Testimony of Timothy Dake of the Wisconsin GrandSons of Liberty to the
Assembly Committee on Criminal justice and Public Safety regarding AB537 – 28 January 2016

Presented by proxy of Robert Fischer

I testified before the Senate Committee on Labor and Government Reform on Tuesday in support of SB521, the companion bill to AB537. In listening to the testimony of those in opposition to the bill, I heard a consistent complaint – that the bill would end all asset forfeiture and along with it, drug task forces. The problem with this erroneous conclusion is that the bill doesn't end asset forfeiture, either criminal or civil; in fact, it doesn't touch criminal asset forfeiture at all, which was the subject of every example given by the law enforcement officers that testified on Tuesday.

We need to be clear, this bill addresses only civil asset forfeiture and not criminal asset forfeiture. To distinguish between the two, let's imagine that a warehouse full of marijuana is raided and the property is seized for forfeiture. The people involved were arrested and charged – that is one of the examples given on Tuesday . That type of action is criminal asset forfeiture not civil. Clearly evidence of a crime was present, in this instance a felony. Now imagine that a driver is on their way to buy another car and has cash in their possession with which to complete the transaction. Perhaps they do not trust banks. That driver is stopped by police who then seize the funds stating that the officer suspects that the cash is "drug money" – there is no evidence to support the assertion and the driver is neither arrested nor charged. There is no trial and certainly no conviction but the money is forfeited nonetheless without any judicial process whatsoever. This is civil asset forfeiture and it is a denial of constitutionally guaranteed due process. According to a Washington Post study conducted in 2014, this type of seizure took place 61,998 times across the United States between September 11, 2001 and mid-2014.

Sponsors of AB537 have told us that in their discussions with Wisconsin law enforcement, the police admit that in 97% of forfeitures, civil and criminal combined, there are charges levied. It is that 3% of incidents outstanding that do not involve the citizen being properly charged and convicted yet losing their property or cash without benefit of due process that concerns us. We are not advocating for the end of asset forfeiture, civil or criminal. We are advocating for the performance of due process in ALL cases through the requirement that one's property or cash is not forfeit without a conviction.

The second issue for which we are advocating in favor, is that of making the forfeiture in proportion to the offense. As an example, imagine a 20 year-old college student, driving a vehicle belonging to his parent or grandparent, in possession of alcohol. This underage possession is a Class C misdemeanor in Wisconsin and the first time punishment is a $500 fine. Yet, we have officers seizing a vehicle worth $10,000 or more as punishment without ever charging the underage driver. The incentive for an officer to seize thus becomes greater than the incentive for an officer to arrest.

We appreciate the work and the dangers faced by our law enforcement officers. We understand the value and necessity of asset forfeiture, civil and criminal, to law enforcement as a crime fighting tool and, once again, we do not want that important tool eliminated. But we are concerned that civil asset forfeiture is skewing the perspective of police departments. When we expect the police, whom we employ to protect us and to deter theft, to commit theft through an

incentive program we are changing the mission of our police from to preserve and protect the public to a mission to pillage and plunder the public. When we alter the criteria by which we judge the effectiveness of a law enforcement department from the number of arrests made and crimes solved to that of the number of dollars seized and the amount of property taken then we cannot wonder why crime increases and respect for law and order decreases.

The FBI has reported that for calendar year 2014, nationwide, burglars took an estimated $3.6 billion in cash and property whereas, for the same period, law enforcement seized $4.5 billion in cash and property – 25% more than the criminals. This seizure activity has not gone unnoticed. In September of 2014, the Canadian Broadcasting Company reported that the Canadian federal government was cautioning its citizens not to carry large amounts of cash when traveling in the United States. The CBC stressed that caution is due to the rampant abuse of civil asset forfeiture by American law enforcement officers.

Article I, Section 8, Clause 1 of our state constitution guarantees due process as do the 5th and 14th Amendments of the federal constitution. Combined with an 8th Amendment violation for excessive fines and punishes this means these seizures without charges and conviction would seem to violate no less than four constitutional provisions. That, as always, is the crux of our objection. If an individual has indeed committed a crime or an officer has, beyond a reasonable doubt, probable cause to believe that the individual has in fact committed a crime, then by all means charge and prosecute the offender. When a conviction is obtained, seize away! – but not until a conviction is made. The presumption that one is innocent until proven guilty is a well-established foundational principle of our legal system.

