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Ohio Needs and Wants Civil Asset Forfeiture Reform

By Daniel Dew

Civil asset forfeiture is a unique legal procedure that allows the government to file a civil lawsuit to take full ownership of private property without a criminal conviction. Ohio's civil asset forfeiture rules need reform in order to better protect citizens, remedy bad incentives, avoid federal "equitable sharing," and make the process more transparent. Reform can be accomplished without sacrificing law enforcement's recognized need to seize property used in the commission of a crime. An overwhelming majority of Ohioans favor reforming the current system.[1]

Require a Criminal Conviction

Under Ohio's current civil asset forfeiture rules, property may be permanently seized without a criminal conviction—and even without criminal charges being filed. Because a civil asset forfeiture suit is a civil action brought against the property itself—rather than an individual—many constitutional protections do not apply to the proceedings.

In a criminal case, for example, the government must convince a jury of the defendant's guilt "beyond a reasonable doubt"—a tall task for prosecutors. A civil suit, however, requires only the lower "preponderance of the evidence" standard. In a criminal proceeding, defendants are guaranteed the right to legal counsel. Civil asset forfeiture proceedings offer no such guarantee. Thus, Ohio's civil asset forfeiture rules permit permanent forfeiture if the court finds—without a jury and with no right to legal counsel—that just over 50% of the evidence shows that the property at issue was a proceed of criminal activity. Consider, for instance, that money is often seized for "drug-related crimes" because it tests positive for narcotics. The chances are good that even the money in your wallet will test positive for drugs—more than 90% of U.S. currency does.[2] That one fact alone should not be enough to confiscate the bills in your back pocket—but in Ohio, it is.

Criminal asset forfeiture, however, would provide Ohio a better system with more robust constitutional protections. Ohio should require a criminal conviction before the government may take ownership of the defendant's property and proceeds of the convict's crime. Of course,

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1 New Polling Shows Ohioans Overwhelmingly Support Reforms to Civil Asset Forfeiture Process, Fix Forfeiture, available at http://www.fixforfeiture.org/new-polling-shows-ohioans-overwhelmingly-support-reforms-to-civil-asset-forfeiture-process/.

2 Madison Park, 90 percent of U.S. bills carry traces of cocaine, CNN, (August 17, 2009), available at http://www.cnn.com/2009/HEALTH/08/14/cocaine.traces.money/.

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there will be cases when a criminal conviction may be impossible, but reforms can and should be crafted to account for such cases and provide for reasonable exceptions under the law.

Remedy Bad Incentives

Civil asset forfeiture currently creates bad incentives and taints the perception of law enforcement in too many communities. Reforms can help address both of these problems.

Under the current asset forfeiture rules, law enforcement agencies have an unseemly vested financial interest in seizing property because those agencies may keep some or all of the proceeds when the property is sold. By allowing agencies to keep the proceeds of confiscated property, the current rules create incentives for agents to seize more property. Such incentives only erode the community's confidence that its law enforcement officers are just and impartial. Reforms that remove such improper financial incentives from law enforcement agencies may help restore some of the community's trust and confidence.

End Equitable Sharing

Ohio should limit state and local law enforcement participation in the federal Equitable Sharing program. The Equitable Sharing program allows local law enforcement to invoke federal civil asset forfeiture laws instead of Ohio law to confiscate private property. The federal rules, however, may be even worse than Ohio law. Thus, any reforms that Ohio pursues must also end or strictly limit agency participation in Equitable Sharing. Without such reform, the state risks local agencies effectively nullifying the reform effort.

Require Accurate Reporting

Currently, Ohio's law enforcement agencies cannot and do not accurately report how many civil asset forfeitures they conduct, or how much revenue those forfeitures yield. Transparency is vital for good government. Without it, citizens grow skeptical of the very government and officers that protect and serve them. Ohio should reform its asset forfeiture rules to make forfeiture more transparent by requiring law enforcement to report publicly every item seized, its value, how it was seized and disposed of, and—if the agency is permitted to keep the forfeiture proceeds—to declare every expense made from the forfeited funds. Such reforms will build trust within the community and keep law enforcement accountable to the people it has sworn to serve.

Maintain Law Enforcement "Seizure" Procedures

Some may object that civil asset forfeiture reform will prevent law enforcement from performing its duties effectively. When property is confiscated at a traffic stop or a crime scene, for example, that property is "seized" because law enforcement has the required probable cause to believe that the property is contraband or was used to commit a crime. Rules governing such seizures need not change, and law enforcement officers may still perform their duties and make necessary seizures even without a criminal conviction.

Civil asset forfeiture, however, is different. Asset forfeiture transfers permanent ownership of the seized property to the state. Such forfeiture occurs through a different legal process—well after the initial search and seizure at a crime scene—and it is that process that requires reform.

Carefully crafted reforms will not impede law enforcement or make Ohio more attractive to drug cartels looking to hide illegal assets. Instead, civil asset forfeiture reform could extend constitutional protections to all Ohioans, remove improper financial incentives for enforcement agencies, improve relations between communities and their officers, and make local public servants more accountable to the people.

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About the Author

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In this capacity, Dew focuses on criminal justice policies that increase Ohioans' safety, make the criminal justice system fairer, and save taxpayer dollars. Dew works closely on civil asset forfeiture reform and provided policy guidance to Ohio's Criminal Justice Recodification Committee.

Dew earned his law degree from Cleveland Marshall College of Law, and his undergraduate degree from Utah State University.

Outside of work, Dew enjoys golf, Cleveland sports, and spending time with his wife, son, and two daughters.