Written Testimony of Jason Pye

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Oklahoma State Legislature

Senate Panel on Civil Asset Forfeiture Reform

Tuesday, September 1, 2015
Thank you, Senator Loveless for inviting me to participate in today’s discussion on Oklahoma’s civil asset forfeiture laws and the effort for reform.

My name is Jason Pye. I’m the Director of Justice Reform at FreedomWorks. Before I jump into the discussion on civil asset forfeiture laws, if the Senator will indulge me for a moment, I’d like to make a comment about my background. I know that any discussion of policing is likely to bring passionate views, especially in light of recent events, and understandably so.

It’s not often that I have the opportunity to talk about my father in what I do for a living, but I would like to note his influence on me before I get into the crux of my remarks here today. My father, after two tours in Vietnam and two purple hearts, served in law enforcement in the 1970s and 1980s in Metro Atlanta, including a stint with the Atlanta Police Department.

Additionally, he served on a volunteer basis in the Georgia State Defense Force, a state agency, in the late 1980s until his death in September 1993. We lived just a few miles from Fulton County, where Atlanta is located, and I recall having to wait on him to pick me up from school one day in April 1992 because he was on standby in case he was needed to assist in mobilizing members to dispel riots in protest of the Rodney King verdict.

I bring this up to say that while I work on policy, including civil asset forfeiture, for a living, I have the utmost respect for law enforcement. Through the influence of my father, I was raised to have that respect.

Recently, FreedomWorks released a publication, From the High Seas to Highway Robbery: How Civil Asset Forfeiture Became One of the Worst Forms of Government Overreach, that offered background on this practice to our community of nearly 7 million activists. It was a result of one of the most frequent questions we get from our activists: “How can the government take property from someone without ever charging them with a crime?”

We usually begin by explaining what civil asset forfeiture is, telling stories of those whose property has been seized by the government and subjected to forfeiture, and highlighting the lack of due process in forfeiture proceedings. From the High Seas to Highway Robbery allowed us to dive deeper in the history of civil asset forfeiture, from its roots in medieval times to British and American admiralty law to how it’s used today.

Unlike criminal proceedings, where charges are brought against an individual, governments bring their case against property in civil asset forfeiture cases, which

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1 Jason Pye, From High Seas to Highway Robbery: How Civil Asset Forfeiture Became One of the Worst Forms of Government Overreach, FreedomWorks, July 22, 2015
is why there are cases like *United States v. $127,700 in U.S. Currency, United States v. Approximately 64,695 Pounds of Shark Fins*,\(^2\) and *Texas v. One Gold Crucifix.*\(^3\)

While some of our activists were already aware of civil asset forfeiture before we included it in our issue set, others are simply perplexed. They often note that the Fifth Amendment says, very clearly, that “[n]o person shall... be deprived of life, liberty, or property, without due process of law.”\(^4\)

Our activists, after hearing about the background of civil asset forfeiture, wanted to know how their states stack up on the issue. In June, we released *Civil Asset Forfeiture: Grading the States,*\(^5\) which scores each state and the federal government based on three questions:

- “What is the standard of proof the government must meet to forfeit a person’s property?”
- “Who has the burden to prove innocence or mistake--the government or the property owner?”
- “What percentage of forfeiture funds is retained by law enforcement?”

We found that 36 states, in addition to the federal government, put the burden of proof on the property owner in forfeiture proceedings. In 21 states, the standard of evidence needed to subject property to forfeiture is “a preponderance of the evidence,” a more than 50 percent likelihood that seized property is connected to illicit activit

In another ten (10) states, only probable cause is needed, the same threshold needed secure a warrant. In federal proceedings, “a preponderance of the evidence” is needed to subject property to forfeiture.

Only four (4) states require a criminal conviction – that is, proof “beyond a reasonable doubt” – to subject property to forfeiture.

We found that 39 states and the federal government allow the seizing law enforcement agency to keep at least some or all of the proceeds from forfeitures, creating a perverse motive to self-fund.

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\(^2\) *Last Week Tonight with John Oliver,* “Civil Forfeiture,” HBO, October 5, 2014
https://www.youtube.com/watch?v=3kEpZWGgJks

\(^3\) Sekemia Mwonyonyi, “Texas v. One Gold Crucifix,” Medium.com, June 4, 2015
https://medium.com/@publicsafety/texas-v-one-gold-crucifix-bc220786f882

\(^4\) United States Constitution, Amendment V, Cornell University Law School
https://www.law.cornell.edu/constitution/fifth_amendment

\(^5\) Michael Greibrok, *Civil Asset Forfeiture: Grading the States,* FreedomWorks, June 8, 2015
http://www.freedomworks.org/content/civil-asset-forfeiture-grading-states
Twenty (20) states and the federal government received Ds and nine (9) received Fs. Only two (2) states received As and seven (7) received Bs.

Saying our activists are frustrated by how their states scored may be an understatement. They’ve told us that they plan to talk to their state legislators about getting legislations passed to fix their states’ civil asset forfeiture laws. We’ve been happy to provide a copy of the Institute for Justice’s model legislation⁶ to help guide them.

Oklahoma, I’m sad to say, received a low score; a D-. We found the standard of proof to be too low, the government must show only a preponderance of the evidence to subject property to forfeiture. The burden is on the property owner to prove his innocence to get his property back. Moreover, a perverse profit motive exists, as law enforcement can keep 100 percent of forfeiture funds.

Ideally, FreedomWorks believes that requiring a criminal conviction – proof “beyond a reasonable doubt” – before property can be subjected to forfeiture offers the best path forward for Oklahoma lawmakers. New Mexico⁷ and Montana⁸ enacted legislation this year to do just that. By tying forfeitures to a criminal conviction, the burden of proof will fall on the government, where it belongs.

If the will doesn’t exist in the legislature to require a criminal conviction, at the very least, lawmakers should raise the standard of evidence in civil court to “clear and convincing,” which would require the government to prove that the claim is substantially more likely to be true than false, and place the burden of proof on the government, not the property owner.

FreedomWorks believes that funding for law enforcement should come from local governments and the state legislature, not from forfeiture funds. We recommend that proceeds from forfeitures be placed in neutral accounts.

With that said, given that this is a sticking point here in Oklahoma, raising the standard of evidence to “clear and convincing” and placing the burden of proof on the government would mitigate the profit motive if the legislature decides not to touch that specific aspect of civil asset forfeiture.

Transparency is also needed. Requiring law enforcement and other agencies with power to seize property to keep track of what they’ve seized, whether the person from whom the property was seized was charged with or convicted of a crime, and how forfeiture proceeds are spent are, along with raising evidentiary standards and putting the burden of proof on the government, a step in the right direction.

This is an approach similar to what is currently being undertaken in Michigan. Importantly, law enforcement, viewing themselves as partners, is on board. The Michigan Association of Police Organizations recently noted: “Law enforcement works best when working in partnership with the communities being served. Any enforcement activities viewed as ‘policing for profit’ do unnecessary damage to that important relationship.”

Contrary to what some have said, civil asset forfeiture reform is not about budgets or other policing issues that have come up in other areas of the country, such as Ferguson. This is a particularly pernicious form of government overreach that is fundamentally inconsistent with the Fifth Amendment of the U.S. Constitution and the Oklahoma Constitution.

The movement for reform is growing in state legislatures. I hope that law enforcement in Oklahoma will see themselves as partners in this effort to protect due process and property rights in this state.

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10 Section II-7 of the Constitution of the State of Oklahoma http://oklegal.onenet.net/okcon/II.html