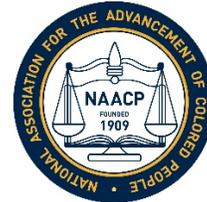




THE AMERICAN CONSERVATIVE UNION



The Leadership Conference



July 26, 2018

Members of Congress
U.S. House of Representatives
United States Capitol
Washington, DC 20515

RE: Civil Forfeiture Reform – Urgent Need for Floor Amendments to the CJS Appropriations Bill

Dear Member of Congress:

Current law allows law enforcement to confiscate property from innocent Americans without charging anyone with a crime. When citizens object, they encounter a system that is stacked against them procedurally and that treats them as presumptively “guilty.” This unpopular practice, known as civil forfeiture, is an affront to property rights and civil liberties and must be banned or reformed as soon as possible, but the immediate priority should be to amend the CJS

appropriations bill when it is considered in the House of Representatives in order to roll back the Department of Justice’s unjustified expansions of this practice.

The victims of civil forfeiture come from all parts of American society, but as Justice Clarence Thomas has emphasized, “forfeiture operations frequently target the poor and other groups least able to defend their interests.” “Perversely,” he continued, “these same groups are often the most burdened by forfeiture.”¹ The problem is compounded because current law allows the law enforcement agency responsible for taking the property often to keep the property—thereby bypassing federal or state appropriations procedures and raising persistent questions regarding the financial incentives that drive the practice.

Americans are well aware of this problem and want it fixed. In poll after poll, clear majorities of Americans have expressed outrage at the taking of private property through civil forfeiture. For example, in one survey, 70 percent opposed allowing the government to “seize an individual’s property if it believes that property was obtained through criminal activity.” In another poll, 71 percent agreed that “[L]aw enforcement should only be able to permanently seize money or other property if that person is charged with and convicted of a crime.”² The public has a commonsense approach to this issue: if property is to be seized, the government must make its case. “Trust us” is not an acceptable rationale.

Unfortunately, the Department of Justice in July 2017 dramatically expanded the use of civil forfeiture despite the overwhelming opposition of the House of Representatives. By way of background, in 2015, the DOJ had banned so-called “adoptive” seizures, where state and local law enforcement can seize property under state law and transfer it to federal prosecutors for forfeiture, in exchange for up to 80 percent of the proceeds. These adoptive seizures allow state and local law enforcement to use federal forfeiture laws to circumvent state-level limitations that had been imposed by legislatures or even state constitutions. The DOJ’s July 2017 policy shift restored the use of “adoptive” seizures, encouraging local law enforcement to engage in practices that many state legislatures have chosen to curtail. That policy change is an affront to the legislatures that have acted to protect their citizens from law enforcement overreach.

The House of Representatives acted clearly to oppose the DOJ’s expansion of civil forfeiture. On September 12, 2017, the House adopted three amendments to H.R. 3354, the 2017 appropriations bill that included Justice Department funding. Each amendment had the same purpose: to reverse the DOJ and stop the expansion of civil forfeiture. All three of these bipartisan amendments were adopted without opposition, with no House Members speaking in opposition. However, despite repeated requests from reformers in the House and Senate, these amendments were not included in the final omnibus appropriations bill that became law earlier this year.

Congressional leaders have repeatedly committed to reforming the civil forfeiture system, but those commitments have not translated into action. Congress has not written new law on this issue in nearly 20 years, notwithstanding the overwhelming policy case, the public promises, and

¹ *Leonard v. Texas*, 137 S. Ct. 847, 848 (2017) (Thomas, J., statement respecting denial of certiorari).

² See Rasmussen, October 2014, available at http://www.rasmussenreports.com/public_content/lifestyle/general_lifestyle/october_2014/70_oppose_police_seizure_of_property_without_a_criminal_conviction, and YouGov, August 2015, available at <https://today.yougov.com/news/2015/08/28/poll-results-civil-asset-forfeiture/>.

the popular support. The least Congress can do at this point is to stop the Department of Justice from making things worse.

When the House of Representatives considers the Commerce, Justice, State Appropriations bill for this year, it should include amendments to the effect of those adopted in the 2017 appropriations cycle, and the House Appropriations Committee should then insist on the inclusion of those amendments in any final bill negotiated with the Senate.

Americans should not have their property taken away simply because a police officer, an IRS agent, a customs official, or other member of law enforcement merely suspects that seizure is in the interest of justice. Nor should the U.S. Department of Justice be working to facilitate evasion of state laws. The government should bear a very high burden before it takes the dramatic step of taking private property, and our current laws fall laughably short of any appropriate standard.

We stand ready to assist you and your staff and are available to answer any questions you may have. For follow-up purposes, please feel free to contact Darpana Sheth of the Institute for Justice at dsheth@ij.org or Kanya Bennett of the American Civil Liberties Union at kbennett@aclu.org.

Sincerely,

The Institute for Justice
American Conservative Union
Drug Policy Alliance
Americans for Prosperity
DKT Liberty Project
Freedom Partners
Justice Action Network
The Libre Initiative
National Assn. of Criminal Defense Lawyers
National Taxpayers Union

American Civil Liberties Union
Leadership Conference on Civil and Human Rights
American Commitment
Campaign for Liberty
FreedomWorks
Goldwater Institute
Law Enforcement Action Partnership
NAACP
National Motorists Association
R Street Institute