

**IN THE SUPREME COURT OF PENNSYLVANIA  
EASTERN DISTRICT**

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**Nos. 29 EAP 2015, 30 EAP 2015**

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**COMMONWEALTH OF PENNSYLVANIA,  
*Petitioner,***

**v.**

**REAL PROPERTY AND IMPROVEMENTS KNOWN AS 416 S. 62<sup>ND</sup> STREET,  
PHILADELPHIA, PA 19143 AND 1997 CHEVROLET AND CONTENTS SEIZED FROM  
JAMES YOUNG,  
*Respondent.***

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**BRIEF FOR THE INSTITUTE FOR JUSTICE AS *AMICUS CURIAE* IN  
SUPPORT OF THE APPELLEE ELIZABETH YOUNG**

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**Appeal from the Order of the Commonwealth Court of Pennsylvania  
*En Banc*, Docketed at Nos. 1990 and 1995 CD 2012, Reversing the Final Order  
of the Court of Common Pleas of Philadelphia County, Civil Trial Division,  
No. CP-51-MD-0002972-2010, March Term 2010, entered on May 1, 2012**

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## **INTEREST OF THE *AMICUS CURIAE***

The Institute for Justice respectfully submits this *amicus curiae* brief in support of Appellee Elizabeth Young to highlight how Pennsylvania’s civil-forfeiture law operates in the real world, particularly as it is aggressively used by the Philadelphia District Attorney’s Office.

IJ is a nonprofit, public-interest law firm committed to defending the essential foundations of a free society through securing greater protection for individual liberty and restoring constitutional limits on the power of government. A central pillar of IJ’s mission is to protect the rights of individuals to own and enjoy their property, both because an individual’s control over his or her property is a tenet of personal liberty and because property rights are inextricably linked to all other civil rights.

Consistent with this mission, IJ has launched a nationwide initiative to reform forfeiture laws through strategic litigation and original research. On the litigation front, IJ represents individuals and small businesses whose property has been threatened with civil forfeiture in both state and federal courts across the country.<sup>1</sup> Most relevant here, IJ is challenging the constitutionality of the City of

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<sup>1</sup> See *United States v. \$107,702.66 in U.S. Currency Seized from Lumbee Guar. Bank Account No. 8200295*, No. 7:14-cv-00295-F, 2016 WL 413093 (E.D.N.C. Feb. 2, 2016), *additional information available at <http://ij.org/case/north-carolina-forfeiture>*; *United States v. Thirty-Two Thousand Eight Hundred Twenty Dollars & Fifty-Six Cents*, No. C13-4102-LTS, 2015 WL 134046 (N.D. Iowa Jan. 9, 2015), *additional information available at <http://ij.org/case/iowa-forfeiture>*; *In the Matter of the Seizure of \$446,651.11*, No. 2:14-mc-1288 (E.D.N.Y. dismissed

Philadelphia’s civil-forfeiture policies and practices on behalf of a class of property owners.<sup>2</sup> Also, IJ has filed *amicus* briefs in the U.S. Supreme Court<sup>3</sup> on issues related to civil forfeiture.

Additionally, IJ produces high-quality, original research documenting the problems with civil forfeiture.<sup>4</sup> In 2015, IJ published the second edition of

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Jan. 20, 2015), *additional information available at <http://ij.org/long-island-forfeiture>*; *Dehko v. Holder*, No. 13-14085, 2014 WL 2605433 (E.D. Mich. June 11, 2014), *additional information available at <http://www.clinic.ij.org/miforf>*; *United States v. 434 Main St., Tewksbury, Mass.*, 961 F. Supp. 2d 298 (D. Mass. 2013), *additional information available at <http://ij.org/case/massachusetts-civil-forfeiture>*; *United States v. 2601 W. Ball Rd.*, No. SACV 12-1345-AG (MLGx) (C.D. Cal. dismissed Oct. 10, 2013); *El-Ali v. State*, 428 S.W.3d 824 (Tex. 2014), *additional information available at <http://ij.org/case/state-of-texas-v-one-2004-chevrolet-silverado/>*; *State ex rel. Cnty. of Cumberland v. One 1990 Ford Thunderbird*, 371 N.J. Super. 228 (App. Div. 2004), *additional information available at <http://ij.org/case/state-of-new-jersey-v-one-1990-ford-thunderbird>*. In addition, IJ is litigating pending forfeiture cases in Indiana, Kentucky, and New Mexico.

<sup>2</sup> See *Sourovelis v. City of Philadelphia*, Civ. No. 14-4687-ER, 2015 WL 2215060 (E.D. Pa. May 12, 2015) (“*Sourovelis Class Action*”). We provide additional information about the *Sourovelis Class Action* in our “*Backgrounder*,” which is available at <http://ij.org/case/philadelphia-forfeiture/#backgrounder>.

<sup>3</sup> *Henderson v. United States*, 135 S. Ct. 1780 (2015); *Kaley v. United States*, 134 S. Ct. 1090 (2014); *Florida v. Harris*, 133 S. Ct. 1050 (2013); *Alvarez v. Smith*, 558 U.S. 87 (2009); *Bennis v. Michigan*, 516 U.S. 442 (1996); *United States v. James Daniel Good Real Property*, 510 U.S. 43 (1993).

<sup>4</sup> See Dick M. Carpenter & Larry Salzman, Institute for Justice, *Seize First, Question Later: The IRS and Civil Forfeiture* (Feb. 2015), [http://ij.org/images/pdf\\_folder/private\\_property/seize-first-question-later.pdf](http://ij.org/images/pdf_folder/private_property/seize-first-question-later.pdf); Dick M. Carpenter & Lee McGrath, Institute for Justice, *Rotten Reporting in the Peach State: Civil Forfeiture in Georgia Leaves the Public in the Dark* (Jan. 2013), <http://ij.org/wp-content/uploads/2015/03/rotten-reporting.pdf>; Dick M. Carpenter, Lee McGrath & Angela C. Erickson, Institute for Justice, *A Stacked Deck: How Minnesota’s Civil Forfeiture Laws Put Citizens’ Property at Risk* (Jan. 2013), <http://ij.org/wp-content/uploads/2015/03/stacked-deck.pdf>; Dick M. Carpenter, Tim Keller & Diana Simpson, Institute for Justice, *Arizona’s Profit Incentive in Civil Forfeiture: Dangerous for Law Enforcement; Dangerous for Arizonans* (Dec. 2012), <http://www.ij.org/report/arizonas-profit-incentive-in-civil-forfeiture>; Dick M. Carpenter, Larry Salzman & Lisa Knepper, Institute for Justice, *Inequitable Justice: How Federal Equitable Sharing Encourages Local Police and Prosecutors to Evade State Civil Forfeiture Law for Financial Gain* (Oct. 2011), [http://www.ij.org/images/pdf\\_folder/private\\_property/forfeiture/inequitable\\_justice-mass-](http://www.ij.org/images/pdf_folder/private_property/forfeiture/inequitable_justice-mass-)

*Policing for Profit*, its landmark study evaluating each state’s civil-forfeiture laws.<sup>5</sup>

As detailed *infra* at 15, Pennsylvania earned a grade of D-.<sup>6</sup>

Drawing on both its litigation experience and its original research, IJ files this *amicus* brief to highlight how law-enforcement officials’ ability to retain forfeiture proceeds not only fuels forfeiture abuse, but requires giving full meaning to the constitutional and statutory protections guaranteed to property owners. The decision by the Commonwealth Court of Pennsylvania does exactly that. IJ urges this Court to affirm.

### **COUNTERSTATEMENT OF THE QUESTIONS INVOLVED**

The *amicus curiae* adopts the counterstatement of the questions involved provided by the Appellee.

### **COUNTERSTATEMENT OF THE SCOPE AND STANDARD OF REVIEW**

The *amicus curiae* adopts the counterstatement of the scope and standard of review provided by the Appellee.

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[forfeiture.pdf](#); Scott Bullock & Dick M. Carpenter, Institute for Justice, *Forfeiting Justice: How Texas Police & Prosecutors Cash In on Seized Property* (Nov. 2010), <http://ij.org/report/forfeiting-justice>.

