



Written by [Joe Wolverton, II, J.D.](#) on December 29, 2015

## DOJ Suspends Asset Seizure Sharing; Value of Seized Property Exceeds That of Stolen Property

Citing significant cuts to its budget made in the recently enacted spending bill, the Department of Justice has suspended a program of sharing seized assets that has been incredibly profitable for local law enforcement for many years.

In a letter dated December 21, M. Kendall Day, head of the Justice Department's office of asset forfeiture and money laundering, informed state, local, and tribal law enforcement authorities that the program that allowed local police to benefit from seizing property from suspected criminals and reporting it to the feds is "deferring for the time being any equitable sharing payments" from the Asset Forfeiture Program.



The so-called "equitable sharing program" incentivizes state and local law enforcement to pursue suspected criminals under federal law rather than applicable state laws. This procedural decision paves the way for the police to rake in millions, up to 80 percent of the amount of property seized.

Day laments the loss of \$1.2 billion from the controversial civil asset forfeiture sharing budget, informing his "partners" in the program, "While we had hoped to minimize any adverse impact on state, local, and tribal law enforcement partners, the Department is deferring for the time being any equitable sharing payments from the Program."

"We will take all appropriate and necessary measures to minimize the impact of the rescission and reinstate sharing distributions as soon as practical and financially feasible," he adds.

He closed his letter by pleading with the police departments that relied on the money made off this unconstitutional seized asset sharing arrangement for "understanding and cooperation during these challenging times."

Challenging times, indeed — for the Constitution, specifically the Fourth Amendment and the principle of due process.

An important aspect of the asset seizure program is that the person whose property is seized — and subsequently spent by the police — need not ever be charged with a crime; mere suspicion is sufficient to satisfy the seizure requirements.

Civil asset forfeiture procedures are based on the premise that a person's property can be complicit in the commission of a crime. This is laughable and legally unreasonable. The Constitution was specifically written to protect citizens from this and all other forms of unreasonable searches and seizures (Fourth Amendment), as well as to place due process protections between the governors and the governed



(Fifth Amendment).

When it comes to civil asset forfeiture, the layers of constitutional violations multiply. Americans — who have been denied due process — are subjected to a financially crippling and liberty-depriving process of defending their ownership of their property. Such tyranny is anathema to the rule of law and the protections bequeathed to us by our Founders.

Some conservatives may argue that while it is sometimes misused, the power of civil asset forfeiture should be retained by police in order to punish “drug dealers.” But there is a constitutional problem in that premise, as well.

In the Constitution, the federal government was granted “few and defined” powers. These powers were listed (enumerated) so as to bind those who would obtain any sort of authority in the manifold offices of the federal government.

Alexander Hamilton explained that if the federal government acted outside the scope of its constitutional authority, then those acts were not laws; they were mere usurpations and they deserved to be treated as such.

Although it is unpopular in some conservative circles to talk about, the so-called “war on drugs” is one example of an area where the federal government has absolutely no constitutional authority to act.

Americans would go a long way toward eliminating the evil of civil asset forfeiture by demanding that federal representatives repeal the full panoply of federal drug regulations — “laws” that incentivize the “policing for profit” that fuels the forfeiture scheme.

Finally, in the letter announcing the provisional pause in the equitable sharing payments, the Justice Department informs law enforcement that “Funds already disbursed to state, local, and tribal agencies may continue to be expended and reported in accordance with the *Guide to Equitable Sharing*.”

*The New American* obtained a copy of this guide (published in 2009), and the “permissible uses” of the private property seized by the police and processed under the DOJ’s sharing program are astonishing, particularly in light of the fact that many of those whose property is being converted into police equipment *are never charged with any crime!*

First on the list of allowable purchases is “law enforcement investigations” which, among other things, specifically permit “payments to informants; ‘buy,’ ‘cash,’ or reward money; and the purchase of evidence.”

In other words, police can unconstitutionally seize your property and then use the proceeds obtained from that illegally obtained property to pay informants for information that could incriminate you or to buy evidence of your alleged criminal behavior.

In light of the increasing attention being paid to the use by local law enforcement of sophisticated surveillance equipment — particularly the StingRay tracking device — the fourth item on the list of proper expenditures of equitable sharing money is provocative.

The *Guide to Equitable Sharing* allows the police to purchase “electronic surveillance equipment, and vehicles.”

Once again, a person charged with no crime is powerless as police take his property, pay an informant for information, buy evidence against the target of the seizure, and then buy surveillance equipment with his (former) property.



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In yet another section under this same heading, state, local, and tribal law-enforcement agencies may use the proceeds from the equitable sharing program to make “cash transfers of shared funds from one state or local law enforcement agency to another.”

If, for example, police department A can't afford a StingRay device and the state police have some extra equitable asset sharing money lying around, they can send the poorer police agency the money necessary to buy the tracking technology, and the constitutional violations keep piling up and the Panopticon continues expanding.

Perhaps the most pernicious aspect of this temporarily halted program is the value of the property seized.

A story posted on the blog [ArmstrongEconomics](#) reports on the seriousness of the seizures and the remarkable comparison to another form of the illegal taking of property: theft. Martin Armstrong reports:

Between 1989 and 2010, U.S. attorneys seized an estimated \$12.6 billion in asset forfeiture cases. The growth rate during that time averaged +19.4% annually. In 2010 alone, the value of assets seized grew by +52.8% from 2009 and was six times greater than the total for 1989. Then by 2014, that number had ballooned to roughly \$4.5 billion for the year, making this 35% of the entire number of assets collected from 1989 to 2010 in a single year. According to the FBI, the total amount of goods stolen by criminals in 2014 burglary offenses suffered an estimated \$3.9 billion in property losses. This means that the police are now taking more assets than the criminals.

The answer to this deplorable condition of the respect for fundamental liberties demonstrated by those in power in all levels of government is for the people to encourage state legislators to pass laws curtailing the civil asset forfeiture program in their states and to reinforce the due process requirements established by state and federal constitutions.

Several states have introduced such measures. Most recently, lawmakers in Wisconsin have introduced a bill that would prohibit any state agency from seizing a person's property prior to that person's conviction of a crime.

As the ultimate sovereigns in a Republic, the people should be outraged that their money is being “legally plundered” by the federal government (in the form of income and other taxes) and is being used to deprive people of property and due process through the subsidizing of unconstitutional searches and seizures.

*Photo of Attorney General Loretta Lynch with DOJ seal in background: AP Images*



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