

ISSUE BRIEF

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Civil Asset Forfeiture Reform Goes Mainstream

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Civil asset forfeiture enables law enforcement agencies to seize money and property that they suspect is being used to commit a crime or represents profits from criminal activity. Law enforcement agencies do not need to convict or even charge the property owner to make these seizures. Civil asset forfeiture was intended to be used as a tool to combat organized crime, but now law enforcement officers target property and property owners on the mere suspicion of wrongdoing.

The number of civil asset forfeiture abuses—and some particularly egregious cases—have drawn the attention of news media and even late-night comedians. The increased attention being paid to this problem may lead to real reform.

A Program Ripe for Abuse

Law enforcement agencies from local police to the Internal Revenue Service (IRS) are encouraged to seize money and property through forfeiture because that money and property goes to their organizations and supplements their budgets. In many states, police agencies keep 100 percent of whatever they seize. A few states try to limit “policing for profit” by placing restrictions on how funds can be forfeited or how the funds can be spent. Even in those states, however, a process known as “equitable shar-

ing” offers a workaround to circumvent such restrictions by allowing local authorities who turn seized assets over to federal authorities for additional proceedings to keep up to 80 percent of any resulting forfeiture.¹ The perverse incentives are clear: More seizures mean more money for the government.

Civil forfeiture laws have encouraged the police to take property from entirely innocent parties, some of whom cannot afford to pay a lawyer to recover what the police have taken. As Heritage has pointed out, the problem with civil asset forfeiture is that the program is ripe for abuse:

Law enforcement agencies have become increasingly beholden to the financing civil forfeiture provides, allowing them to purchase equipment and finance special task forces outside the scope of the regular political process. One need not be an expert to see the perverse incentives built into a system that pins officers’ continued employment or advancement on their ability to seize cash and property.²

Increased Media Scrutiny

In a high-profile examination of the topic, *The New York Times* recently reported on an IRS practice of seizing control of personal bank accounts without ever charging or convicting the owner.³ Carole Hinders, owner and operator of a restaurant in Arnolds Park, Iowa, deposited the cash earnings from her restaurant into her bank account in increments of less than \$10,000. The IRS requires small businesses to report cash deposits over \$10,000, and it is against the law to “structure” deposits for the

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purpose of avoiding the reporting requirement.⁴ On the suspicion that Hinderers was structuring her deposits, the IRS seized nearly \$33,000 from her checking account without formally charging her with any crime.⁵ The Institute for Justice estimates that the IRS made 639 of these types of seizures in 2012; only one in five of these seizures was prosecuted as a criminal structuring case.⁶

Bank accounts are not the only things the government can seize through civil asset forfeiture: Cash, cars, and even buildings can be taken on the mere suspicion that they are being used for criminal purposes. A Philadelphia couple was evicted from their home after it was seized by the police.⁷ Because their son was arrested for selling \$40 worth of heroin out of the home, authorities sought forfeiture of the property on the theory that the house was being used to facilitate drug-related activities—activities his parents knew nothing about. This incident is not uncommon. Philadelphia officials have seized more than 1,000 houses, approximately 3,300 vehicles, and roughly \$44 million in cash in the past 10 years.

John Oliver, host of HBO's comedy show *Last Week Tonight with John Oliver*, produced an extended segment for his show on civil asset forfeiture that mocked law enforcement agencies who abuse it.⁸ The segment included a clip of a police chief in Columbia, Missouri, stating in a public hearing that seized assets were “pennies from heaven” that the

department used to buy “toys.” Oliver then cited several outrageous ways that various departments have used forfeiture funds: A police department in Montgomery County, Texas, purchased a margarita machine for office parties, and another department in Worcester, Massachusetts, purchased a Zamboni ice resurfacing machine.⁹

Presumed Guilty

Compounding the civil asset forfeiture problem is the difficulty that innocent people face to reclaim their money or property from the government once it has been seized. If the government demonstrates that the seized asset was being used for an illegal purpose, the owner of that asset has the burden of proving by a preponderance of the evidence that he was an “innocent owner,” who was neither aware of nor consented to the unlawful use of his property and did everything that was reasonably possible to prevent its unlawful use.¹⁰ In other words, once property has been seized, the owner is essentially presumed guilty.