<sup>5</sup> Dick M. Carpenter, Lisa Knepper, Angela C. Erickson & Jennifer McDonald, Institute for Justice, *Policing for Profit: The Abuse of Civil Asset Forfeiture* (2d ed. 2015), <http://ij.org/report/policing-for-profit/>.

<sup>6</sup> Pennsylvania’s report is attached to this brief as Appendix A.

## COUNTERSTATEMENT OF THE CASE

The *amicus curiae* adopts the counterstatement of the case provided by the Appellee.

## SUMMARY OF THE ARGUMENT

Given the inherent conflict of interest posed by law-enforcement's retention of forfeiture proceeds, this Court should adequately safeguard property owners by closely scrutinizing the government's actions in the case at bar and giving robust meaning to the Excessive Fines clauses of the Pennsylvania and U.S. Constitutions and the statutory innocent-owner defense.

As a direct result of law-enforcement agencies being authorized to retain forfeiture proceeds, civil forfeiture has become a way for these agencies to generate revenue. As a result, government's use of civil forfeiture has expanded dramatically in scope. For example, Pennsylvania law-enforcement agencies seize and forfeit over \$11.5 million worth of property each year.

The financial incentive to seize and forfeit property is problematic enough, but most civil-forfeiture laws also make seizing and forfeiting property disconcertingly easy. Civil-forfeiture laws stack the deck against property owners contesting forfeiture. The perverse financial incentive coupled with the absence of adequate procedural safeguards makes forfeiture abuse predictable.

Unsurprisingly, numerous empirical studies demonstrate that civil-forfeiture laws, like those in Pennsylvania, distort law-enforcement priorities away from the impartial administration of justice and toward the pursuit of property and the revenue forfeiture generates.

Nowhere is this more salient than in Philadelphia. Between 2002 and 2014, Philadelphia law-enforcement officials forfeited over \$72 million worth of property, including over 1,200 real properties, 3,500 vehicles, and \$50 million in cash. These staggering numbers reflect the automated way that Philadelphia seizes and forfeits property, enabling its D.A.'s Office to file thousands of forfeiture petitions each year. In addition, Philadelphia prosecutors, until this year, controlled initial forfeiture proceedings in the now infamous Courtroom 478, where property owners were required to appear to contest forfeiture. Despite its moniker, there was no judge in Courtroom 478. Just the prosecutors who called all the shots: calling cases; assuring property owners that they did not need counsel; demanding documentation and sworn responses to interrogatories and unilaterally assessing their sufficiency; and requiring property owners to return for multiple proceedings, resulting in thousands of default judgments.<sup>7</sup>

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<sup>7</sup> These practices were in place when the forfeiture case against Appellee Young was filed and litigated to trial. As noted in footnote 54, these practices were only changed as a result of the *Sourovellis* Class Action in January 2016.

In deciding the case at bar, this Court should be mindful of all this self-dealing and protect property owners' rights. Courts have scrutinized law-enforcement authorities more closely when those authorities are self-dealing in a variety of contexts, including excessive-fines and innocent-owner analyses. In light of the direct financial stake Philadelphia law-enforcement officials have in forfeiture proceedings, IJ urges the Court to apply careful scrutiny to their actions in this case and to affirm the Commonwealth Court of Pennsylvania. In so holding, this Court can mitigate forfeiture abuse in Pennsylvania.

### **ARGUMENT**

Section I of this *amicus* brief provides background on how civil forfeiture has strayed from its historical roots and consequently grew. Section II discusses how, by allowing law enforcement to retain forfeiture proceeds, modern civil-forfeiture laws create perverse financial incentives to seize and forfeit property. Section III looks at how these incentives have created a veritable forfeiture machine in Philadelphia. Finally, Section IV urges the Court to consider law-enforcement agencies' self-dealing when analyzing the Excessive Fines clauses and innocent-owner defense.

**I. TODAY’S CIVIL-FORFEITURE LAWS HAVE BECOME UNMOORED FROM THEIR HISTORICAL JUSTIFICATION, LEADING TO AN EXPLOSION OF FORFEITURE ACTIVITY.**

Modern civil-forfeiture laws, which trace their origins to the government’s war on drugs, differ from their predecessors in material respects. Because forfeiture proceeds now go directly back to law-enforcement authorities—rather than to general funds controlled by the legislature—the purpose of civil forfeiture has transformed over time. Now, generating revenue is often a primary purpose of forfeiture. As a result, the government’s use of civil forfeiture has expanded dramatically.

**A. Because Law-Enforcement Officials Retain Forfeiture Proceeds, Civil Forfeiture Is Often Undertaken for the Purpose of Generating Revenue.**

In contrast to most of American history in which the proceeds from civil forfeitures went to a general fund to benefit the public at large, modern civil-forfeiture laws allow law-enforcement officials to keep most forfeiture proceeds.<sup>8</sup> For instance, the laws of 43 states authorize law-enforcement agencies to receive some or all proceeds from forfeited property.<sup>9</sup> In Pennsylvania, law-enforcement agencies receive 100 percent of forfeiture proceeds.<sup>10</sup>

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<sup>8</sup> See, e.g., *Policing for Profit* at 2.

<sup>9</sup> *Id.* at 14 (depicting in Figure 6 the percentage of forfeiture proceeds distributed to law enforcement in each state).

<sup>10</sup> See Pa. Cons. Stat. § 6801(e)–(h); see also *Policing for Profit* at 22.

By allowing law-enforcement officials to retain forfeiture proceeds, federal and state forfeiture laws—including Pennsylvania’s—create a perverse financial incentive to maximize seizures of forfeitable property. Accordingly, under modern civil-forfeiture laws, unlike their predecessors, increasing law-enforcement revenue is often the primary purpose of forfeiture.

Pennsylvania law-enforcement officials have admitted as much. For example, the Pennsylvania District Attorneys Association claims that forfeiture serves “very important and valuable purposes,” like paying for “overtime and salaries for municipal and state police officers” and police departments’ purchases, providing vehicles for their use, and supplementing the budget when counties and municipalities would rather fund other priorities.<sup>11</sup> The Chief Deputy Attorney General for Pennsylvania’s Asset Forfeiture & Money Laundering Section also admits that forfeiture funds supplement budgets, noting that, without access to forfeiture proceeds, “law enforcement agencies would be required to rely on unpredictable state and local funding.”<sup>12</sup> Thus, by Pennsylvania law-enforcement officials’ own accounts, forfeiture is pursued as an additional stream of revenue.

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<sup>11</sup> *Hearing on S.B. 869 Before the S. Judiciary Comm.*, Reg. Sess. 2015–2016, at 7 (Pa. Oct. 20, 2015) (testimony of the Pennsylvania District Attorneys Association), <http://judiciary.pasenategop.com/files/2015/10/Testimony-of-PDAA.pdf>.

<sup>12</sup> *Hearing on S.B. 869 Before the S. Judiciary Comm.*, Reg. Sess. 2015–2016, at 4 (Pa. Oct. 20, 2015), (testimony of Letty Kress, Chief Deputy of the Asset Forfeiture and Money Laundering Section, on behalf of the Office of Attorney General), <http://judiciary.pasenategop.com/files/2015/10/Testimony-of-Letty-Kress.pdf>.

Proponents of civil forfeiture often assert that its purpose is to reduce drug abuse or to fight crime. But, in many jurisdictions, like Pennsylvania, the way in which forfeiture proceeds are spent belies this claim. For example, between 2002 and 2013, Philadelphia law enforcement spent none of its \$69 million in forfeiture funds on community-based anti-drug and crime-prevention programs.<sup>13</sup> Instead, it spent over \$25 million on salaries, including the salaries of the very individuals involved in seizing and forfeiting property.<sup>14</sup>

As the statements and funding priorities of law-enforcement officials show, the ability to retain forfeiture proceeds has transformed the purpose of civil forfeiture. These agencies often seek forfeitures with the intent of supplementing their budgets.

**B. Consequently, Civil Forfeiture Has Broadened Dramatically in Scope.**

With this new focus on generating revenue, governments have substantially expanded forfeiture's scope, both in the types of property subject to forfeiture and the types of crimes giving rise to forfeiture.

Historically, civil forfeiture in the United States was limited to seizing contraband. Contraband included not only *per se* illegal goods and stolen goods, but also goods that were concealed to avoid paying required customs duties, which

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<sup>13</sup> See *Policing for Profit* at 16; *Sourovelis* Class Action, Am. Compl., ECF No. 40, ¶ 54 (“Am. Compl.”).