The Civil Asset Forfeiture has earned an egregious reputation based on the way modern civil asset forfeiture is applied, or perceived to be miss applied when dealing with or carrying cash.

This maligned reputation stems from the differences in personal rights and property rights; and how our modern judicial process separates people from their property and forces each into its own channel in the judicial process. A person is entitled to certain constitutional protections like public defenders. But, property must be defended at your own cost. The stark reality is this; when it comes to cash, the police merely need to have a suspicion that somehow your cash is involved with or is the proceeds of illicit activity, and they can seize it. Specifically, with regards to carrying cash; this turns innocent people into suspected criminals just because they happen to carry what a police officer may subjectively determine is a large amount of cash. Independent studies by the FBI and Federal Bureau of Engraving have shown most paper currency in circulation will have trace amounts of drug residue; this means K-9 units have unfair advantage when encountering cash. Yet, an alert by a police dog can be the only supporting reason for the officer to suspect illicit activity and seize your savings, or just hard earned money. Yes, you don't need to be part of drug culture to have tainted money on you. Somehow, through Civil Asset Forfeiture, carrying legal tender has become a quasi-illegal act.

Because of the expense of defending your seized property, it's not uncommon for the victim to forfeit the property rather incur the expense of defending the innocence of their property. The result is that it is easier to lose your property than fight for it.

Last year, New Mexico and Wyoming passed sweeping reforms. This year, both states are having problems breaking the cycle of civil asset forfeiture abuse. Wyoming is introducing a new bill to strengthen the requirement for a criminal conviction while New Mexico is having to sue the city of Albuquerque for failing to follow the new law. Since 2012, many states (NM, WY, GA, FL, MI, PA, OH, CA, to list a few) proposed bills to provide needed reforms only to meet stiff resistance from the law enforcement special interest lobby and government representatives who don't want the "pennies from heaven" to stop raining down into their budgets via civil asset forfeiture windfalls.

The abuses are so bad that they overshadow the good Criminal seizures and righteous busts being dutifully investigated by our dedicated law enforcement personnel. Civil asset forfeiture is branded with the nicknamed, "Policing for Profit" and several news team investigations revealed the outrageous acts of "Drug Enforcement" Task Forces most notably in Tennessee and Oklahoma. Yet, here is Wisconsin we also have these drug task forces and cite one; the Dane County Narcotics Task Force benefited from Civil Asset Forfeiture by over $407,000 in FY2014. Between the year 2000 and 2013, Wisconsin ranked 28th nationally for federal "Equitable Sharing" proceeds of $51 Million dollars… of which 80% can go to local agencies.

In a couple different interviews, law enforcement leaders have called the funds from Civil Asset Forfeiture "pennies from heaven" since it helps make up budgetary shortfalls as elected officials trim police budgets to spent those funds elsewhere. Milwaukee's Journal Sentinel newspaper ran an article in 2012 on uses of the civil asset forfeiture proceeds by the Milwaukee Sheriff Department. The Fox Valley "Metro Enforcement Group" netted $394,000 dollars in 2012. In a newspaper article from 2014, St. Croix County announced they were going to step up efforts to keep confiscated cash.

As it is, Assembly Bill 537 stands to make needed changes to Wisconsin's Civil Asset Forfeiture statutes. It is a good bill. It preserves the means for law enforcement to reap the proceeds from good police work and solid convictions of real criminals. It removes the incentive to "Police for Profit" and adds a mechanism for transparency that should help disclose what the various levels of government are doing in the war on crime.

Bottom line: AB537 does the right things, while it protects the constitutional rights of the citizens and it preserves the dignity of our law enforcement officers. These reasons are why the Wisconsin GrandSons of Liberty support the bill and ask that this committee approve AB537.

Once again, Representatives, thank you for the opportunity to address you today.