Establishing a defense to prove innocence and recover one's property can be a daunting task. The legal fees alone in a civil asset forfeiture proceeding can easily cost around \$20,000 or more.¹¹ As Heritage has noted, many people cut deals and “allow police to keep part of what is seized, or lose it altogether, simply because getting a lawyer is often more costly than the value of what was taken.”¹²

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1. Jason Snead and Andrew Kloster, “Civil Forfeiture Criticized in Congress,” *The Daily Signal*, June 5, 2014, <http://dailysignal.com/2014/06/05/civil-forfeiture-criticized-congress/>.
 2. Jason Snead and Andrew Kloster, “Time to Change Course: Stop Letting Police Seize Property from Innocent People,” *The Daily Signal*, September 30, 2014, <http://dailysignal.com/2014/09/30/time-to-change-course-stop-letting-police-seize-property-from-innocent-people/>.
 3. Shaila Dewan, “Law Lets I.R.S. Seize Accounts on Suspicion, No Crime Required,” *The New York Times*, October 25, 2014, http://www.nytimes.com/2014/10/26/us/law-lets-irs-seize-accounts-on-suspicion-no-crime-required.html?_r=0 (accessed November 13, 2014).
 4. 31 USC § 5324.
 5. Daniel P. Finney, “Forfeiture Target Calls It ‘a Violation of Civil Rights,’” *The Des Moines Register*, November 2, 2014, <http://www.desmoinesregister.com/story/news/crime-and-courts/2014/11/02/civil-forfeiture-iowa-carole-hinders-arnolds-park/18362299/> (accessed November 13, 2014).
 6. Dewan, “Law Lets I.R.S. Seize Accounts on Suspicion, No Crime Required.”
 7. Pamela Brown, “Parents’ House Seized after Son’s Drug Bust,” *CNN*, September 8, 2014, <http://www.cnn.com/2014/09/03/us/philadelphia-drug-bust-house-seizure/> (accessed November 13, 2014).
 8. “Last Week Tonight with John Oliver: Civil Forfeiture (HBO),” YouTube video, October 5, 2014, <https://www.youtube.com/watch?v=3kEpZWGgJks> (accessed November 13, 2014). Contains profanity.
 9. *Ibid.*
 10. 18 USC § 983.
 11. Dewan, “Law Lets I.R.S. Seize Accounts on Suspicion, No Crime Required.”
 12. Jason Snead and Andrew Kloster, “Time to Change Course.”
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Reforming Civil Asset Forfeiture

Due in part to the increased scrutiny from media outlets, various reforms have been proposed to address the problems with civil asset forfeiture. Senator Rand Paul (R-KY) introduced the Fifth Amendment Integrity Restoration Act that would, among other reforms, end equitable sharing altogether.¹³ Representative Tim Walberg (R-MI) introduced the Civil Asset Forfeiture Reform Act that would change the burden of proof in civil asset forfeiture proceedings and require that the government offer “clear and convincing” evidence that the property was being used for illegal purposes.¹⁴ The current standard relies simply on a preponderance of the evidence, a much lower standard for the government to meet.

Others have called for the practice to be stopped altogether. After seeing the abuses of civil asset for-

feiture, John Yoder and Brad Yates, two of the architects of the expansion of federal forfeiture in the 1980s, publicly asserted that the “program began with good intentions but now, having failed in both purpose and execution, it should be abolished.”¹⁵

Conclusion

Much work needs to be done in order to right the wrongs perpetrated by civil asset forfeiture, but it is a welcome sign that the media are taking a keen interest in the program and demanding change. If the American people want to ensure justice in the justice system, reforming the current civil asset forfeiture practices is an excellent place to start.

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13. Fifth Amendment Integrity Restoration Act of 2014, S. 2644, 113th Cong., 2nd Sess.

14. Civil Asset Forfeiture Reform Act of 2014, H.R. 5212, 113th Cong., 2nd Sess.

15. John Yoder and Brad Cates, “Government Self-Interest Corrupted a Crime-Fighting Tool into an Evil,” *The Washington Post*, September 18, 2014, http://www.washingtonpost.com/opinions/abolish-the-civil-asset-forfeiture-program-we-helped-create/2014/09/18/72f089ac-3d02-11e4-b0ea-8141703bbf6f_story.html (accessed November 14, 2014).