New American

Arkansas Halts Civil Asset Forfeiture and Closes Federal Loophole

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"There shall be no civil judgment under this subchapter and no property shall be forfeited unless the person from whom the property is seized is convicted of a felony offense that [is] related to the property being seized and that permits the forfeiture of the property," said State Senator Bart Hester (R-Cave Springs), the sponsor of a bill that went into effect July 24 to abolish civil asset forfeiture in practically all cases in the state of Arkansas.

The vote was unanimous in both houses of the Arkansas Legislature, and Governor Asa Hutchinson signed the bill into law back in March. According to the new law, the state is prohibited from taking a person's property unless there is a criminal conviction first.

Previously, the state had already taken action to withdraw from a federal program known as "equitable sharing." Under equitable sharing, state and local police, and prosecutors, were able to essentially ignore state restrictions on the practice known as civil asset forfeiture (CAF) by passing cases off to the federal government via what is known as adoption. Then-Attorney General Jeff Sessions was a huge supporter of CAF, and while he was Attorney General, the U.S. Department of Justice would "share" proceeds from CAF with state and local authorities.

CAF is a legal process by which law-enforcement agencies take assets from persons they suspect of having committed a crime, without necessarily even charging the owners of the property with any crime. Legally speaking, with CAF, the case is between the police and the asset itself, sometimes referred to by the Latin term *in rem*, meaning "against the property." In this type of case, the property itself becomes the defendant and no criminal charge against the person is needed in order to simply seize the property. This has led to some odd-sounding cases, such as *The State v. $12,000 Cash*, when assets are seized from owners without the owners of the property themselves ever being charged at all. This is contrasted with criminal asset forfeiture, where the accused is afforded all of the constitutional and statutory procedural safeguards available under criminal law, and must be found guilty beyond a reasonable doubt before any property is forfeited.

Some states, recognizing the inherent injustice involved in civil forfeiture, have passed laws to rein in the practice. Unfortunately, many of these state laws are no match for enterprising politicians. Enter adoption forfeiture, or "equitable sharing," the practice by which local law enforcement can circumvent state laws against CAF by "sharing" part of their seized cash or property with federal authorities.

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Written by **Steve Byas** on July 25, 2019

The Arkansas Legislature has moved to curtail this effort to circumvent state sovereignty. Under their law, the transfer of property to the feds is now prohibited, except with judicial approval.

No state or local law-enforcement agency may transfer any property seized by the state or a local agency to any federal entity for forfeiture unless the circuit court having jurisdiction over the property enters an order, upon petition by the prosecuting attorney, authorizing the transfer.

Secondly, the transfer shall not be approved unless it reasonably appears that the activity is giving rise to the investigation or the seizure involves more than one state, or if the nature of the investigation or seizure would be better pursued under federal law.

Unfortunately, a compliant judge could still circumvent state law by, as the Tenth Amendment Center warns, simply becoming a "rubber stamp" to the requests of law enforcement. The Tenth Amendment Center suggests that Arkansas needs to tighten up this loophole by withdrawing from the federal equitable sharing program completely.

Sadly, many citizens who otherwise strongly support the concepts of due process of law, and the principle that an accused person is considered innocent until proven guilty beyond reasonable doubt, will, when it comes to drugs, protest that drug cases present a special problem, because drug abuse and drug dealing is so serious. But murder, robbery, and rape are all more important than taking the property of an accused drug dealer without conviction, and yet we afford persons accused of those very serious crimes the procedural safeguards that we all treasure.

These safeguards are not the innovation of bleeding-heart liberals. One provision of the English Bill of Rights, adopted in the aftermath of the Glorious Revolution of 1688 in England, was crystal-clear on this point: "Forfeitures before conviction are void." In fact, civil asset forfeiture by the British government against their American colonists was among the grievances that caused the states to secede from the British Empire.

Hopefully, more states will follow the lead of Arkansas.

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