

ISSUE BRIEF

No. 4469 | NOVEMBER 20, 2015

Instead of Raiding the Assets Forfeiture Fund, Congress Should Simply Discontinue It

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Civil asset forfeiture is the legal tool that enables law enforcement officials to seize personal cash or private property, based on probable cause that it is involved in, or represents the proceeds of, a criminal act. Because forfeiture proceedings are *in rem*, meaning the “defendant” is the property itself, the government need not convict the owner to take his property from him. Insufficient due-process protections, misplaced burdens of proof, and low evidentiary standards combine to skew forfeiture proceedings against property owners.¹

With the passage of the Comprehensive Crime Control Act in 1984,² law enforcement agencies were permitted for the first time to retain the proceeds of successful civil forfeitures. Agencies within the Department of Justice began depositing their forfeiture proceeds into a newly created Assets Forfeiture Fund.³ Beginning in 1992, Treasury agencies, such as the IRS, were empowered to deposit forfeiture proceeds into their own special account, the Treasury Forfeiture Fund.⁴ At the time, Congress made the policy judgment that law enforcement funding needs trumped any other potential use for these proceeds—so much so that it gave exclusive and perpetual control of forfeiture funds to the Justice and Treasury Departments to finance law enforcement operations outside the normal appropriations process.

Three decades later, it appears that Congress may be beginning to re-evaluate this arrangement. In both the 2013⁵ and 2015⁶ Bipartisan Budget Acts, Congress “rescinded” (a technical budget term that essentially means “withdrew”) a total of more than \$2.3 billion from both the Treasury and the Assets Forfeiture Funds to offset spending increases elsewhere in the budget. Clearly, Congress made the determination that other policy priorities were in greater need of at least some forfeiture revenues than the nation’s law enforcement agencies. As it considers the issue of civil forfeiture reform, Congress should go further and redirect *all* forfeiture revenues to the General Fund, permanently ending the perverse profit incentive and budgetary dependencies that have so warped civil forfeiture.

Origins of the “Profit Incentive”

The notion that law enforcement agencies are entitled to the financial gains of forfeiture is a relatively recent one. With the passage of the Comprehensive Crime Control Act, Congress turned to civil forfeiture—which previously had been limited mainly to customs enforcement actions—as a new tool to target the assets of drug kingpins, criminal organizations, and money launderers. Before then, there was no expectation that a successful civil forfeiture would result in a financial gain to the agency that was responsible for seizing the cash or property; revenues derived from forfeitures were deposited into the General Fund and controlled by Congress via the normal appropriations process.

Allowing federal agencies to retain forfeiture proceeds, not to mention spend them with little oversight, was meant to incentivize their use of

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<http://report.heritage.org/ib4469>

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the new tool. It appears that Congress achieved its goal: In 1985, the first year the Department of Justice's Assets Forfeiture Fund was in place, the fund brought in \$27 million. In 2014, the fund had a net balance of more than \$2.5 billion.⁷

That money does not stay only with federal authorities. Under the equitable sharing program, state and local agencies that seize property under *state* law can transfer that property to federal authorities for forfeiture under *federal* law. The originating agency then receives up to 80 percent of the resulting proceeds. In 2013 alone, equitable sharing payments to the states totaled \$657 million.⁸ With so much money on the line, state and local officials have an incentive to bypass state forfeiture laws, which make it more difficult to forfeit property or are more restrictive of how the resulting proceeds may be spent. Congress simultaneously gave every law enforcement organization in the country a direct financial stake in the seizure of property, and placed the resulting revenues completely beyond the control of any local or state legislative body.

Fostering Dependence

The effect of the forfeiture profit incentive on law enforcement financing has been profound. According to *The Washington Post*, since 2008, some 298 police and sheriffs' departments and 210 task forces

have generated the equivalent of at least 20 percent of their budgets via civil forfeiture.⁹ A review of law enforcement agency budgets in Texas revealed that civil forfeiture revenues accounted for an average of 14 percent of those agencies' budgets.¹⁰ In 2001, a survey of 1,400 police executives and county sheriffs revealed that nearly 40 percent of respondents considered asset forfeiture to be a *necessary* source of revenue to complement their appropriated budgets.¹¹

In short, a significant percentage of law enforcement agencies across the country have grown dependent on forfeiture revenues to finance their operations. Police and sheriffs rely on forfeiture funds to provide equipment, vehicles, training, and even in some circumstances to pay salaries, overtime, and benefits.

