Written by **Joe Wolverton, II, J.D.** on March 7, 2023

Colorado Bill Would End Policing for Profit, Civil Asset Forfeiture

The Colorado House of Representatives is considering passage of a bill that would end civil asset forfeiture in their state, replacing it with a constitutionally sound process. Should this bill become law, Colorado law enforcement would be prevented from making an end run around this law by opting the state out of the federal civil asset forfeiture program.

Stock Depot/iStock/Getty Images Plus

House Bill 1086 — Due Process Asset Forfeiture Act — would substitute the civil asset forfeiture scheme with a criminal procedure that protects the accused from being treated like the convicted.

Under the proposed law, a person's property could be seized by law enforcement "only when a defendant is convicted of a crime of unlawful distribution, manufacturing, dispensing, or selling a controlled substance."

Regarding participation in the federal government's civil asset forfeiture program, the Colorado measure bans local agencies from sidestepping their state's stricter rules by proceeding under the looser (and lucrative) federal program.

The bill prohibits any "state or local law enforcement agency" from "accepting payment of any kind or distribution of forfeiture proceeds from the federal government."

Additionally, the proposed legislation would permit colluding with the federal government in "joint task forces" run by the federal government if the seized property remains under the control of state government authority.

The federal program that is the subject of this section of the bill has enabled local and state police to make seizures and then have them "adopted" by federal agencies, which share in the proceeds. It allowed police departments and drug task forces to keep up to 80 percent of the proceeds of adopted seizures, with the rest going to the feds.

Colorado's state legislature is, should they pass this bill into law, fulfilling their constitutionally protected role as a barrier to federal tyranny.

This measure's reworking of the state's civil asset forfeiture statute would erect additional obstacles not only to federal tyranny, but to tyranny on the local and state level, as well.

As with so many of the other ongoing assaults on the vestigial liberty enjoyed by Americans, civil asset forfeiture is justified by its perpetrators as a means of keeping the people safe.

Civil 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 the ownership of their property.

Such tyranny is anathema to the rule of law and the protections of life, liberty, property, and the pursuit of happiness that is the only legitimate purpose of government in the first place. This is the attitude adopted by our Founding Fathers in the Declaration of Independence and in the U.S. Constitution.

Some 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."

Not surprisingly, there is another constitutional problem in that premise.

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.

In *The Federalist*, 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 deserved to be treated as such.

Although it is unpopular in some conservative circles to say this, 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 their federal representatives repeal the full panoply of federal drug regulations: "laws" that incentivize the "policing for profit" that fuels the forfeiture scheme.

Some states are doing better than others in eradicating this "policing for profit" and other legal loopholes for seizing property without due process. According to a press release issued by the Institute of Justice (IJ):

> IJ released the third edition for our groundbreaking survey, Policing for Profit: The Abuse of Civil Asset Forfeiture, which analyzed civil forfeiture laws in all 50 states and relating to the federal government. The report graded the states on how well they protect property owners: Only seven states and the District of Columbia received a "B" or better.

Coloradans may soon see their grade in this subject improved by lawmakers who take seriously their Article VI oath to support the U.S. Constitution.

The bill is currently being considered by members of the state's House Committee on Judiciary Witness Testimony and/or Committee.