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One small step against tyranny

The tide is turning against asset forfeiture and Loretta Lynch

By Richard W. Rahn

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Do you think the government should be able to seize your property if you have not been convicted of any crime? Most people are not aware that one of the most odious activities of federal, state and local tax and police authorities is that of "asset forfeiture." Asset forfeiture laws allow law enforcement to seize and keep property of individuals and businesses without a criminal conviction.

The practice has been rife with abuse by law enforcement officials, often using seized property of innocent individuals for their own use. As a result of the outcries about the abuse, there was a unanimous vote by both Republicans and Democrats in the House and Senate in New Mexico to end the practice of civil asset forfeiture in the state. The bill now awaits the signature of Gov. Susana Martinez. An unlikely coalition supported the measure to repeal asset forfeiture, ranging from the left-leaning American Civil Liberties Union of New Mexico to the libertarian-leaning Institute for Justice. Former federal prosecutor and director of the Justice Department's Asset Forfeiture Office, Brad Cates, now a resident of New Mexico, is one of the leading advocates of repeal of asset forfeiture laws at both the state and federal levels. Mr. Cates and the first director of the federal Asset Forfeiture Office, Judge John Yoder, in an article in The Washington Post last September, wrote: "We find it particularly painful to watch as the heavy hand of government goes amok. The program began with good intentions but now, having failed in both purpose and execution, it should be abolished."

Many states and the federal government still allow asset forfeiture, even though they appear to fly in the face of the Fifth and 14th Amendments to the Constitution, which clearly protect any person from being deprived of property without due process. Where are the judges who are supposed to protect us from unconstitutional abuses?

It is particularly troubling that President Obama's nominee for attorney general, Loretta Lynch, the current U.S. attorney for the Eastern District of New York, strongly defended civil asset forfeiture during her Senate confirmation hearings, despite major abuses by her own office. One case is described by my Cato colleague and attorney, Alan Bates: "In May of 2012 the Hirsch

brothers, joint owners of Bi-County Distributors of Long Island, had their entire bank account [of \$446,651.11] drained by the Internal Revenue Service working in conjunction with Lynch's office without so much as a criminal charge." Ms. Lynch's office simply sat on the money for more than two years. The Institute for Justice, acting on behalf of the Hirsch brothers, was finally able to get the money returned earlier this year, after Ms. Lynch's office admitted there was no evidence of wrongdoing.

In January, Republican Sen. Rand Paul of Kentucky, and Republican Rep. Tim Walberg of Michigan reintroduced the "Fifth Amendment Integrity Restoration (FAIR) Act, which would revise the federal civil forfeiture law to give property owners more protection and reduce the profit incentive that encourages law enforcement to seize assets." The provisions in this proposed legislation would go some distance toward stopping many of the worst abuses even though, in my judgment, it does not go nearly far enough in ending asset forfeitures. Nonetheless, support for this legislation should be a no-brainer for members of Congress from both parties.

Loretta Lynch's office has, by her own admission, confiscated over \$100 million from people who have not been charged or convicted of anything. Mr. Paul has announced that he will oppose her confirmation because he doesn't "think she's shown any compassion, or understanding of the law, but particularly compassion for people who are victims of civil forfeiture. People who are victims of civil forfeiture are often poor, African-American or Hispanic, and people who can't afford an attorney to try to get the money that's taken by the government."

It is rather basic, "Thou shall not steal." Most people understand that commandment, and it doesn't matter if it is the government doing the stealing or just a common miscreant. It is very troubling that Ms. Lynch and many others in law enforcement, particularly at the IRS, seem to have so little understanding of the Constitution and the basis of a civil society. To confirm Ms. Lynch for attorney general, without passing serious reform of the asset forfeiture law as Mr. Paul has proposed, will endanger the property and even the liberty of many Americans.

Former federal prosecutor Brad Cates and Judge John Yoder said it best: "Civil asset forfeiture and money-laundering laws are gross perversions of the status of government amid a free citizenry. The individual is the font of sovereignty in our constitutional republic, and it is unacceptable that a citizen should have to 'prove' anything to the government. If the government has probable cause of a violation of law, then let a warrant be issued. And if the government has proof beyond a reasonable doubt of guilt, let that guilt be proclaimed by 12 peers."

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