<sup>14</sup> See *Policing for Profit* at 16; Am. Compl. ¶ 52.

at the time provided 80 to 90 percent of the finances for the federal government.<sup>15</sup>

During the Prohibition Era, the federal government expanded the scope of its forfeiture authority beyond *per se* contraband to cover automobiles and other vehicles transporting illegal liquor. However, the forfeiture provision of the National Prohibition Act was considered “incidental” to the primary purpose of “destroy[ing] the forbidden liquor in transportation.”<sup>16</sup> Nevertheless, forfeitures were still disfavored.<sup>17</sup>

With the advent of the “War on Drugs” in the 1970s, civil forfeiture expanded to reach instrumentalities of crimes.<sup>18</sup> For instance, Pennsylvania’s 1972 iteration of its Controlled Substance, Drug, Device and Cosmetic Act —modeled on its federal counterpart—authorized forfeiture for “all property used as a container for controlled substances.”<sup>19</sup>

Today, forfeiture laws in this country cover not only contraband and instrumentalities, but all manner of real and personal property connected to alleged

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<sup>15</sup> See James R. Maxeiner, *Bane of American Forfeiture Law: Banished at Last?*, 62 Cornell L. Rev. 768, 782 n. 86 (1977); Act of July 31, 1789, 1 Stat. 29, 43 (providing that all “goods, wares and merchandise, on which the duties shall not have been paid or secured, shall be forfeited”).

<sup>16</sup> *Carroll v. United States*, 267 U.S. 132, 155 (1925).

<sup>17</sup> See, e.g., *United States v. One 1936 Model Ford V-8 De Luxe Coach, Motor No. 18-3306511*, 307 U.S. 219, 226 (1939) (“Forfeitures are not favored; they should be enforced only when within both letter and spirit of the law.”).

<sup>18</sup> See, e.g., Comprehensive Drug Abuse Prevention and Control Act of 1970, Pub. L. No. 91-513, 84 Stat. 1236 (1970).

<sup>19</sup> See *Commonwealth v. Landy*, 362 A.2d 999, 1002 (Pa. Super. Ct. 1976) (summarizing the controlled-substances forfeiture provisions in effect at the time of the ruling).

criminal activity. For example, like its federal counterpart,<sup>20</sup> Pennsylvania’s Controlled Substances Forfeiture Act authorizes forfeiture of homes, vehicles, and cash “used or intended to be used” to facilitate any drug violation.<sup>21</sup> In fact, under Pennsylvania law, money merely “found in close proximity” to illegal drugs is “rebuttably presumed to be proceeds derived from the selling of” illegal drugs.<sup>22</sup>

As the types of property subject to forfeiture expanded, the list of crimes tethered to forfeiture has also grown. Historically, forfeiture of noncontraband items was justified only by the practical necessities of enforcing admiralty or piracy laws. As an *in rem* proceeding, an action against the property itself, forfeiture allowed courts to obtain jurisdiction over property when it was virtually impossible to seek justice against that property’s owners, who were overseas or otherwise outside the court’s jurisdiction. Later, Congress and state legislatures expanded forfeiture beyond alleged instances of drug violations to include myriad crimes at the federal and state levels.

Today, there are more than 400 federal forfeiture statutes relating to a number of federal crimes, from environmental crimes to the failure to report

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<sup>20</sup> See 21 U.S.C. § 881(a)(7) (subjecting to forfeiture all real property “used, or intended to be used, in any manner or part, to commit, or facilitate the commission of” a drug crime).

<sup>21</sup> See 42 Pa. Cons. Stat. § 6801(a)(4), (6).

<sup>22</sup> *Id.* § 6801(a)(6)(ii).

currency transactions.<sup>23</sup> Further, all states have statutory provisions authorizing some form of civil forfeiture.<sup>24</sup> Pennsylvania, for example, authorizes forfeiture in connection with at least 30 statutes, including its Controlled Substance, Drug, Device and Cosmetic Act.<sup>25</sup>

As a direct result of this expansion, civil-forfeiture activity has exploded in Pennsylvania. From 2002 to 2014, law-enforcement agencies in the Keystone

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<sup>23</sup> See Charles Doyle, Cong. Research Serv., *Crime and Forfeiture* at 82–94 (Jan. 22, 2015), <http://fas.org/sgp/crs/misc/97-139.pdf>; see also Asset Forfeiture and Money Laundering Section, U.S. Dep’t of Justice Criminal Div., *Asset Forfeiture and Money Laundering Statutes* (2015), <https://www.justice.gov/sites/default/files/criminal-afmls/legacy/2015/04/24/statutes2015.pdf>.

<sup>24</sup> See generally Steven L. Kessler, *Civil and Criminal Forfeiture: Federal and State Practice* (2012) (discussing each state’s civil-forfeiture provisions).

<sup>25</sup> See also 4 Pa. Cons. Stat. § 1518(f) (Gaming Act); 18 Pa. Cons. Stat. § 910(c.1) (theft of telecommunications services); 18 Pa. Cons. Stat. § 2506(f) (drug delivery resulting in death); 18 Pa. Cons. Stat. § 3021 (human trafficking); 18 Pa. Cons. Stat. §§ 3141 *et seq.* (sexual offenses); 18 Pa. Cons. Stat. § 4116(i) (unauthorized copying of recorded materials); 18 Pa. Cons. Stat. § 4119(f) (trademark counterfeiting); 18 Pa. Cons. Stat. § 5511(m) (cruelty to animals); 18 Pa. Cons. Stat. § 5513(b) (gambling devices); 18 Pa. Cons. Stat. § 5707 (Wiretapping and Electronic Surveillance Control Act); 18 Pa. Cons. Stat. § 6101.1(d) (possession of a firearm by minor); 18 Pa. Cons. Stat. § 6314(f) (trafficking drugs to minors); 18 Pa. Cons. Stat. § 6321(e) (transmission of sexually explicit images by minor); 18 Pa. Cons. Stat. § 6501(b)(5) and (d) (scattering rubbish); 18 Pa. Cons. Stat. § 7508(e) (drug trafficking sentencing and penalties); 18 Pa. Cons. Stat. § 7707(a) (vehicle chop shop; illegally obtained and altered property); 27 Pa. Cons. Stat. § 6208(f) (waste transportation violation); 37 Pa. Cons. Stat. § 511 (conducting field investigation of Commonwealth property without permit); 42 Pa. Cons. Stat. § 6801.1 (terrorism forfeiture); 75 Pa. Cons. Stat. § 4909(c) (transportation of foodstuffs in vehicles used to transport waste); 75 Pa. Cons. Stat. § 9405 (importing fuels without permit); 3 Pa. Cons. Stat. § 459-211(c) (Dog Law); 35 Pa. Cons. Stat. § 831.1 (forfeiture for storage or transportation of drugs); 35 Pa. Cons. Stat. § 6018.614 (Solid Waste Management Act); 43 Pa. Cons. Stat. §§ 1311-15 *et seq.* (Public Employee Pension Forfeiture Act); 47 Pa. Cons. Stat. § 6-602 (Liquor Code violation); 53 Pa. Cons. Stat. § 4000.1715(a) (Municipal Waste Act); 68 Pa. Cons. Stat. § 46 (restrictions on acquisition of agricultural lands by certain aliens); and 72 Pa. Cons. Stat. § 8285(a) (cigarette tax violations).

State have forfeited over \$150 million, including over \$20 million in real property, over \$12 million in vehicles, and over \$117 million in cash.<sup>26</sup>

Law-enforcement officials' financial incentives have played a large role in the considerable growth of forfeiture.

## **II. LAW-ENFORCEMENT OFFICIALS' PECUNIARY INCENTIVES DRIVE THE PURSUIT OF FORFEITURE.**

Forfeiture abuse is predictable when laws make forfeiture both lucrative and easy to accomplish. Empirical evidence shows that, predictably, these perverse incentives result in distorted law-enforcement priorities.

### **A. When Forfeiture Is Both Lucrative and Easy to Accomplish, Forfeiture Abuse Is Inevitable.**

For law-enforcement officials, civil forfeiture has substantial benefits and minimal costs. Accordingly, law-enforcement agencies' use of forfeiture to supplement their budgets at the expense of other crime-fighting priorities is entirely predictable.

