

Wisconsin Grand *Sons of Liberty*
ISSUE ANALYSIS & POSITION STATEMENT -#21
CIVIL ASSET FORFEITURE

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Overview: Civil Asset Forfeiture originated in English common law; the value of an inanimate object could be forfeited to the English Crown as a penalty for carelessness resulting in the death of person. In the early years of the United States, it is estimated 70% of the federal budget came from seizing smuggling ships and their cargo. Early property seizures were done because the owners of said property were usually in other countries where the possibility of extradition and justice was severely limited. Over the years, the concept realigned to combat criminal activities. In our modern era, property seizure became the weapon of choice to combat many social and criminal problems.

Progressive View:

*Asset forfeiture can remove the tools, equipment, cash flow, profit, and, sometimes, the product itself, from the criminals and the criminal organization, rendering large criminal organizations powerless to operate.

*As local police departments face shrinking budgets, Civil Asset Forfeiture allows for creative strategies to pad their budgets via this enforcement tool.

*Asset forfeiture provides a valuable tool for law enforcement officials, as it helps strike at the economic foundations of criminal activity.

Conservative View:

*No one should lose their property to the state without first being convicted of a crime.

*Under the rubric of "Civil Forfeiture" property owners receive fewer protections than that of actual criminal defendants.

*Civil Asset Forfeiture assumes that inanimate objects such as cash, cars, homes, etc. can be "Guilty" of criminal activity even if the owner is never charged with a crime.

*The burden of proof to seize private property is "merely suspicion" of being party to a crime or "Probable Cause" of illicit activity. It does not require conviction of or even charging the property owner with a crime to initiate the forfeiture process.

*Government agencies frequently get to keep the proceeds of seized and sold private property for their own budgetary use which results in these agencies having a substantial incentive to "police for profit" resulting in seizing as much private property as possible.

*Cash currency is improperly the prime target of police departments since estimates are that 90% of all paper currency in circulation has trace amounts of Cocaine residue.

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PROs:

- In colonial times and in our modern ear, smuggling was a way to avoid paying tariffs or bringing illicit items into the country. The actual property owner may be in a foreign country or indirectly involved in the criminal operation so the forfeiture action removes the ability to continue the illicit activity.
- The idea of losing personal property serves as a Crime Deterrent for some people.
- It has been used successfully to target a variety of crime problems, ranging from illegal drug sales, prostitution, street racing, nuisance properties and drunk driving.

CONs:

- Civil Forfeiture undermines due process and violates personal property rights as protected by the Fifth Amendment to the US Constitution.
- Property is considered “Guilty until Proven Innocent” as no clearly defined statutes exist to ensure seized property is returned to the rightful owners if no charges are filed in a timely manner or if the person is ultimately found not guilty of any charges made by law enforcement departments.
- Effective crime control strategy needs to be balanced between threatening people's rights while targeting criminal persons.
- Forfeiture actions are driven by local budget politics rather than standards of criminal activity and objective criteria for seizing property of convicted criminals.
- Keeping proceeds from sale of confiscated assets incentivizes routinely seizing property without clear and unequivocal evidence of criminal intent.
- Civil Forfeiture can be independent of criminal proceedings and it is estimated over 60% of civil forfeitures are not accompanied by criminal charges.

Law:

- Civil Forfeiture can occur via Three Mechanisms”
 - Summary Forfeiture of contraband items (drugs, illegal items, etc.)
 - Administrative Forfeiture (assets valued under \$500k) law enforcement needs “Probable Cause” to initiate the forfeiture action (the most common method)
 - Civil Judicial Forfeiture is similar to a trial before a judge and the real property is valued in excess of \$500k.
- Wisconsin’s Statutory Law ([Wis. Stat. 961.55](#)), defines what is subject to forfeiture
- Wisconsin’s Statute Law ([Wis. Stat. 961.555](#)) defines the Forfeiture Proceedings
- Partial List of the 400+ Federal Forfeiture Laws:
 - 18 USC § 492: Forfeiture of counterfeit paraphernalia
 - 18 USC § 844: Forfeitures relating to *explosive law* violations
 - 18 USC § 924: Forfeitures relating to firearms violations
 - 18 USC § 1955: Forfeitures related to illegal gambling businesses
 - 18 USC Chapter 96: Racketeer Influenced and Corrupt Organizations (RICO)
 - 19 USC § 1607: Forfeiture provisions for seizures valued \$500,000 or less
 - 21 USC § 881: Forfeiture provisions under the CSA
 - 49 USC § 80303: Forfeitures of conveyances carrying contraband.

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Legislation:

WISCONSIN:

- *PROPOSAL*: for a Wisconsin Civil Asset Forfeiture Reform Act:
- Raise the required level of proof to “Clear and Convincing Evidence” of criminal activity.
- Criminal Charges must accompany the Administrative Forfeiture process.
- Require the immediate and automatic return of confiscated property if the owner is found not guilty or if no criminal charges are filed within 2 weeks.
- Provision to hold confiscating agency responsible for returning the seized property in the same condition as when confiscated, and in the case of cash the agency must return 100% of the value of the seized cash.
- For currency, prohibit the singular basis of seizure being a drug dog keying on cash; require corroborating physical evidence to confiscate any amount of cash money.
- Reiterate that carrying cash is not suspicious activity no matter the quantity on hand.
- Provide an exemption for property in use by another person for illicit activity without the consent or knowledge of the actual property owner
- No one should lose their property to the state without being convicted of a crime.

