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Frederick farmer joins chorus calling for civil asset forfeiture reform

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The owner of a Frederick County farm joined activists and lawmakers from both sides of the aisle on Tuesday to call for the end of civil asset forfeiture in Maryland.

Under civil forfeiture, police can seize and then keep or sell property, including cash and real estate, that may be associated with a crime, even though the owner may not ever be arrested, convicted or directly involved.

Randy Sowers, owner of South Mountain Creamery, said he supported the end of the practice after his farm was unwittingly caught up in a federal civil forfeiture case in 2012.

“It takes a lot to scare me, but I was scared,” Sowers said. “They want you to think the worst, so you’ll just give them the money and move on.”

Since the forfeiture complaint was filed against his business in 2012, Sowers said he has felt a calling to stand up for others who were put in a similar position.

He agreed to forfeit \$29,500 to the federal government through a settlement, which he accepted to avoid losing even more in a protracted legal fight, Sowers said.

A bill introduced last week by three state senators — Michael Hough, a Republican lawmaker from District 4 in Frederick; Jamie Raskin, D-Montgomery; and Robert Zirkin, D-Baltimore County — would end the practice of civil asset forfeiture in Maryland by requiring police to pursue criminal charges against a person before seizing their property.

“So many of us, myself included, didn’t really understand how this process worked, but the more I looked into it, the more I was deeply troubled,” Hough said at a news briefing Tuesday that was attended by more than a dozen advocates for reform.

Under current state law, police can seize property and initiate civil forfeiture proceedings in court, by alleging that property is associated with criminal activity. The cases, which are brought against property rather than a person, require the owner to come to court and prove the innocence of their belongings. In civil forfeiture, unlike in criminal asset forfeiture, people don't have to be charged with or convicted of a crime before the government can take permanent ownership of their property.

"I believe that the state of the law today is blatantly unconstitutional," said Raskin, a constitutional law professor at American University. "It says that the government — without arresting you, charging you or convicting you — can seize your private property and then require you to go out and hire a lawyer to go to court to sue and prove that your property is innocent."

Others who advocated for the end of civil asset forfeiture on Tuesday included representatives from the American Civil Liberties Union, the NAACP, ALEC — a conservative group of lawmakers, a retired Maryland State Police major, and a Baltimore man who said his life is still in disarray after his income tax return and car were seized in a 2012 traffic stop.

A bill passed last year — which was vetoed by Gov. Larry Hogan and scheduled for an override vote on Thursday — would scale back the civil asset forfeiture program, and place the burden of proof back on the government.

Hogan vetoed the bill, following the recommendation of groups including the Maryland State's Attorneys' Association and the Maryland Sheriffs' Association.

The new bill could also have an indirect effect on federal forfeiture cases in the state, by prohibiting local police and prosecutors from transferring forfeiture cases to the federal government unless a criminal case related to the seizure is prosecuted in the federal court system, or the person consents to the seizure. The same provision was included in the 2015 bill, which will be the subject of a veto override vote on Thursday.

State law enforcement agencies have received more than \$85 million since 2007 through a now-suspended federal program to process civil forfeitures.

Walter Olson, a senior fellow at the Cato Institute's Center for Constitutional Studies who lives in Frederick County, applauded provisions that would increase transparency and oversight of asset forfeiture cases.

The bill would require law enforcement agencies that seize property to submit annual reports to the Maryland Statistical Analysis Center.

During last year's deliberations over the bill, the Department of Legislative Services could not estimate the fiscal impact of the bill. There were no reliable data on how often the types of property affected by the bill are seized by local law enforcement agencies.

Funds from forfeiture cases in state courts are generally transferred to the general funds of a police agency's municipality.

Frederick County collected \$213,966 in fiscal 2015, and \$50,380 since July 1 of this fiscal year, according to Lori Depies, finance director.

The Frederick Police Department received \$78,643 in revenue from forfeiture cases in the 2015 fiscal year and spent \$68,186 from asset forfeiture funds, according to city budget documents.