As discussed *supra*, Pennsylvania law-enforcement agencies directly benefit from forfeiture because they retain forfeited property or its proceeds.

Pennsylvania's prosecutors, including the Philadelphia D.A.'s Office, retain

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<sup>26</sup> These figures are based on Pennsylvania's annual asset forfeiture reports, which are publicly available. IJ retains an internal analysis of these reports on file and uses the analysis for, among other things, its *Policing for Profit* study. See, e.g., *Policing for Profit* at 16 ("Pennsylvania law enforcement agencies . . . forfeited more than \$152 million between 2002 and 2013 . . .").

proceeds by virtue of Pennsylvania’s Controlled Substances Forfeiture Act.<sup>27</sup> In turn, District Attorneys are free to share forfeiture proceeds with the police departments that seize property. The Philadelphia D.A.’s Office, for instance, shares forfeiture proceeds with the Philadelphia Police Department. Under an agreement, after distributing an initial \$927,500, the balance of forfeiture revenue is divided, with 40 percent going to the Philadelphia D.A.’s Office and 60 percent going to the Philadelphia Police Department.<sup>28</sup>

Compared to these direct benefits, law-enforcements’ costs of pursuing civil forfeiture are low due to two primary factors. First, because civil-forfeiture proceedings afford property owners weak procedural safeguards, civil forfeiture is all too easy for law enforcement. Specifically, these civil proceedings are not accompanied by the legal rights available to defendants in criminal proceedings. Whereas criminal convictions require proof beyond a reasonable doubt, the standard of proof for civil forfeiture is mere preponderance of the evidence.<sup>29</sup>

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<sup>27</sup> Specifically, the Act requires forfeited property to be transferred to the custody of the District Attorney for that county if the law-enforcement authority seizing property has county-wide jurisdiction, and also authorizes District Attorneys to either sell forfeited property or retain it for official use. 42 Pa. Cons. Stat. § 6801(e).

<sup>28</sup> See, e.g., American Civil Liberties Union of Pennsylvania, *Guilty Property* at 3 n.6 (June 2015), [http://www.aclupa.org/files/3214/3326/0426/Guilty\\_Property\\_Report\\_-\\_FINAL.pdf](http://www.aclupa.org/files/3214/3326/0426/Guilty_Property_Report_-_FINAL.pdf) (“*Guilty Property*”); Am. Compl. ¶ 55. The first \$927,500 forfeited each fiscal year was apportioned as follows: \$727,500 to the Philadelphia D.A.’s Office to cover “forfeiture related administrative expenses,” including salaries; and \$200,000 to the Philadelphia Police Department. Am. Compl. ¶ 55.

<sup>29</sup> See, e.g., *Commonwealth v. \$6,425,880*, 880 A.2d 523, 529–30 (Pa. 2005) (“To meet its burden, the Commonwealth must establish, by a preponderance of the evidence, that a nexus

Similarly, though an accused is presumed innocent until proven guilty in a criminal trial, property owners in civil-forfeiture cases have the burden to show they had nothing to do with alleged crimes.<sup>30</sup> These procedures are so weak, and Pennsylvania law-enforcement officials' pecuniary incentive so strong, that Pennsylvania earned a D- grade in IJ's nationwide evaluation of jurisdictions' civil-forfeiture laws.<sup>31</sup>

Second, law-enforcement agencies rarely need to expend time or resources litigating against a vigorous defense. This is the case because, while civil forfeiture is easy for law enforcement, it is difficult for property owners to challenge. Many seizures go unchallenged because the time and cost of challenging the forfeiture, including legal fees, surpass the value of the property at issue.<sup>32</sup> In Philadelphia, for example, between 2011 and 2013, half of all cash-

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exists between the money and a violation of the Controlled Substance Act. . . . A preponderance of the evidence is tantamount to a 'more likely than not' standard.") (internal citations omitted); *Policing for Profit* at 122.

<sup>30</sup> See, e.g., 42 Pa. Cons. Stat. § 6802(j)(3) ("In the event that it shall appear that the property was unlawfully used or possessed by a person other than the claimant, *then the claimant shall show* that the unlawful use or possession was without his knowledge or consent.") (emphasis added); *Policing for Profit* at 122.

<sup>31</sup> *Policing for Profit* at 122.

<sup>32</sup> See, e.g., Isaiah Thompson, *The Cash Machine*, Phila. City Paper (Nov. 28, 2012) <http://citypaper.net/The-Cash-Machine/> ("Another reason for the DA's advantage is the simple fact that requiring respondents to appear in court multiple times to prove ownership of relatively small amounts of money simply isn't worth their time. Likewise, hiring a lawyer is often a losing financial proposition from the start.").

forfeiture cases are estimated to have involved sums less than \$192.<sup>33</sup> And, even if property owners could afford counsel, missing work to attend a forfeiture hearing is, often, not economically worth the hassle. In Philadelphia, for example, the median number of appearances for disputed forfeitures is four. Missing work to attend court four appearances would cost a minimum-wage employee 20 percent more than the median amount at issue in cash-forfeiture cases.<sup>34</sup> As a result, thousands of cash-forfeiture cases result in wins for the government by default.<sup>35</sup>

In light of civil forfeiture’s substantial benefits and miniscule costs for law enforcement, it is predictable that law enforcement would aggressively use forfeiture for personal and institutional gain.<sup>36</sup> As explained below, empirical evidence supports this prediction.

**B. There Is Strong Evidence That Law-Enforcement Agencies’ Profit Motive Is Distorting Their Priorities.**

Unsurprisingly, there is substantial evidence that law-enforcement agencies’ ability to retain forfeiture proceeds has distorted their priorities from the pursuit of justice to the pursuit of profit.

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<sup>33</sup> *Guilty Property* at 7.

<sup>34</sup> *See id.* at 7–8.

<sup>35</sup> *See infra* at 24.

<sup>36</sup> *See, e.g.*, Bart J. Wilson and Michael Preciado, Institute for Justice, *Bad Apples or Bad Laws?*, at 23 (Sept. 2014), <http://ij.org/report/bad-apples-or-bad-laws/> (“[A]llowing law enforcement to take property and keep the proceeds creates incentives for abuse.”). We note that this study received funding from IJ.

In particular, law enforcement has prioritized seizing cash over stopping the influx of drugs into communities. A former New York City Police Commissioner observed that police had an incentive to set up roadblocks on the southbound lanes of Interstate 95, which were heading in to the city, in order to seize cash that was putatively being used to purchase drugs rather than setting up similar roadblocks on the northbound lanes, which were heading out of the city, and that could have been used to seize the drugs themselves.<sup>37</sup> Similarly, an investigation in Tennessee revealed that law-enforcement agencies were *ten times* more likely to make stops on the westbound lanes of Interstate 40—where money travels—than the eastbound lanes—where drugs come in from Mexico.<sup>38</sup>

Through these kinds of operations, law-enforcement agencies are taking advantage of lenient forfeiture statutes to pad their budgets.<sup>39</sup> In a survey of more than 1,400 law-enforcement executives, nearly 40 percent of police agencies

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<sup>37</sup> Eric Blumenson & Eva Nilsen, *Policing for Profit: The Drug War's Hidden Economic Agenda*, 65 U. Chi. L. Rev. 35, 68 (1998) (“[Police have] a financial incentive to impose roadblocks on the southbound lanes of I-95, which carry the cash to make drug buys, rather than the northbound lanes, which carry the drugs. After all, seized cash will end up forfeited to the police department, while seized drugs can only be destroyed.”).

<sup>38</sup> Phil Williams, News Channel 5, *Are Middle Tennessee Police Profiting Off Drug Trade?* (Jan. 20, 2016), <http://www.newschannel5.com/news/newschannel-5-investigates/policing-for-profit/are-middle-tennessee-police-profiting-off-drug-trade>.