NATIONALLY:

- Rep. Tim Walberg [introduced H.R. 5212](#), the Civil Asset Forfeiture Reform Act, 7/28/2014. No Action taken after Introduction to House.
- Rep. Henry Hyde sponsored [HR 1658](#), the Civil Asset Forfeiture Reform Act, 5/4/1999. Signed by President Clinton and first Civil Forfeiture reform in 30 years.
- How the Press Exaggerated Holder’s Forfeiture Reform ([Reason.com blog](#))

OTHER STATES:

Washington DC initiates Civil Forfeiture Reform:

<http://www.heritage.org/research/reports/2014/12/washington-dc-civil-forfeiture-reform-a-model-for-the-states>

Minnesota enacts law requiring a guilty verdict before it can seize property:

https://www.revisor.mn.gov/bills/text.php?number=SF874&version=2&session=ls88&session_year=2013&session_number=0

Georgia’s forfeiture laws viewed harshly:

<http://www.politifact.com/georgia/statements/2014/mar/03/americans-prosperity-georgia-chapter/georgias-forfeiture-laws-viewed-harshly/>

Bill would eliminate civil asset forfeiture in Wyoming:

http://trib.com/news/state-and-regional/govt-and-politics/bill-would-eliminate-civil-asset-forfeiture-in-wyoming/article_c374a4ce-13da-51d6-81c6-c4fff89388a7.html

Colorado Starts Reforming Civil Asset Forfeiture Law:

<https://selfgovern.com/colorado-starts-reforming-civil-asset-forfeiture-law/>

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Civil Forfeiture in the News:

- *1. US Attorney General hopeful joins in over \$2.2 Billion in Civil and Criminal forfeiture actions: <http://www.brooklyneagle.com/articles/us-attorney%E2%80%99s-office-eastern-district-ny-joins-over-22b-civil-criminal-actions-forefeitures>

- *2. *Proponent of Civil Forfeiture no longer a fan when it's "HIS" car being confiscated:* <http://www.sodahead.com/united-states/karma-proponent-of-civil-forfeiture-no-longer-a-fan-when-its-his-car-thats-being-confiscated/question-4323135/>

- *3. *United States vs. \$32,820.56 from Mrs. Lady's, Inc. Account*
<https://www.ij.org/iowa-forfeiture>

- *4. Homeowners Move to Suspend Philadelphia's Practice of Using Civil Forfeiture to Seize and Seal Homes Without Warning
<http://ij.org/philadelphia-forfeiture-local-release-9-8-2014>

- *5. Feds Seize Long Island Family Business' Entire Bank Account
<http://endforfeiture.com/feds-seize-long-island-family-business-entire-bank-account/>

- *6. Policing for Profit: The Abuse of Civil Asset Forfeiture
<http://www.ij.org/policing-for-profit-the-abuse-of-civil-asset-forfeiture-4>

- *7. Feds Seize Bank Account of Family Grocery Store
<http://www.ij.org/miforf>

- *8. Texas Statute Paves Way for Highway Robbery
<https://www.aclu.org/blog/racial-justice/texas-statute-paves-way-highway-robbery>

- *9. DEA Program to Record American's Whereabouts with License Plate Readers <https://www.aclu.org/blog/technology-and-liberty-criminal-law-reform/foia-documents-reveal-massive-dea-program-record-ame>

- *10. U.S. Department of Justice Shuts Down Major Aspect of its Civil Forfeiture Program - <http://endforfeiture.com/u-s-department-of-justice-shuts-down-major-aspect-of-its-civil-forfeiture-program/>

- *11. Those Hamiltons and Jacksons Carry Some Cocaine:
<http://www.nytimes.com/2009/08/18/science/18obcoke.html? r=0>

- *12. Testing the Incentives of Civil Forfeiture:
http://www.ij.org/images/pdf_folder/private_property/bad-apples-bad-laws.pdf

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CONSTITUTIONALITY:

“Civil Forfeiture” was recognized in British Common Law by our Founding Fathers but was never added to the U.S. Constitution.

The 4th Amendment to the U.S. Constitution states: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

The 5th Amendment to the U.S. Constitution states: “...nor be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation”.

Relationship to the Principles of the Founders of the Republic:

Free Markets: Taking property without a criminal conviction violates the agreement between citizens and their government involving property rights. The government should not be confiscating personal property from innocent citizens without criminal charges, and if the person is found not guilty then the government must immediately return the property in the condition originally confiscated or better.

Constitutionally Limited Government: Lowering the evidentiary bar to Reasonable Suspicion combined with no requirement for a criminal conviction infringes on rights guaranteed to all Americans under the 4th and 5th Amendments.

Fiscal Responsibility: Current Civil Asset Forfeiture laws encourage law enforcement to get creative with their budgets to increase funding. The result has been termed “Policing for Profit” and also contributes to the militarization of our police departments.

Additional Info/Reference Sites:

- **Problem Oriented Policing (Nov 2008)** in Response Guide #7: This guide explains the advantages and disadvantages to police of using asset forfeiture as a response to various crime problems. It also reviews several of the possible novel uses of forfeiture.
- **HR 1658 Analysis:** Bill provided a start to reforming and correcting abuses forfeiture laws before the year 2000. <http://www.kessleronforfeiture.com/tag/h-r-1658/>
- **FBI position on Civil Forfeiture:** “the ability of the government to forfeit property connected with criminal activity can be an effective law enforcement tool by reducing the incentive for illegal conduct.” Asset forfeiture “takes the profit out of crime” by helping to eliminate the ability of the offender to command resources necessary to

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continue illegal activities.” [http://www.fbi.gov/about-us/investigate/white collar/asset-forfeiture](http://www.fbi.gov/about-us/investigate/white-collar/asset-forfeiture)