Written by **Steve Byas** on January 22, 2016

Oklahoma Legislator Seeks to Rein In Civil Asset Forfeiture

In the case of *criminal asset forfeiture*, the accused is afforded all the constitutional and statutory procedural safeguards available under criminal law. With criminal forfeiture, the accused must be found guilty beyond a reasonable doubt before property is forfeited.

With *civil asset forfeiture*, on the other hand, no conviction is required. It is used by both federal government officials and state and local law enforcement officers to seize property that they suspect has been used in wrongdoing — without having to charge a person with wrongdoing.

Civil asset forfeiture laws are an assault upon the very concept of private property and the legal position that an accused person is innocent until found guilty beyond reasonable doubt.

And one state senator is doing something about it.

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Senator Kyle Loveless (shown — R-Okla. City) has taken up the fight to change civil asset forfeiture laws in the Sooner State. Despite arguments from Oklahomans who claim that their laws are different from those of other states, that does not appear to be the case.

Kaye Beach wrote in the *Oklahoma Constitution* newspaper,

> Over a five-year period, law enforcement officials in 12 Oklahoma counties seized more than $6 million in cash, almost $4 million of which was taken without any criminal charge. Records indicate that of the $6.1 million dollars taken, only $2.1 million was seized from people who were actually charged with a crime, meaning more than 65 percent of the cash seized was taken without any criminal charges being filed.

“We want to change the dynamic,” Senator Loveless declared in unveiling his reform legislation. “When an innocent person in Oklahoma gets their property taken, they have to go before the government to get the property back. It’s a fundamental flaw. It’s an inversion of the system.”

Loveless began his efforts to change Oklahoma law on civil asset forfeiture near the end of last year’s legislative session. Not surprisingly, his proposal was met with stiff opposition from most police chiefs, district attorneys, and sheriffs in the state. Law enforcement targeted the senator’s proposal to put seized assets — whether cash, cars, houses, or other such property— into the general fund rather than in the coffers of the agency seizing the money or property. Some contended that Loveless simply wanted to beef up the general fund of the state in order to have more money to dole out. His modified proposal addresses that charge. It would send the forfeited property to a fund administered by a citizen oversight board to provide grants to drug treatment facilties, drug courts, and law enforcement.

"My intention is to remove the direct profit incentive of forfeiture," Loveless explained. "An agency shouldn't be able to grow its budget based on how much property it takes."

Despite this concession, most law enforcement agencies that have benefited financially from the old arrangement are balking at the new proposal.

Mike Fields, district attorney in Enid, Oklahoma and president-elect of the Oklahoma District Attorneys Association, admitted that seized drug proceeds now go to the agencies that seized them, but he contended that the proceeds are needed in the fight against illegal drugs.

"At a time when budget concerns are a priority across the state, it wouldn't seem to make a lot of sense to make taxpayers pick up the tab for drug enforcement efforts currently funded by drug traffickers, dealers, gang members and cartel members," he asserted.

Fields insisted that he did not believe the rights of Oklahomans were being violated "in any sort of systematic way," because Oklahoma law enforcement and prosecutors are "accountable" to the people at the "ballot box." There are "multiple layers of protection" in the system of civil asset forfeiture in the state, he claimed, adding, "Ultimately, a judge has to review and approve each and every case where property is forfeited to the state of Oklahoma." Fields said that those whose property is taken under civil asset forfeiture laws have "due process rights, as well as a right to a jury trial, where an individual who has had property taken ultimately is judged by fellow citizens."

While it is true that a person who has had cash or other property taken from them may demand a jury trial in some cases, this is not true in all cases. No such right to a jury trial exists for cases involving amounts under $1500. And the burden of proof is not the same as in a criminal case, where a person must be found guilty beyond a reasonable doubt. In any effort to regain property seized under civil asset forfeiture, the burden of proof has now shifted to the person whose property was taken and is only a "preponderance of the evidence."

The harsh reality is that if law enforcement seizes cash, the expense of hiring an attorney and fighting to get the money back is simply not worth it for the suspect — the amount seized is generally less than the expenses of going to trial. Many times, a law enforcement agency does not even file criminal charges, but simply takes the cash or other property. Tom Fook, an official with the Michigan Association for the Preservation of Property, said he believed that "most" civil forfeitures in his state were little more than "curbside shakedowns," involving seizures of hundreds of dollars, when it would cost thousands of dollars for a suspect to fight to regain the money.

The Institute for Justice, an organization which fights civil asset forfeiture abuses, has given Oklahoma a "D" for the lack of fairness in its civil asset forfeiture laws.