<sup>39</sup> See, e.g., Jefferson E. Holcomb, Tomislav V. Kovandzic & Marvin R. Williams, *Civil Asset Forfeiture, Equitable Sharing, and Policing for Profit in the United States*, 39 J. Crim. Justice 273, 280–83 (2011) (finding that the extent to which officials benefit from forfeiture and the restrictiveness of state forfeiture laws affect how much they pursue federal equitable sharing). We note that this study received funding from IJ.

reported that civil-forfeiture proceeds were a necessary budget supplement.<sup>40</sup> And as of September 2014, 298 police departments and 210 task forces seized the equivalent of 20 percent or more of their annual budgets since 2008 under a federal program that allows state and local law enforcement to receive forfeiture proceeds in exchange for referring seized property to federal authorities.<sup>41</sup>

Thus, empirical evidence supports the common-sense prediction that authorities' ability to retain proceeds results in forfeiture abuse. Philadelphia offers a stark example of the consequences of making forfeiture easy and lucrative for law enforcement.

### **III. PECUNIARY INCENTIVES HAVE FUELED PHILADELPHIA'S FORFEITURE MACHINE.**

Because they financially benefit from forfeiture, Philadelphia law-enforcement officials aggressively forfeit property. In order to maximize forfeiture revenue, Philadelphia prosecutors created a veritable machine with an assembly-line system for filing and prosecuting forfeiture cases, and until recently, controlled initial forfeiture proceedings.

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<sup>40</sup> See John L. Worrall, *Addicted to the Drug War: The Role of Civil Asset Forfeiture as a Budgetary Necessity in Contemporary Law Enforcement*, 29 J. Crim. Justice 171, 179 (2001).

<sup>41</sup> Michael Sallah, Robert O'Harrow Jr., Steven Rich & Gabe Silverman, *Stop and seize: Aggressive police take hundreds of millions of dollars from motorists not charged with crimes*, Wash. Post (Sept. 6, 2014) <http://www.washingtonpost.com/sf/investigative/2014/09/06/stop-and-seize/>.

**A. For Financial Gain, Philadelphia Law-Enforcement Officials Forfeit an Unprecedented Amount of Property.**

Cashing in on their ability to retain forfeiture proceeds, Philadelphia law-enforcement officials forfeit a staggering amount of property.

The proceeds benefit Philadelphia law-enforcement officials both personally and institutionally. The personal benefits come from salary supplements paid from forfeiture revenue. For example, between 2002 and 2012, Philadelphia used \$25 million on law-enforcement salaries, including the salaries of the very prosecutors who bring forfeiture actions.<sup>42</sup> The institutional benefits come in the form of budget supplements, with Philadelphia's civil-forfeiture revenue equaling nearly one-fifth of the District Attorney Office's general appropriated budget.<sup>43</sup>

To accrue these personal and institutional benefits, Philadelphia law-enforcement officials aggressively pursue forfeiture. Since 1987, the Philadelphia D.A.'s Office has brought in more than \$90 million in forfeiture revenue.<sup>44</sup> Just between 2002 and 2014, Philadelphia law enforcement took in over \$72 million in civil-forfeiture revenue, consisting of over 1,200 real properties, 3,500 vehicles,

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<sup>42</sup> See, e.g., *Sourovellis Action, Backgrounder*, Am. Compl. ¶ 52; *Policing for Profit* at 16. In fact, the Philadelphia D.A. Office spends twice as much of its forfeiture revenue on salaries as all other county D.A.'s offices combined. Am. Compl. ¶ 52.

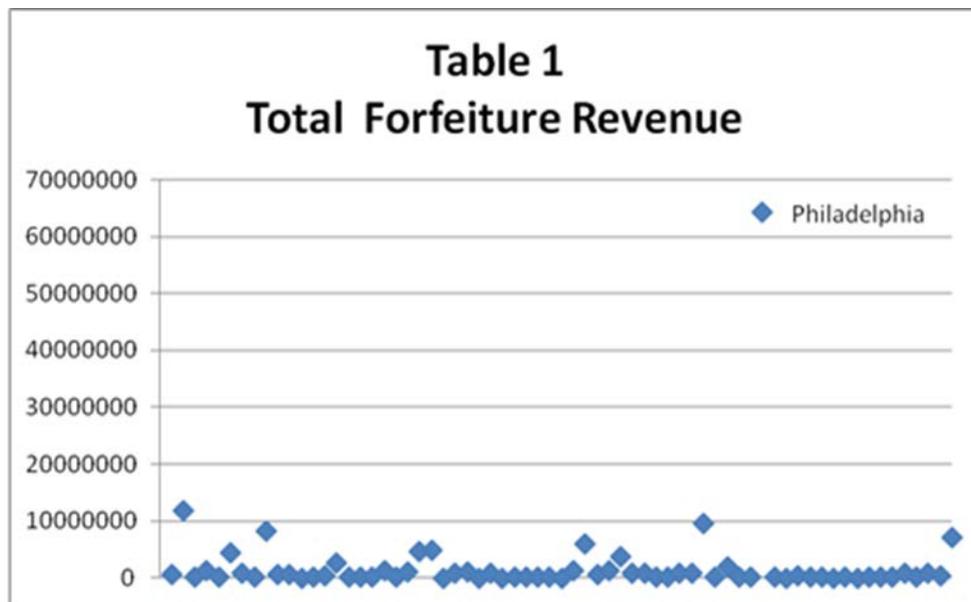
<sup>43</sup> *Policing for Profit* at 16; Am. Compl. ¶ 48; *Backgrounder*.

<sup>44</sup> See Am. Compl. ¶ 41; Isaiah Thompson, *The \$10 Million Question*, Phila. City Paper (Nov. 29, 2012) [http://issuu.com/phillycp/docs/cp\\_2012-11-29](http://issuu.com/phillycp/docs/cp_2012-11-29).

\$50 million in cash, and various other items, including electronics and jewelry.<sup>45</sup>

This is more than \$5.5 million per year.

As reflected by forfeiture data IJ obtained from the Pennsylvania Office of the Attorney General before filing the *Sourovelis* Class Action, Philadelphia is in a class of their own. The amount of forfeiture revenue each Pennsylvania district attorney's office collected between 2002 and 2012 is illustrated below in Table 1.



In statistical terms, Philadelphia's forfeiture revenue is almost 8 standard deviations above the Pennsylvania mean and, hence, as aberrant as a 7-foot-tall woman or an 8-foot-tall man.<sup>46</sup>

<sup>45</sup> As noted in footnote 26, these figures are based on Pennsylvania's annual asset forfeiture reports.

<sup>46</sup> See, e.g., Am. Compl. ¶ 46.

These numbers expose the staggering scale of Philadelphia’s civil-forfeiture program. The next section focuses on some of the financially motivated practices enabling this program.

**B. Philadelphia Law-Enforcement Officials Have Profited Through a Robo-Forfeiture System and Through Their Control of Forfeiture Proceedings.**

So as to maximize forfeiture revenue, Philadelphia law-enforcement officials have relied on: (1) an automated assembly-line system of filing and prosecuting forfeiture petitions; and (2) prosecutorial control of forfeiture proceedings.

To garner over \$72 million in forfeiture revenue in a 12-year span, the Philadelphia D.A.’s Office uses an assembly-line system to file thousands of forfeiture petitions each year.<sup>47</sup> For example, in 2011 alone, the D.A.’s Office filed 6,560 forfeiture petitions.<sup>48</sup> Philadelphia prosecutors file form documents in initiating and prosecuting forfeitures.<sup>49</sup> The Philadelphia D.A.’s Office relies on its paralegals to mechanically copy information from property receipts onto a series of forfeiture petitions.<sup>50</sup> These petitions overwhelmingly contain the rote allegation that the property “was used and/or continues to be used (or intended to

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<sup>47</sup> *Id.* ¶ 74.

<sup>48</sup> *Id.* ¶ 75.

<sup>49</sup> *See Guilty Property* at 8 (“Because the [Philadelphia] DA’s office files the same boilerplate petition in every cash case, the costs of prosecuting undisputed forfeitures is likely close to zero.”).

<sup>50</sup> Am. Compl. ¶ 84; *Backgrounder*.

be used) to commit, or to facilitate the commission of, violations of the Controlled Substance, Drug, Device and Cosmetic Act.”<sup>51</sup> The petitions are then rubber-stamped by an assistant district attorney who asserts “that the facts set forth in the foregoing petition are true.”<sup>52</sup>

The Philadelphia D.A.’s Office files other “form” legal documents supplementing forfeiture petitions as well. Of the 23 applications for an *ex parte* seize-and-seal order between September 2011 and August 2014 that IJ reviewed, all applications had the same typographical error.<sup>53</sup> Thus, Philadelphia prosecutors obtained a staggering amount of property (and revenue) through robo-forfeitures.