Some fault for this dependence rests with state, local, and federal legislators who recognized forfeiture's revenue-generating potential and restricted agency budgets on the expectation that shortfalls could be made up via forfeitures.¹² Nevertheless, the growth in forfeiture proceeds in recent years has far outpaced declines in appropriated law enforcement financing, raising the question of whether agencies are merely using forfeiture to make themselves whole or whether they are growing and expanding their budgets, potentially beyond what is strictly necessary for public safety. In short, while politically expedient, agency self-financing is not without cost.

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1. "Arresting Your Property: How Civil Asset Forfeiture Turns Police Into Profiteers," The Heritage Foundation, 2015, <http://www.heritage.org/forfeiturereform>.
 2. Comprehensive Crime Control Act, Public Law 98-473.
 3. *Ibid.*
 4. Treasury Department Appropriations Act, Public Law 102-393.
 5. Bipartisan Budget Act of 2013, Public Law 113-67.
 6. Bipartisan Budget Act of 2015, Public Law 114-67.
 7. U.S. Department of Justice, Office of the Inspector General, "Audit of the Assets Forfeiture Fund and Seized Asset Deposit Fund Annual Financial Statements, Fiscal Year 2014," <https://oig.justice.gov/reports/2015/a1508.pdf#page=1> (accessed November 18, 2015).
 8. "Civil Asset Forfeiture: 7 Things You Should Know," The Heritage Foundation, 2014, <http://www.heritage.org/research/reports/2014/03/civil-asset-forfeiture-7-things-you-should-know>.
 9. Robert O'Harrow et al., "Stop and Seize," *The Washington Post*, September 6, 2014, <http://www.washingtonpost.com/sf/investigative/2014/09/06/stop-and-seize/> (accessed November 18, 2015).
 10. "Policing for Profit: The Abuse of Civil Asset Forfeiture, First Edition," The Institute for Justice, http://www.ij.org/images/pdf_folder/other_pubs/assetforfeituretoemail.pdf (accessed November 18, 2015).
 11. 770 agencies submitted responses to the survey. John Worrall, "Addicted to the Drug War: The Role of Civil Asset Forfeiture as a Budgetary Necessity in Contemporary Law Enforcement," *Journal of Criminal Justice*, Vol. 29 (2001), pp. 171-187, <https://www.heartland.org/sites/default/files/1-s2.0-s0047235201000824-main.pdf> (accessed November 18, 2015).
 12. Drug Policy Alliance, "Above the Law: An Investigation of Civil Asset Forfeiture in California," http://www.drugpolicy.org/sites/default/files/Drug_Policy_Alliance_Above_the_Law_Civil_Asset_Forfeiture_in_California.pdf (accessed November 18, 2015).
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Lack of Transparency and Oversight

Unlike the ordinary budget process, the amount and use of forfeiture funds are largely opaque. Federal law makes forfeiture proceeds available to law enforcement agencies to finance law enforcement operations, with the agencies themselves determining how these funds are spent. Similarly, local and state agencies participating in the equitable sharing program do not have to explain or justify their use of forfeiture funds to any local or state legislators. The result: Law enforcement agencies can raise and then spend revenue completely apart from the ordinary political process, answerable to no one outside the law enforcement community.

As a consequence of this lack of oversight, many law enforcement officials have spent their forfeiture funds in highly controversial ways. In Camden County, Georgia, the then-sheriff spent \$90,000 on a Dodge Viper to impress children as part of the Drug Abuse Resistance Education (DARE) program. In the town of Sunrise, Florida, a small cohort of officers working reverse sting operations paid themselves over \$1 million in overtime and benefits, financed directly through the cash and property they seized. Others have paid for a Zamboni, staff retreats to exotic locales, and even drugs and prostitutes.¹³ As a result of abuses like these, many have called forfeiture a law enforcement “slush fund.”

If these expenditures were covered by public funds, that would be bad enough. The fact that the funds come from the forcible seizure of property, often without a criminal conviction and with little-to-no evidence to justify that seizure, is extremely troubling.

