did not apply to joint task forces (which were responsible for more than 80% of the nation’s forfeiture proceeds received from the Department of Justice), it was an important first step to rein in equitable sharing. The new administration should expand on these reforms.

Most Justice Department forfeitures are done civilly (87%), with no right to an attorney. Of those, 88% were administrative, or done without any court supervision. In order to strengthen procedural protections the DUE PROCESS Act would have provided property owners with a right to an attorney in administrative forfeitures, raised the standard of proof to forfeit property

and required an annual audit to bolster transparency and accountability. The bill would also have required the government to prove that owners knew of alleged criminal conduct with their property, which would have restored the presumption of innocence. Despite an overwhelming bipartisan consensus around civil-forfeiture reform, the DUE PROCESS Act did not receive a vote in 2016.

In the coming session, we urge Sen. Sasse to codify the modest Holder reforms and work with Attorney General-designate Sessions to craft comprehensive legislation that would protect the property rights of the innocent, without jeopardizing public safety.

Unlike so many other political issues, opposition to civil forfeiture cuts across party lines. In a historic first, the national Republican and Democratic Party platforms both called for reform. One recent poll by YouGov and the Cato Institute found that 84% of Americans oppose confiscating property without a criminal conviction.

Many of Sen. Sasse's colleagues in the Republican Party have been instrumental in overhauling the practice. Conservative heavy-hitters like Grover Norquist, the Heritage Foundation, Right on Crime and FreedomWorks have worked with the Institute for Justice to pass major reforms in Florida, Maryland, Montana and New Mexico—all states that either voted for Donald Trump or are led by Republican governors.

In fact, Nebraska has been a national leader on this issue. Last year, the state passed landmark legislation that abolished civil forfeiture entirely and strictly limited equitable sharing.

Even high-ranking law enforcement officials have turned against the practice. Most notably, Brad Cates and John Yoder, who both headed the Justice Department's Asset Forfeiture Office during the Reagan Administration, slammed civil forfeiture: "The program began with good intentions but now, having failed in both purpose and execution, it should be abolished."

Civil forfeiture is one of the greatest threats to private property facing the nation today. Effective reform can both protect property rights and free law enforcement to focus on its core mission, rather than generating revenue for cash-strapped agencies. We hope that Sen. Sasse and the next Attorney General will be committed to developing lasting solutions to this problem.