Robo-forfeiture was especially easy because, until recently, the Philadelphia D.A.’s Office controlled initial forfeiture proceedings in the very cases it was prosecuting. These prosecutors, who have a direct financial interest in depriving owners of their property, acted as judges in Philadelphia’s forfeiture “courtroom”—Philadelphia City Hall Courtroom 478—where, until January 2016, property owners seeking to reclaim their property had to appear.<sup>54</sup>

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<sup>51</sup> Am. Compl. ¶ 84.

<sup>52</sup> *Id.* ¶ 94.

<sup>53</sup> *Sourovelis* Class Action, Mem. Supp. Pl.’s Mot. Prelim. Inj., ECF No. 21, 17–18.

<sup>54</sup> As a result of the *Sourovelis* Class Action, on January 6, 2016, initial forfeiture listings were moved to Philadelphia Criminal Justice Center Courtroom 1101, where a Court of Common Pleas judge, or a Trial Commissioner designed by a judge, presides over initial listings.

Despite its moniker, there were no judges in Courtroom 478. Instead, Philadelphia prosecutors were in complete control of proceedings, in spite of the direct conflict of interest.<sup>55</sup> Philadelphia’s Assistant District Attorneys and their paralegals manned both tables in the room and called property owners’ names after they signed in.<sup>56</sup> Prosecutors routinely advised property owners that they did not need counsel and forced the owners, often without legal representation, to answer a long list of interrogatories under oath. Prosecutors then unilaterally assessed the sufficiency of these answers and any supporting documentation.<sup>57</sup> Once “negotiations” were underway, prosecutors routinely advised property owners that they did not need counsel and offered coercive settlement agreements requiring property owners to prospectively waive constitutional and statutory rights.<sup>58</sup>

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<sup>55</sup> See *Souovelis* Class Action, Decl. Briana Elzey, ECF No. 55-7, ¶ 11 (“Elzey Declaration”); see also *Last Week Tonight with John Oliver: Civil Forfeiture* (HBO), YouTube (Oct. 5, 2014), <https://www.youtube.com/watch?v=3kEpZWGgJks> (analogizing “courtrooms” without judges to hospitals without doctors).

<sup>56</sup> Elzey Declaration ¶¶ 11, 19.

<sup>57</sup> *Guilty Property* at 6–7; Am. Compl. ¶ 108.

<sup>58</sup> See *Souovelis* Class Action, Decl. Markela Souovelis Supp. Mot. Prelim. Inj., ECF No. 23, ¶ 11. Prior to the filing of the *Souovelis* Class Action, Philadelphia prosecutors routinely required property owners to agree to coercive conditions, such as ejecting family members from their property or waiving statutory and constitutional defenses, in order to settle forfeiture cases and unseal homes subject to seize-and-seal orders. See, e.g., *Souovelis* Class Action, Decl. Daren Waite, ECF No. 28-2, Ex. 1(A). (Before IJ filed the *Souovelis* Class Action, Philadelphia law-enforcement officials routinely “seized and sealed” real properties without notice, an opportunity for homeowners to contest seizures, or any showing of exigent circumstances.) Through a partial settlement in the *Souovelis* Class Action, the Philadelphia D.A.’s Office has agreed to stop imposing these conditions on property owners as well as stopping its prior practice of “seizing and sealing” homes without providing any notice or opportunity to be heard. See *Souovelis* Class Action, Order Granting Unopposed Mot. to Certify Settlement Classes and Grant Final Approval Settlement of Plaintiffs’ First and Second Claims for Relief and

These prosecutors used their power to procure thousands of default judgments, which could result whenever property owners missed any one of several proceedings.<sup>59</sup> According to one review of 16,000 non-real-estate cases filed between 2011 and 2013, owners disputing forfeiture had to appear at a median of four listings before having their cases decided.<sup>60</sup> With some property owners required to appear at upwards of ten listings before reaching a hearing before a judge, it was disconcertingly easy to inadvertently incur a default judgment.<sup>61</sup> In fact, according to one estimate, 87 percent of cash-forfeiture cases ended with forfeiture by default.<sup>62</sup>

With the odds so stacked against property owners, it is no surprise that prosecutors' forfeiture efforts have proven so profitable for Philadelphia's law-enforcement agencies. As set forth in more detail below, this Court should be mindful of this background and how Appellants, through the Philadelphia D.A.'s Office, aggressively pursue forfeiture.

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Dismissing Plaintiffs' First and Second Claims Without Prejudice, ECF No. 104 ("*Partial Settlement*"), 7–10 (Nov. 4, 2015). That said, officials' ability to retain forfeiture proceeds—which motivated law-enforcement officials' coercive settlement offers and *ex parte* seizures—remains.

<sup>59</sup> *Guilty Property* at 5; Am. Compl. ¶ 102; *Backgrounder*.

<sup>60</sup> *Guilty Property* at 6.

<sup>61</sup> *Guilty Property* at 5; *Backgrounder*.

<sup>62</sup> *Guilty Property* at 5.

#### **IV. THIS COURT SHOULD CONSIDER PENNSYLVANIA LAW-ENFORCEMENT AGENCIES' SELF-DEALING WHEN ANALYZING THE EXCESSIVE FINES CLAUSES AND INNOCENT-OWNER DEFENSE.**

Courts must scrutinize governmental actions more closely when government officials have an incentive to act in their financial self-interest. Closer scrutiny is also warranted when the front-end procedures are stacked against individuals challenging these government actions. In the context of civil forfeiture, the constitutional prohibition against excessive fines and the statutory innocent-owner defense are the final bulwarks against wrongful or unjust forfeitures. By affirming the Commonwealth Court's ruling, this Court can ensure that these vital safeguards remain and thus mitigate forfeiture abuse in Pennsylvania.

Courts have a long history of scrutinizing governmental action more closely where self-dealing is afoot, including cases involving constitutional requirements for adversarial hearings,<sup>63</sup> prompt hearings,<sup>64</sup> neutral magistrates,<sup>65</sup> and forfeiture

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<sup>63</sup> See, e.g., *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 55–56 (1993) (“The purpose of an adversary hearing is to ensure the requisite neutrality that must inform all governmental decisionmaking. That protection is of particular importance here, where the Government has a direct pecuniary interest in the outcome of the proceeding.”); *Freeman v. City of Dallas*, 242 F.3d 642, 666–67 (5th Cir. 2001) (en banc) (Dennis, J., dissenting) (“The protection of an adversary hearing . . . is of particular importance where the government has a direct pecuniary interest in the outcome of the proceeding.”).

<sup>64</sup> *Krimstock v. Kelly*, 306 F.3d 40, 51 (2d Cir. 2002), *cert. den'd*, 539 U.S. 969 (2003) (holding that, where a government seizes a vehicle, prompt hearings are necessary because—in part—of the seizing authority's financial interest).

<sup>65</sup> See, e.g., *Tumey v. Ohio*, 273 U.S. 510, 523 (1927) (overturning a fine where the mayor also sat as a judge and personally received a share of the proceeds); *Ward v. Village of Monroeville*, 409 U.S. 57, 60–61 (1972) (holding that having a mayor sit as a judge where a substantial portion of the town's revenues came from fines violated due process).

generally.<sup>66</sup> *See, e.g., Harmelin v. Michigan*, 501 U.S. 957, 977 n.9 (1991) (Scalia, J.) (“As we have recognized in the context of other constitutional provisions, it makes sense to scrutinize government action more closely when the State stands to benefit.”).

This insight has been extended in contexts similar to the issue here. In explaining the rationale for the Eighth Amendment’s Excessive Fines Clause, the *Harmelin* court explained that “[t]here is good reason to be concerned that fines, uniquely of all punishments, will be imposed in a measure out of accord with the penal goals of retribution and deterrence” precisely because “fines are a source of revenue.” *Id.*<sup>67</sup> Likewise, in a case concerning an innocent-owner defense—much like the one at issue here—one Supreme Court Justice voiced concern that “[f]orfeiture could become more like a roulette wheel employed to raise revenue from innocent but hapless owners . . . or a tool wielded to punish those who associate with criminals, than a component of a system of justice.” *Bennis v. Michigan*, 516 U.S. 442, 456 (1996) (Thomas, J., concurring).

