



Amid Criminal Justice Debate, Sen. Rand Paul Adds His Voice

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July 15th, 2020

As the nation reimagines the criminal justice system following widespread protests over the deaths of Black Americans in police custody, Kentucky's junior senator Rand Paul (R) is reintroducing several policy proposals concerning civil liberties. Among them is the issue of civil asset forfeiture.

"The government can accuse people of a crime and take their stuff," he lamented as part of a lengthy speech on the Senate floor in May 2015.

"Turns out that most people having their stuff taken are poor, often African American, often Hispanic but for the most part poor," he added.

Senator Paul has long been a vocal critic of civil asset forfeiture, a legal tool law enforcement use to seize property they say has been involved in criminal activity, even if the property owner has not been convicted.

At the end of June, Paul reintroduced the Fifth Amendment Integrity Restoration (FAIR) Act to weaken the practice. Sen. Angus King (I-ME), Sen. Mike Crapo (R-ID), and Sen Mike Lee (R-UT) are co-sponsors of the legislation.

"The federal government has made it far too easy for government agencies to take and profit from the property of those who have not been convicted of a crime. The FAIR Act will uphold the Fifth Amendment and ensure government agencies no longer profit from taking American citizens' property without due process. It will guard against abuse while maintaining the ability of courts to order the surrender of proceeds of crime," said Sen. Paul in a statement.

"It would provide for a damages remedy so that if law enforcement takes your property using civil forfeiture, but then you win because it turns out they didn't have the legal authority to do that, you get not just the property that they took back, but you also get a multiple of the value of the property that they took. That creates a disincentive for law enforcement to take your property," said Clark Neily, who leads the criminal justice program at the libertarian think tank Cato Institute.

Neily says the FAIR Act also increases the burden of proof for officers and changes the circumstances in which local and federal law enforcement can participate in forfeiture together. But the real trouble, Neil argues, is the legal wrangling involved in trying to get your property back if you haven't been convicted. Most people don't even try.

"They actually don't sue you as the property owner even though they know it belongs to you. What they do is they sue the property itself so you get these crazy case names, United States vs. a briefcase containing sixty thousand dollars or my favorite of all time, United States vs. one solid gold object in the form of a rooster, which apparently was a statue seized from a casino in Reno, Nevada," said Neily.

"Property doesn't have rights. People do," he added.

The law enforcement community has long argued civil asset forfeiture is a useful punitive tool and that criminals shouldn't be able to profit from their crimes. It also provides a tremendous amount of revenue for local police departments and the federal government.

According to the Kentucky Center for Investigative Reporting (KYCIR), the Louisville Metro Police Department seized "more than \$27 million, about 450 vehicles and nearly 11,000 guns between 2013 and 2019."

KYCIR reports, "Of the nearly \$2.1 million seized by LMPD in the cases reviewed by KYCIR, about \$328,000 came from cases where the defendant was not ultimately convicted of drug trafficking."

Neily says we are in a unique moment and believes this is the right political climate for Paul's bill to advance.

"The idea that a representative of government should be able to waltz into your life and take your money, your car or even your home with virtually no due process and no meaningful way to resist that in the courts is a concept that is deeply offensive to people," said Neily.

According to the Institute for Justice, only ten states and the District of Columbia demand the government prove owners did something wrong before forfeiting their property.

Those states are California, Oregon, Utah, Montana, Colorado, New Mexico, Mississippi, New York, Connecticut and Florida.