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## State's civil forfeiture law struck down

Judge says the pursuit of profits from property sales could taint prosecutions

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STAR-LEDGER STAFF

The state's civil asset forfeiture law is unconstitutional because it gives prosecutors a financial incentive for seizing cash, cars, homes and other property connected to a crime, a state Superior Court judge ruled.

In a case that has been closely watched around the country, Judge Thomas Bowen held that using seized funds to help finance police and prosecutor agencies violates the due process rights of the owner of the assets involved. The opinion, issued Wednesday but announced yesterday, won't stop police from seizing property related to crimes, but the way the funds are distributed and used has to change, the judge ruled.

"The decision is going to ensure that police and prosecutors throughout the state make their decisions in the interest of justice and not for the pursuit of property and profit," said Scott Bullock, attorney with the Institute for Justice, a Washing-

ton, D.C.-based libertarian organization that brought the suit.

State officials said they disagree with the ruling and will appeal.

"Forfeiture is a legitimate law enforcement tool. It is a tool that is necessary to allow police and prosecutors to take the profit out of crime," said John Hagerty, a spokesman for the N.J. Division of Criminal Justice.

It was unclear yesterday what immediate impact the ruling would have on county prosecutors' offices.

There is little controversy over criminal asset forfeiture, in which police seize possessions obtained through illegal activity after a defendant has been convicted. Civil asset forfeiture, however, is controversial, because the process can begin before a conviction, and the property only needs to be linked to criminal activity.

New Jersey's laws are considered among the toughest in the nation because they allow police to take property connected to any violation of law except disorderly persons offenses.

The South Jersey case has been billed

by legal experts as the most important civil asset forfeiture case in the country. The decision means that challenges to such laws in other states are likely, said David Smith, an Alexandria, Va., attorney who has written on forfeiture law and is a former deputy chief of the U.S. Department of Justice's asset forfeiture office.

"This is the first time the rotten system has been challenged, and it fell with the first assault. . . . It takes a brave judge to basically say the emperor has no clothes," said Smith.

The challenge centered on a white 1990 Ford Thunderbird, which teenager Rex McCaffrey of Millville drove on several occasions to sell marijuana to undercover police officers. When he was arrested in March 1999, officers also seized the car, which was owned by his mother. McCaffrey, then 17, eventually pleaded guilty.

Shortly after the arrest, the  
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**DAVID SMITH, FORMER DEPUTY CHIEF OF THE U.S. DEPARTMENT OF JUSTICE'S ASSET FORFEITURE OFFICE**

Cumberland County Prosecutor's Office filed a lawsuit to start the forfeiture proceedings.

But Carol Thomas — McCaffrey's mother, who was then a Cumberland County sheriff's officer — filed a countersuit with the support of the Institute for Justice. They contended law enforcement authorities were trying to pad their agencies' coffers by taking property either to use themselves or sell at auction.

The state Attorney General's Office gave Thomas her car back and sought to have the suit dropped because the case for seizing the car was weak.

But in January 2001, Judge Bowen said the issue was “a substantial question which ought to be decided.” A hearing was held last month in Salem County, where Bowen sits.

Between 1998 and 2000, forfeitures added \$24.8 million to the budgets of county prosecutors who handle lawsuits seeking seizure. A large chunk of that money is

shared with local police agencies, court papers show.

The funds were used to buy computer equipment, cars and fitness machines, and to pay for golf outings and expenses at law enforcement conferences, court papers show.

There have been numerous instances in which prosecutors have come under scrutiny for how they used the funds. Disgraced Somerset County Prosecutor Nicholas Bissell, who committed suicide, used the money to buy health club memberships for his staff. William Schmidt, the former Bergen County prosecutor, was criticized by legislators for plans to use the funds for a \$500,000 renovation of a house to be used for interviewing juveniles.

While there is no suggestion that an individual prosecutor or police official has directly gained from the seizures, New Jersey's law violates due process rights, Bowen wrote in his 11-page decision. The fact that a property owner can dis-

pute the seizure in court does not make it a valid practice, he said.

“This court concludes that the augmentation of the county prosecutors' budgets . . . provides to those in prosecutorial functions financial interests which are not remote as to escape the taint of impermissible bias in enforcement of the laws,” according to Bowen's opinion.

The state's lawyers argued that the potential for profit is remote, since the money is divvied up between several agencies, according to court papers.

Carol Thomas said yesterday she was pleased with the decision.

“My whole reason for sticking this whole thing out is because I didn't want to see someone go through what I went through,” said Thomas, who now runs a dog-grooming business. “It's like somebody is robbing your house and there is nothing you can do about it.”