One of the most important functions of the legislature is to control the purse strings, and thereby hold government agencies accountable to the public through their elected representatives. By creating the Assets Forfeiture Fund and its Treasury counterpart, Congress effectively waived this traditional power, short-circuiting not only its own ability to oversee law enforcement affairs, but the ability of hundreds of state and local legislatures to hold their own agencies accountable as well.

Raiding the Forfeiture Funds

Three decades ago, Congress made the determination that the budgetary needs of law enforcement agencies were so pressing and supreme that they merited giving law enforcement authorities perpetual and near-total control of forfeiture revenues. History provides many reasons to doubt the wisdom of such a judgment, not only for the reasons outlined above, but because future Congresses were largely prevented from tapping these funds to cover other, competing policy priorities.

More recently, Congress has taken a different view. In the 2013 Bipartisan Budget Act, Congress rescinded \$693 million in funding from the Assets Forfeiture Fund and an additional \$867 million from the Treasury Forfeiture Fund to cover budgetary shortfalls elsewhere in the federal budget. It repeated this maneuver in the recently enacted 2015 Bipartisan Budget Act, withdrawing \$746 million from the Assets Forfeiture Fund. Between the two major budget deals, Congress used \$2.3 billion of forfeiture funds to offset spending increases in non-law enforcement areas.

Congress has clearly determined that there are other, more pressing, uses for at least some forfeiture revenues. But to capture forfeiture funds to spend on non-law enforcement purposes, Congress must permanently rescind the money from the Assets and Treasury Forfeiture Funds, accounts it deliberately set up to keep funds *outside* the normal appropriations process and reserved solely for law enforcement.

Continued unanticipated funding rescissions present a potentially serious problem. Many law enforcement agencies depend on the funds in these accounts to finance a substantial portion of their operations. Unexpected billion-dollar rescissions of funds risk causing real and potentially serious budget shortfalls that local and state lawmakers may be unable to cover on short notice. Even worse, agencies may feel they have no choice but to seize and seek forfeiture even more frequently to ensure adequate forfeiture revenues, resulting in real and potentially serious consequences to innocent property owners.

13. For more instances of questionable purchases and abusive forfeitures, see “A Sampling of Abusive Forfeitures From Around the Country,” The Heritage Foundation, <http://www.heritage.org/forfeitureabuse>.

Returning Proceeds to the General Fund

Returning forfeiture revenues to the General Fund would stabilize agency budgets, end the profit incentive that has all too often warped law enforcement priorities, and restore the power of the purse to local, state, and federal legislatures. Congress would be free to appropriate federal forfeiture revenues as it sees fit to meet competing and changing policy challenges.

This does not automatically mean that law enforcement agencies will see reductions in their budgets. Reforming civil forfeiture is not about cutting funding to the agencies responsible for enforcing the laws and keeping the public safe. Indeed, these agencies should be fully and generously funded. If they have a genuine need for a disbursement of funds from the public treasury, they will have a compelling case to make before legislators. Law enforcement agencies were funded without forfeiture proceeds for two centuries; there is no reason this historically tried-and-true system cannot work today.

There is certainly a risk that Congress might use forfeiture revenues to increase the size of the federal budget, but isolating forfeiture revenues in special law enforcement accounts has not stopped Congress from using these revenues to pay for new spending—the rescissions of 2013 and 2015 are proof of that. In short, the present system leaves innocent Americans vulnerable to unjust property seizures, skews law enforcement priorities toward revenue generation, and degrades governmental accountability and transparency while enabling Congress to expand the size of government. It is bad policy all around.

Conclusion

Civil forfeiture has skewed law enforcement priorities for 30 years, allowing these agencies to raise and spend substantial sums of money with little oversight or accountability. In the process, many law enforcement agencies have grown dependent on the proceeds of forfeiture to finance their operations. Civil forfeiture can be a powerful and effective crime-fighting tool, but only if it is exercised fairly and impartially, only if property owners are granted sufficient due process protections to challenge unjust and wrongful seizures, and only if law enforcement agencies are held accountable to the public they protect and serve.

The time has come to terminate both the Assets and the Treasury Forfeiture Funds, and redirect all forfeiture proceeds to the General Fund. At the same time, lawmakers should end the federal equitable sharing program. The net result of these two actions would be to return the financial aspects of federal forfeiture law to their pre-1984 condition. Law enforcement funding decisions would be returned to the purview of legislators rather than self-interested agency leaders.

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