



February 23, 2018

Oregon Progressive Party Position on Bill at 2018 Session of Oregon Legislature:

HB 4056A: Oppose

Dear Committee:

The Oregon Progressive Party continues to oppose this bill, which, according to its revised Staff Measure Summary:

- Designates 10 percent of forfeiture proceeds for scholarship program for children of public safety officers.
- Modifies eligibility requirements for scholarship.
- Specifies length and amount of scholarship.
- Defines key terms, such as child.
- Allows disbursement of certain forfeiture proceeds for support of all specialty courts.

The only change made by the House was to change the words "family members" to "children." This does not fix the underlying problem. Under this bill, 10% of the proceeds of civil forfeitures would be allocated to the Oregon 529 College Savings Plans "for children of public safety officers." Thus, this bill would give the law enforcement officers a direct financial incentive to seize property from those accused of crime.

Law enforcement personnel should not be given personal financial incentive to seize property. They can do their jobs without being offered such a conflict of interest. Creating that conflict of interest will impair the credibility of law enforcement agencies.

We suggest that the Legislature directly appropriate the same amount of funds to the Oregon 529 College Savings Plans as would be expected to be generated for that purpose of HB 4056. Doing so would cost the government nothing extra, because the 10% of civil forfeiture funds that HB 4056 directs to that purpose would instead fund other government functions--functions that do not place public safety officers into a conflict of interest.

We have attached an article from the conservative *National Review* that describes the conflict of interest posed when police seizures result in financial benefit for the police:

Asset forfeiture creates an obvious conflict of interest for law-enforcement agencies: Because the proceeds go into their budgets, they have a vested

interest in maximizing the use of forfeiture in their jurisdictions. You will be less than surprised to learn that this has produced some serious abuses, and the law-enforcement tool intended to be used against centimillionaire cartel bosses inevitably ends up being used to harass — and loot — nobodies in East Funky. That is the nature of such innovations in government.

The ACLU states:

Police abuse of civil asset forfeiture laws has shaken our nation's conscience. Civil forfeiture allows police to seize — and then keep or sell — any property they allege is involved in a crime. Owners need not ever be arrested or convicted of a crime for their cash, cars, or even real estate to be taken away permanently by the government.

Forfeiture was originally presented as a way to cripple large-scale criminal enterprises by diverting their resources. But today, aided by deeply flawed federal and state laws, many police departments use forfeiture to benefit their bottom lines, **making seizures motivated by profit rather than crime-fighting**. For people whose property has been seized through civil asset forfeiture, legally regaining such property is notoriously difficult and expensive, with costs sometimes exceeding the value of the property.

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Asset Forfeiture: Police Abuse It All the Time

National Review June 25, 2017

Kevin D. Williamson is National Review's roving correspondent.



(Photo: Hriana/Dreamstime)

Police can take your money or property and keep it, even if no charges are filed.

Clarence Thomas is famously taciturn on the bench. But his few words carry a great deal of weight.

Though the matter has not yet come before the Supreme Court, Justice Thomas is very much at the center of a federal case with a name that sounds like it ought to have come from a William Gaddis novel: *United States v. Seventeen Thousand Nine Hundred Dollars in United States Currency*. The case has the potential to help rein in one of the most abused powers enjoyed by American government: asset forfeiture.

The case involves a New York couple, Angela Rodriguez and Joyce Copeland, who lost the above-mentioned \$17,900 to police in a case in which no charges were ever filed against them. They sued for recovery of their money, and — incredibly — a federal court found that they lacked standing to sue for possession of their own assets. The D.C. Circuit Court sees things differently and has ruled in favor of allowing Rodriguez and Copeland to at least have their day in court and attempt to reclaim their money.

Current asset-forfeiture practice, like much that is wrong with U.S. law enforcement, has its roots in the so-called war on drugs. The practice of seizing assets is ancient: It dates back at least to 17th-century maritime law, under which ships illegally transporting goods would be seized, along with the contraband inside. Asset forfeiture was used against bootleggers during Prohibition, but it really came into its own in the Reagan era, when the Comprehensive Crime Control Act of 1984 empowered federal and local law-enforcement agencies to take property from drug kingpins for their own use. The sudden, unlikely inventory of exotic cars and yachts possessed by law-enforcement agencies inspired that great cultural document of the 1980s: *Miami Vice*.

Asset forfeiture creates an obvious conflict of interest for law-enforcement agencies: Because the proceeds go into their budgets, they have a vested interest in maximizing the use of forfeiture in their jurisdictions. You will be less than surprised to learn that this has produced some serious abuses, and the law-enforcement tool intended to be used against centimillionaire cartel bosses inevitably ends up being used to harass — and loot — nobodies in East Funky. That is the nature of such innovations in government. It is why the city won't fix your potholes but the revenue-producing red-light camera is never on the fritz for long.

(Here's a prediction: In a fashion similar to that of the weapons in the war on drugs, the tools created for the so-called war on terror are going to present acute problems for Americans in 20 years — far beyond what they already have — as their metastatic spread throughout government continues.)

The spreading use of forfeiture has of course drawn resistance amid concerns about due process and outright abuse. The Supreme Court declined to hear a high-profile forfeiture case, *Leonard v. Texas*, for procedural reasons. But Justice Thomas issued a statement on the case that was both erudite and blistering. It was also very humane: Justice Thomas has a keen interest in the literary details as well as the legal ones. He wrote:

This system — where police can seize property with limited judicial oversight and retain it for their own use — has led to egregious and well-chronicled abuses. According to one nationally publicized report, for example, police in the town of Tenaha, Texas, regularly seized the property of out-of-town drivers passing through and collaborated with the district attorney to coerce them into signing waivers of their property rights. In one case, local officials threatened to file unsubstantiated felony charges against a Latino driver and his girlfriend and to place their children in foster care unless they signed a waiver. In another, they seized a black plant worker's car and all his property (including cash he planned to use for dental work), jailed him for a night, forced him to sign away his property, and then released him on the side of the road without a phone or money. He was forced to walk to a Wal-Mart, where he borrowed a stranger's phone to call his mother, who had to rent a car to pick him up.

These forfeiture operations frequently target the poor and other groups least able to defend their interests in forfeiture proceedings. Perversely, these same groups are often the most burdened by forfeiture. They are more likely to use cash than alternative forms of payment, like credit cards, which may be less susceptible to forfeiture. And they are more likely to suffer in their daily lives while they litigate for the return of a critical item of property, such as a car or a home.

The issue, Justice Thomas wrote, is “whether modern civil-forfeiture statutes can be squared with the Due Process Clause and our Nation’s history.” Because these asset-forfeiture proceedings are civil rather than criminal actions, their targets do not enjoy the ordinary procedural protections that they would if they were charged with crimes, the most important of those being jury trials and the heightened standard of evidence demanded in criminal proceedings. Forfeiture cases in effect allow police to punish people for committing crimes without having to go to the trouble of proving that they have committed those crimes. And the fact that the police get to keep the money does not exactly discourage them.

The fact that the practice is a longstanding one does not mean that it is a constitutional one.

The fact that the practice is a longstanding one does not mean that it is a constitutional one. We are not seizing the unflagged vessels of smugglers at colonial ports; and even if we were, it is not clear, as Justice Thomas notes, that those seizures were permitted to advance as purely civil matters unconnected to any underlying criminal charge. Due process does not have a great many friends just now: Congressional Democrats have made a campaign out of revoking the civil rights of Americans put on secret government terrorism watch lists, even if those people have never been charged with, much less convicted of, any actual crime. These episodes are a constant reminder that what conservatives intend to conserve, and what progressives intend to progress away from, is Anglo-American liberalism, with its individual rights, procedural justice, and rule of law.

Leonard wasn’t the case that will be used to sort out forfeiture, but Justice Thomas’s *Leonard* statement was repeatedly cited in the ruling for the plaintiffs in *United States v. Seventeen Thousand Nine Hundred Dollars in United States Currency*. Justice Thomas may not say very much on the bench, but he has made it clear that when forfeiture finally does come before the nation’s highest court, at least one gimlet-eyed justice is going to be skeptical.

Justice Thomas Defends Victims of ‘Policing for Profit’
Trump Sides with the Sheriffs on Their Racket
When Cops Seize Property: ‘We Want the Cash. Good Agents Chase Cash.’

Source: <https://www.nationalreview.com/2017/06/civil-asset-forfeiture-police-abuse-clarence-thomas/>

Through civil asset forfeiture police are stealing from citizens

Monetary gain shouldn't be the focus of our police departments.

USA Today May 18, 2017

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GTY 660665590 A CLJ HUM POC USA NYIn most of the United States, police can seize your property without charging or convicting you of a crime.

It's called civil asset forfeiture. If it doesn't sound fair to you, you're not alone.

But thanks to a bipartisan coalition of grassroots volunteers across the country, lawmakers in at least 15 states are weighing legislation to do away with the practice.

Under civil asset forfeiture, police can and have seized cash, cars and even houses from people who ultimately are found innocent — and [pocketed the proceeds](#). Many police departments [depend on such seizures](#) to bolster their budgets, and have fought tooth and nail to [defend the practice](#) despite the public outcry. Yet the tide is beginning to turn. In a sea change of public opinion that would have seemed impossible even a decade ago, people of all political stripes are beginning to recognize that there are some serious concerns with this practice — and lawmakers are taking note.

Related content:

In Iowa, which just passed legislation to reform civil asset forfeiture, lawmakers [targeted the burden of proof](#) as a central problem with the practice. To seize property, it used to be that police in the Hawkeye State needed only to prove that it was connected to a crime by a preponderance of the evidence — a legal term meaning stronger evidence in favor than not. The preponderance of the evidence standard is typically used in civil cases, and it's a weaker test than the "clear and convincing" or "beyond a reasonable doubt" standards needed for convictions in criminal trials.

Now, the standard of proof has been raised to "clear and convincing," and prosecutors must obtain a criminal conviction to seize property worth less than \$5,000. While this is a start, the bill takes only baby steps toward addressing what Lee McGrath, counsel for the Institute for Justice (IJ), has called the "perverse financial incentives that warp law enforcement priorities to pursue cash instead of criminals." Still, any progress is welcome.

Challenging the status quo

Other states are taking different approaches. In Tennessee, lawmakers are voting on requirements that the proceeds of forfeitures be deposited in the state's general fund, hoping to remove the incentive for police to unjustly seize property. This approach seems to have merit. According to IJ's [Dick Carpenter](#), research shows that "the financial incentives baked into civil forfeiture laws influence law enforcement behavior" because they often [keep 100% of funds](#) raised through forfeiture. From 2009 to 2014, Tennessee law enforcement [collected nearly \\$86 million](#) in forfeiture, not including the value of all the cars and electronics they seized.

Yet even where states enact restrictions, local departments find a way to get around the rules. By exploiting a process called "equitable sharing," law enforcement decision-makers can circumvent restrictions by cooperating with federal agencies, which then share up to 80% of the proceeds with them. In New Hampshire, police departments garnered an average of more than [\\$1 million a year from 2000 to 2013](#) through this tactic. In response, the state legislature is working on a bill to close that loophole.

Raising standards of proof, eliminating perverse incentives, and preventing agencies from skirting local rules by cooperating with the federal government are the key planks of a reform platform that is gaining traction in state legislatures.

Voters across the nation should applaud legislators and governors for taking important steps forward and demand that their own representatives support continued reforms changes. Enacting these reforms to fix this problematic incentive system gets us closer to restoring the promise of the Bill of Rights: that no state shall deprive any person of life, liberty, or property without due process of law.

Source: <https://www.usatoday.com/story/opinion/2017/05/18/how-police-steal-citizens/101719870/>