



Forfeiting Freedom

By Tim Donner
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Innocent until proven guilty. We all know that is the very bedrock of the American criminal justice system. But the most powerful and feared agency of our government has now admitted engaging in activity that is not only based on the opposite premise, that you are to be presumed guilty until proven innocent, but is actually consistent with the characteristics of a police state.

The issue at hand is civil asset forfeiture, a legalistic way of saying the IRS can take as much of your money as they want without evidence you have committed any kind of crime.

But don't worry. They now say they are not going to do it anymore. They promise.

This is distinct from the IRS response to revelations that they put the bullseye on the president's political opponents. That, they say, was unauthorized and perpetrated by a few rogue agents in Cincinnati. Nothing to see there.

This time, they cannot argue with the facts.

As part of the government's war on drugs, and as a means of detecting terrorist activity, laws were passed that require banks to report all cash deposits of more than \$10,000, but also require those banks to report all transactions *they believe might be designed to skirt the reporting rule*. The result is that seizures have increased more than 500% in recent years, from 114 in 2005 to 639 in 2012. But the heart of the matter is that the IRS [has been](#) using these laws to attack people who are clearly not criminals. In only 20 percent of the cases were any criminal charges even pursued.

So once the IRS figured out no criminal activity took place in 80% of these seizures, you would assume the money was returned. But you would be wrong. Forfeiture is so nefarious because after the government confiscates your property, you can get it back only if you take them to court and prove that you had it legally, and that it should not have been taken in the first place. This obviously presents a couple of major problems. First, you are forced to prove yourself innocent, which turns the legal system on its head, and second, you are likely to roll up a five or six figure legal bill in fighting against a powerful government agency with a virtually unlimited budget.

One of the many [victims](#) is a Long Island candy and cigarette distribution company which made daily cash deposits, usually under \$10,000. The IRS seized \$447,000 from the company and

refused to return it, despite the fact there was no crime to prosecute. They instead offered a partial settlement.

Forfeiture law is based on the notion that property itself, not a person, can be guilty. As the Cato Institute's Roger Pilon [puts it](#):

Finding its origins in the Old Testament and in medieval doctrine, in the idea that animals and even inanimate objects involved in wrongdoing could be sacrificed in atonement or forfeited to the Crown, modern forfeiture law, filtered through early American admiralty and customs law, has simply carried forward, uncritically, the practice of charging things.

Thus, officials today can seize a person's property, real or chattel, without notice or hearing, upon an ex parte showing of mere probable cause to believe that the property has somehow been "involved" in a crime. Neither the owner nor anyone else need be charged with a crime, for the action, again, is against the thing.

It is called "structuring" when someone does their banking in a manner designed to skirt the reporting law. It doesn't matter if you "structured" your deposits simply because you are not fond of prying eyes and were not doing anything nefarious. The mere fact that you tried to avoid reporting by, for example, making two smaller deposits on successive days instead of one larger one, makes you the subject of a federal criminal investigation. More importantly, in the eyes of the IRS, it could make your money itself criminal and subject to forfeiture.

One of the enduring blind spots for many conservatives is their lack of skepticism about granting the government more power when the justification is law enforcement of almost any kind. Terrorism and asymmetrical warfare are existential threats to the United States, but so is the potential for an ever more powerful state that can simply crush citizens under its boot. Even if we don't question the motives of those who argue for granting even more power to government agents, and are willing to assume that all prosecutors and police really want are new powers and authorities to go after drug dealers, jihadists and pedophiles, are we willing to accept the assumption that these expanded powers will not be abused going forward?

History has taught us to always assume that any powers granted will be wielded by many who have, to put it mildly, ulterior motives, and thus should be kept to a minimum.

Republicans have at times been at the forefront of reform on this issue. The late Henry Hyde, best known for the Hyde Amendment which banned the use of certain federal funds to pay for abortions, was also an early leader in recognizing the outrageous abuses perpetrated by the government against the citizenry under civil asset forfeiture provisions. So much so that he wrote a book in 1995 entitled *Forfeiting Our Property Rights: Is Your Property Safe From Seizure?* Of course, the answer to the book's question is no, and Hyde tried to do something about it. In the 104th Congress, he introduced the [Civil Asset Forfeiture Reform Act](#). It did not pass, but it does provide a starting point for reform that can at least assure such minimal protections as court-appointed counsel for those whose property was seized.

The new policy at the IRS is just that, a change in policy, not a change in the law. There have been few issues a Republican-controlled Congress could work on with Barack Obama in the White House, but this may be one of them. It would be hard for any president to veto legislation that seeks to correct such chilling violations of civil liberties. And it may be one of the few meaningful bills the GOP can actually get passed into law before the next presidential election.