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<sup>66</sup> *See, e.g., United States v. 6380 Little Canyon Rd., El Dorado, Cal.*, 59 F.3d 974, 984 (9th Cir. 1995), *abr’d on other grounds by United States v. Bajakajian*, 524 U.S. 321 (1998) (“All assets seized by the Department of Justice go into its Asset Forfeiture Fund, which the Attorney General is authorized to use for law enforcement purposes. . . . This incentive enhances the need for close scrutiny of *in rem* forfeitures.”) (citation omitted).

<sup>67</sup> This fear has been corroborated by a scathing Department of Justice report on America’s criminal justice system which lamented that “[i]n some places, justice systems have been transformed into revenue centers that pay for even a jurisdiction’s non-justice-related government operations.” U.S. Dept. of Justice, *Resource Guide: Reforming the Assessment and Enforcement of Fines and Fees* at 2 (Mar. 14, 2016), <http://ojp.gov/docs/finesfeesresguide.pdf>.

Consistent with these opinions, in determining the appropriate standards for whether a forfeiture constitutes an excessive fine or whether forfeiture victims are innocent owners, this Court should pay special heed to the fact that as authorized by Pennsylvania statute, law-enforcement officials can retain forfeited property and its proceeds. This self-dealing is compounded by the fact that civil-forfeiture procedures stack the deck against property owners, as discussed *supra* at 7–8. Because civil forfeiture is financially beneficial for these officials and procedurally easy to obtain, this Court must give full effect to the Excessive Fines clauses and the innocent-owner defense.

As the case at bar demonstrates, the constitutional prohibition against excessive fines and the statutory innocent-owner defense serve as final bulwarks against unjustified forfeitures. To water those protections down would allow forfeiture of Ms. Young’s \$54,000 home and her minivan based on her son’s sale of \$90 worth of marijuana—which she did not know of or consent to.

By affirming the Commonwealth Court’s ruling, the Court can ensure that property owners’ last-resort defenses remain intact. The Commonwealth Court’s ruling included, as relevant here, three holdings at issue in the Commonwealth’s appeal. First, the Commonwealth Court held that—for a forfeiture to satisfy the Excessive Fines Clause—“forfeitable property must be instrumental” to a criminal offense. *1997 Chevrolet*, 106 A.3d at 859. Second, the Commonwealth Court held

that, for purposes of determining whether a forfeiture is a disproportionate fine, the extent to which the forfeited property's owner is criminally culpable and the *actual* penalty imposed on the perpetrator of the underlying criminal offense are relevant. *Id.* at 855. Third, the Commonwealth Court held that, in order to reject an innocent-owner defense, a court "must identify the circumstances that make it reasonable to infer that the property owner had actual knowledge and did consent to" a controlled-substances violation. *Id.* at 870.

In affirming these holdings, this Court can protect vital constitutional and statutory safeguards for property owners. Though Pennsylvania forfeiture abuse will be systematic as long as officials can retain forfeiture proceeds, these protections will mitigate the abuse.

## CONCLUSION

The *amicus curiae* respectfully requests that this Court affirm the Commonwealth Court.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

This brief complies with the word-count limitation of Pa. R.A.P. 2135, because it contains 6,913 words, including footnotes, based on the word count of the word processing system used to prepare it.

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Date: March 23, 2016

**CERTIFICATE OF SERVICE**

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# APPENDIX A

# Pennsylvania earns a **D-** for its civil forfeiture laws:

- Low bar to forfeit and no conviction required
- Poor protections for innocent third-party property owners
- 100% of forfeiture proceeds go to law enforcement

## State Civil Forfeiture Laws

Pennsylvania has some of the worst civil forfeiture laws in the country. Earning a D-, Pennsylvania law only requires law enforcement to tie property to a crime by a preponderance of the evidence in order to forfeit it. Innocent owners are required to prove that they did not participate in, give consent to or have knowledge of the criminal activity with which their property is associated. Worst of all, law enforcement agencies have every incentive to seize: They retain 100 percent of all forfeiture proceeds.

Law enforcement agencies in Philadelphia have taken full advantage of the money-making opportunity afforded by Pennsylvania law. Between 2002 and 2013, forfeiture revenues were equivalent to nearly one-fifth of the Philadelphia district attorney's budget.

The Keystone State's forfeiture reporting requirements provide limited transparency. Each county is required to make annual reports of its forfeitures and forfeiture fund expenditures to the attorney general, who aggregates the reports and sends them to the Legislature. However, these reports would be more helpful if they included such features as itemized lists of forfeited assets or breakdowns of civil versus criminal forfeitures. The reports are not available online, forcing interested parties to file a request under the Pennsylvania Right-to-Know Law. Data obtained by the Institute for Justice using a RTKL request indicate that Pennsylvania law enforcement agencies reportedly forfeited more than \$152 million between 2000 and 2013, averaging about \$10.9 million per fiscal year.

## State Forfeiture Data

Year	Reported Forfeiture Proceeds				Total
	Currency	Vehicles	Real Property	Other	
2000	\$5,521,524	\$656,273	\$362,518	\$103,134	\$6,643,449
2001	\$5,052,475	\$440,521	\$460,349	\$44,958	\$5,998,303
2002	\$6,353,097	\$818,455	\$350,433	\$93,250	\$7,615,235
2003	\$8,016,870	\$609,507	\$2,178,054	\$45,321	\$10,849,751
2004	\$7,117,420	\$901,419	\$2,051,150	\$224,456	\$10,294,444
2005	\$9,953,843	\$744,491	\$1,770,187	\$35,587	\$12,504,108
2006	\$9,987,015	\$1,089,929	\$2,183,496	\$95,689	\$13,356,129
2007	\$7,757,828	\$1,202,026	\$2,716,312	\$64,046	\$11,740,212
2008	\$9,393,068	\$1,207,816	\$1,196,849	\$205,040	\$12,002,774
2009	\$11,965,015	\$831,473	\$1,999,110	\$151,472	\$14,947,070
2010	\$8,955,802	\$887,842	\$1,297,060	\$145,239	\$11,285,943
2011	\$10,102,475	\$1,108,395	\$975,014	\$83,871	\$12,269,755
2012	\$9,508,357	\$974,925	\$1,099,026	\$111,912	\$11,694,221
2013	\$8,381,972	\$832,639	\$1,677,598	\$82,727	\$10,974,936
<b>Total</b>	<b>\$118,066,759</b>	<b>\$12,305,711</b>	<b>\$20,317,156</b>	<b>\$1,486,703</b>	<b>\$152,176,329</b>
Average per year	\$8,433,340	\$878,979	\$1,451,225	\$106,193	\$10,869,738

Source: The Institute for Justice obtained the Office of the Attorney General's forfeiture reports by filing a Pennsylvania Right-to-Know Law request. The data represent fiscal-year forfeitures, including both forfeited cash and proceeds from the sale of forfeited property.

# Pennsylvania ranks 41<sup>st</sup> for federal forfeiture,

with nearly **\$105 million** in Department of Justice equitable sharing proceeds from 2000 to 2013.

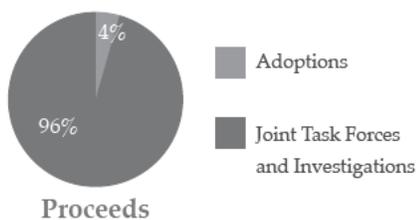
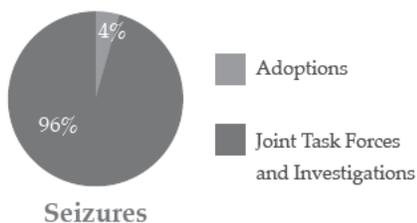
## Federal Equitable Sharing

Ranking 41<sup>st</sup> in the nation on equitable sharing, Pennsylvania law enforcement agencies participated in the Department of Justice's equitable sharing program to a much greater extent than did most other states' agencies. Between 2000 and 2013, Pennsylvania agencies received \$104.9 million in equitable sharing proceeds from the DOJ, a calendar-year average of almost \$7.5 million. The overwhelming majority of both assets seized and proceeds received—96 percent of both—came from joint task forces and investigations, which former Attorney General Holder's policy change did little to restrain. Agencies also received nearly \$15.5 million in proceeds from the Treasury Forfeiture Fund, averaging over \$1.1 million per fiscal year.

