



Written by [Steve Byas](#) on May 19, 2015

## Civil Asset Forfeiture About More Than Fighting Drugs

The seizure last year of \$107,702 from North Carolina convenience store owner Lyndon McClellan is an example that civil asset forfeiture is not just about “fighting drug cartels”; it is a disrespect by the government for private property, and it turns the burden of proof from the government to the person accused of a crime.



McClellan has been told that he will get his money back from the IRS — eventually, although his lawyer said it could take months.

The IRS seized all the money in the bank account of McClellan’s L & M Convenience Mart in Fairmont, North Carolina, and accused him of committing “structuring violations,” though he was never charged with any crime.

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It seems that McClellan had made many cash deposits of less than \$10,000 into the store’s bank account. Under federal law, all deposits of more than \$10,000 must be reported to the IRS. Since many money-laundering operations and drug traffickers skirt the law by making deposits under \$10,000, this has become a crime. Most law-abiding Americans are unaware of such a law, assuming that making deposits into their own bank account violates no law.

Government officials do not actually have to prove any guilty intent by the person making the deposits; they simply work off assumptions. In McClellan’s case, while the government has dismissed the case against him and stated that it will eventually return all his money, he is left with legal fees and expenses that the government has no intention of paying.

Increasingly, innocent American citizens are faced with the dilemma of either fighting the government seizure of their assets (which would most likely cost more than the amount seized) or simply letting the government keep the money. The problem of civil asset forfeiture is now so serious that the Canadian government has warned its citizens not to carry cash into the United States, because U.S. officials do not presume innocence, but rather guilt when it comes to the money. And this is not about pocket change. *Over \$2.5 billion has already been confiscated from Canadians traveling inside the United States.*

Americans are often perplexed when they hear of civil forfeiture’s flipped burden of proof because they were taught that in our legal system the accused is presumed innocent until proven guilty. Under civil asset forfeiture, however, it is the property, not the person, that is seized — which explains why the cases have odd names such as *The United States of America vs. \$100,000 in Cash*. Once the property is seized, its owner must prove innocence before the property is returned.

Under the Equitable Sharing Program, property seized can even be used to buy food and drinks at government conferences. According to the *Washington Post*, there have been more than 60,000 cash



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seizures on highways and elsewhere since 9/11, without search warrants or indictments. