

# FEDERALISM IN Action

## Civil Forfeiture

Civil forfeiture occurs when the government takes cash and property from someone who is suspected of wrongdoing. Unlike criminal forfeiture, in which the government obtains assets after an individual is convicted of a crime, civil forfeiture does not require a guilty verdict. Texas has some of the most permissive civil forfeiture laws in the country, allowing local law enforcement to keep up to 70 percent of any assets seized and requiring only a preponderance of evidence standard in order to seize the property. In many cases, once the property has been seized, formal charges are never actually brought against the accused and the burden is on the accused to prove their innocence in order to reclaim their property. In civil forfeiture cases, individuals do not get a state-appointed attorney, so they must bear the cost of attempting to reclaim their property. Texas brings in an average of \$41.5 million in civil forfeitures every year.<sup>i</sup>

Critics of civil forfeiture charge that it deprives individuals of their property without due process, places the burden of proof on the accused rather than the government, and creates perverse incentives for law enforcement agencies that reap the financial rewards of forfeiture. One of the worst examples of abuse comes from the town of Tenaha, Texas. In 2007 James Morrow was pulled over in Tenaha,

Texas, for driving too close to the white line. The police officer asked Morrow if he had any cash, and when Morrow indicated he had \$3,900 in the car, the cash was seized and Morrow was arrested. Morrow was told that if he didn't agree to forfeit the money, he would be charged with money laundering.<sup>ii</sup> Tenaha, a small town in East Texas, sits on a highway often used to drive to casinos in Louisiana. The town routinely pulled over cars with out-of-town plates, threatened to charge the drivers with money laundering, and even threatened to place their children in foster care in order to coerce them into signing over their assets. The town took an estimated \$3 million between 2006 and 2008, while the district attorney gave out "light sentences to those caught with drugs, or laundered money, in exchange for seizing their assets."<sup>iii</sup> For the average law enforcement agency in Texas, civil forfeitures amount to around 14 percent of its budget, and the money has been used for everything from trips to Hawaii, visits to casinos, and a margarita machine.<sup>iv</sup>

Civil forfeiture can also occur in a federal case. If a local official seizes property in pursuant of a federal crime, the federal government allows the local office to keep up to 80 percent of value of assets taken. On occasion, the forfeiture can allow local officials to circumvent state and local laws to pursue the federal case. This type of civil forfeiture, called equitable sharing, has netted Texas nearly \$25 million a year on average from the Department of Justice and another \$12 million from the Treasury Department.<sup>v</sup> From a federalist perspective, equitable sharing allows local law enforcement agencies cooperating with federal agencies to do an end run around state laws. For example, in states where marijuana has been legalized, citizens can still be charged by local law enforcement of violating laws if the local police are working with a federal agency. The 84th Texas Legislature saw a number of proposals

introduced to limit civil forfeiture, although only one ultimately passed. The new law required that the attorney general publish the state's aggregate totals on the website. Other states have passed laws requiring a conviction for forfeiture to occur and disallowing local agencies from profiting from such forfeitures.

- How do the current civil forfeiture laws limit individual rights?
- Should local law enforcement agencies be allowed to keep profits from civil forfeitures?
- To what extent should local law enforcement be able to circumvent state laws in pursuit of civil forfeiture?
- What civil forfeiture reforms, if any, should the state legislature adopt in the next legislative session? What reforms, if any, should the national government adopt?

i Dick Carpenter, Lisa Knepper, Angela Erikson, and Jennifer McDonald, *Policing for Profit: The Abuse of Civil Asset Forfeiture*, 2nd ed., (Arlington, Va.: Institute for Justice, 2015), <http://ij.org/wp-content/uploads/2015/11/policing-for-profit-2nd-edition.pdf> (accessed July 6, 2016).

ii James Drew, "East Texas Town Faces Civil Rights Lawsuit Without Government Help," *Dallas Morning News*, November 26, 2010, <http://www.dallasnews.com/news/crime/headlines/20100122-East-Texas-DA-faces-civil-rights-860.ece> (accessed July 1, 2016).

iii Forest Wilder, "When it Comes to Civil Forfeiture in Texas, You Have No Property Rights," *Dallas Observer*, May 12, 2014, <https://www.texasobserver.org/preying-innocent-civil-forfeiture> (accessed June 29, 2016).

iv Nick Sibilla, "Cops in Texas Seize Millions by Policing for Profit," *Forbes*, June 5, 2014, <http://www.forbes.com/sites/institutefor-justice/2014/06/05/cops-in-texas-seize-millions-by-policing-for-profit/#141cff123aa8> (accessed July 6, 2016).

v Carpenter et al., *Policing for Profit*.