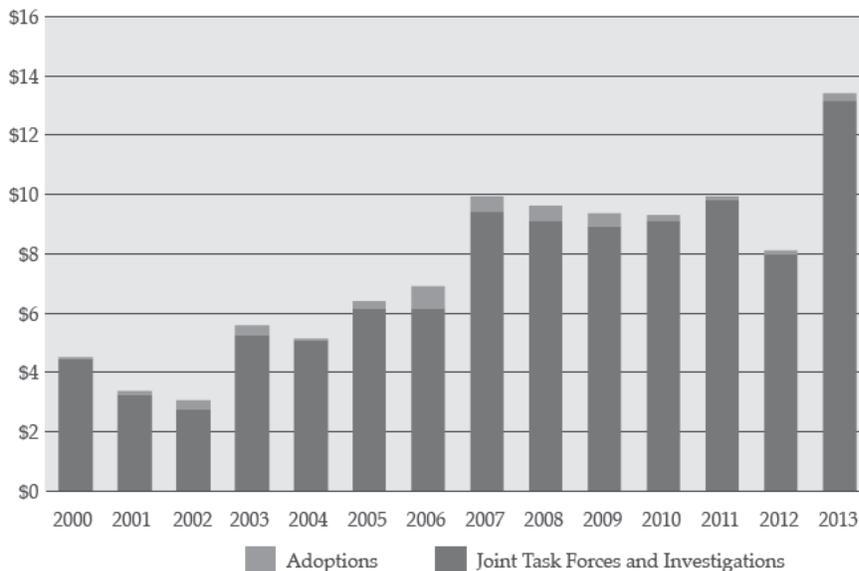
## DOJ and Treasury Equitable Sharing Proceeds

Year	DOJ (calendar years)	Treasury (fiscal years)
2000	\$4,524,767	\$444,000
2001	\$3,407,270	\$786,000
2002	\$3,098,388	\$587,000
2003	\$5,586,394	\$445,000
2004	\$5,115,294	\$112,000
2005	\$6,402,002	\$710,000
2006	\$6,952,958	\$3,238,000
2007	\$9,970,265	\$578,000
2008	\$9,604,562	\$2,217,000
2009	\$9,349,668	\$214,000
2010	\$9,333,625	\$3,803,000
2011	\$9,955,269	\$699,000
2012	\$8,130,351	\$1,138,000
2013	\$13,425,422	\$485,000
<b>Total</b>	<b>\$104,856,235</b>	<b>\$15,456,000</b>
Average per year	\$7,489,731	\$1,104,000

### DOJ Equitable Sharing, Adoptive vs. Joint, 2000–2013



### DOJ Equitable Sharing Proceeds, 2000–2013 (in millions)



Sources: Institute for Justice analysis of DOJ forfeiture data obtained by FOIA; Treasury Forfeiture Fund Accountability Reports. Data include civil and criminal forfeitures. Because DOJ figures represent calendar years and Treasury figures cover fiscal years, they cannot be added.

# Philadelphia's Civil Forfeiture Machine Grinds Property Owners Down

The most terrifying place in Philadelphia is Courtroom 478 in City Hall. This is where property owners enter the city's civil forfeiture machine, which chews up their rights while churning out revenue for Philadelphia police and prosecutors.

Owners wishing to contest the seizure of their cash, cars and homes must go to Courtroom 478. For years, prosecutors alone—not judges or juries—have run this “courtroom,” often telling property owners they do not need a lawyer before handing them a stack of complicated legal documents to complete.<sup>1</sup> Prosecutors have also “relisted” cases, forcing owners to return to Courtroom 478 multiple times. Missing even one court date could mean losing property forever through default.<sup>2</sup>

When homes have been taken under “seize-and-seal” orders, prosecutors have pressured owners to agree to unreasonable and unconstitutional conditions in order to regain access to their homes pending a final determination in their cases. Conditions have included waiving their constitutional rights in future civil forfeiture actions or even barring loved ones from their homes.<sup>3</sup>

Philadelphia's civil forfeiture machine is notable for its scope and efficiency. Up to 80 cases of all types have been listed for “hearing” in Courtroom 478 in a single day.<sup>4</sup> The district attorney's office won over 90 percent of its 8,284 cash-forfeiture cases in 2010.<sup>5</sup> Philadelphia homeowners face even worse odds: Owners won in only 30 of the nearly 2,000 real-property cases filed from 2008 to 2012.<sup>6</sup>

Altogether, civil forfeiture generated more than \$69 million in revenue for the district attorney's office between 2002 and 2013—an annual average of almost \$5.8 million.<sup>7</sup> The office spent about 40 percent of these funds on salaries, including those of the very prosecutors who have been running Courtroom 478.<sup>8</sup> This financial stake, and the conflict of interest it engenders, is the engine of the Philadelphia civil forfeiture machine.

Philadelphia is thus the quintessential example of what happens when state actors face bad incentives and few restrictions, something Chris Sourovelis discovered in March 2014 when his son was arrested for selling \$40 worth of drugs outside the family home.<sup>9</sup> Although Sourovelis had committed no crime, he was thrown out of his home and into Philadelphia's civil forfeiture machine.

To regain access to their home, Sourovelis and his wife agreed, without legal representation, to ban their son from the premises and change the locks, among other things.<sup>10</sup> After seven days, the Sourovelises—minus their son—were back in their home, but they still were not in the clear. They had to appear in Courtroom 478 no fewer than nine times.<sup>11</sup>

In August 2014, Sourovelis filed a class-action lawsuit brought by the Institute for Justice against the city and the district attorney's office for violating his and others' constitutional rights. Under pressure from the federal lawsuit and public opinion, the district attorney's office dropped the forfeiture case against Sourovelis' home in late 2014.<sup>12</sup> In a partial class-wide settlement, the office also agreed, in mid-2015, to stop seizing homes without giving owners warning and a chance to make their case before a judge, unless it could show such actions were necessary to prevent crimes. The office will no longer order homes sealed, absent exigent circumstances, before owners have had their day in court, nor will it demand that family members be banned from the premises.<sup>13</sup>

These changes should prevent other homeowners from suffering the same ordeal the Sourovelises did. But more must be done to dismantle Philadelphia's forfeiture machine once and for all, and so the litigation continues. Most significantly, law enforcement in the city still enjoys the financial fruits of forfeiture, and as long as this financial incentive persists, it is doubtful that Philadelphians and their property will be safe from the civil forfeiture machine.

1 Compl. at 19–21, *Sourovelis v. City of Phila.*, No. 14-4687 (E.D. Pa. Aug. 11, 2014) [hereinafter *Sourovelis Compl.*], available at [https://ij.org/images/pdf\\_folder/private\\_property/philadelphia-forfeiture/philadelphia-forfeiture-complaint-8-11-14.pdf](https://ij.org/images/pdf_folder/private_property/philadelphia-forfeiture/philadelphia-forfeiture-complaint-8-11-14.pdf).

2 Sibilla, N. (2014, August 26). Philadelphia earns millions by seizing cash and homes from people never charged with a crime. *Forbes*.

3 *Sourovelis Compl.* at 21.

4 Thompson, I. (2012, November 28). The cash machine. *Philadelphia CityPaper*.

5 Thompson, 2012.

6 Thompson, I. (2013, August 5). Law to clean up “nuisances” costs innocent people their homes. *ProPublica*.

7 IJ analysis of Pennsylvania annual asset forfeiture reports. See also *Sourovelis Compl.* at 2–3, 11.

8 IJ analysis of Pennsylvania annual asset forfeiture reports. See also *Sourovelis Compl.* at 12–13.

9 Sibilla, 2014.

10 Order at 1, *Commonwealth of Pennsylvania v. 12011 Ferndale Street*, No. CP-51-MD-0003952-2014 (Ct. Com. Pl. May 16, 2014).

11 Docket, *In Re: Street 12011 Ferndale*, No. CP-51-MD-0003952-2014 (Ct. Com. Pl. May 7, 2014).

12 Newhouse, S. (2014, December 18). D.A. drops two civil forfeiture actions under controversial law. *Metro*.

13 Dirty money. (2015, July 7). *The Philadelphia Inquirer* [Editorial].