As previously mentioned, any changes to civil asset forfeiture laws are almost always opposed by law enforcement agencies, which profit so handsomely by it. Back in the 1990s, Sheriff Bob Vogel of Volusia County, Florida summed up the attitude of many at that time on the question of guilt of those from whom assets were seized: "We don't have to prove the fact they [property owners] are guilty."

One argument used against any reform of the practice of civil asset forfeiture is that those promoting such reform are favoring drug dealers over law enforcement. The drug problem is so severe, they contend, that law enforcement simply must have the "tools" to combat the drug kingpins. But It is unfair to charge those who wish to rein in the abuses of civil asset forfeiture as favoring criminals, just as it is unfair to charge those who argue for due process for accused murderers as supporting murder.

It is also claimed that budgets of law enforcement agencies are so strapped that taking away the assets seized in drug dealing and other crimes would create a great burden on sheriffs, police departments, and district attorneys.

However, in his press conference arguing for his bill, Senator Loveless cited examples of a district attorney who actually took up residence in a seized home, and another who used seized funds to pay off student loans.

In fairness, though, many involved in seizing assets which they believe are used in drug dealing or other crimes truly believe they are doing right and are perfectly honest. They see the ravages of the effects of drugs on addicts, and feel justified in taking whatever actions are necessary to combat the problem.

However, doing wrong to do right is still not right. Even in horrific murder, rape, and armed robbery cases, the accused are still afforded the due process of law. One provision of the English Bill of Rights, adopted in the aftermath of the Glorious Revolution in England, was crystal clear: "Forfeitures before conviction are void."

If one concedes that district attorneys' offices, sheriffs' departments, and police departments are underfunded — and in some cases, they no doubt are — that does not justify taking property from American citizens who have not been convicted of any crime. As U.S. Senator Daniel Webster stated in the 19th century, "Good intentions will always be pleaded for every assumption of power.... The Constitution was made to guard the people against the dangers of good intentions."

What are some of the "dangers" of the "good intentions" of civil asset forfeiture?

Although many examples could be offered, one from Forfeiting our Property Rights, by the late Henry Hyde, a U.S. congressman from Illinois, is instructive:

> Willie Jones owned a landscaping service. He paid cash for an airplane ticket at the Nashville, Tennessee, Metro Airport. This was considered "suspicious" behavior — a black man paying cash — and the ticket agent alerted the Nashville police. Although a search of Jones and his luggage found no drugs, he did have almost $10,000 in his wallet. A "drug-sniffing" dog detected "traces" of drugs on the cash (a condition which is true of almost all U.S. currency).
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> This was enough for the police to seize the cash, ignoring Jones' explanation that he needed the money to purchase plants and shrubbery from growers in Houston, Texas. No arrest was made, but the seizure almost drove Jones out of business. The Drug Enforcement Agency (DEA) refused to return the cash, so Jones sued the DEA. Since he was black, he was able to make the charge that it was discrimination based on race.
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> More than two years later, a federal judge ordered the money returned.

The assumption in Jones' case — and in those of hundreds of thousands of other Americans, black and white who have similarly had their assets seized without being convicted of any crime — is that a person would not be carrying large amounts of cash unless he or she was involved in some sort of criminal activity. But who decides what is "a large amount of cash"? And furthermore, it is not a crime to carry large amounts of cash.

Lest average citizens think such a nightmare could never happen to them, in reality it could occur quite easily. If tenants in a citizen's rent house conducted a drug deal, for instance, or some other crime on the property, that property could very well be seized under the guise of "fighting crime."

Congressman Hyde also considered civil asset forfeiture an example of a violation of the 8th

Amendment, which prohibits “excessive fines.” He wrote, “There is little or no proportionality between the crimes alleged and the punishment imposed,” citing examples similar to the citizen’s rent house cited above, of hotels being taken because gangs used them for drug transactions, or apartment houses being confiscated because of drug deals allegedly taking place in some of the apartments. (One would think this would include the majority of the apartment complexes in the country.) And, of course there is the 7th Commandment, “Thou shalt not steal.”

And, as a stunning and egregious example of what would have been one of the costliest civil asset forfeiture seizures at the time (it was later released), in 1988, the $80 million oceanographic research vessel Atlantis II was seized off the coast of San Diego because of the discovery of marijuana residue and two pipes in the ship’s crew quarters.

It is far past time for the civil asset forfeiture laws to be addressed not only in Oklahoma, but in all the states, and in the halls of Congress.

Photo: Senator Kyle Loveless

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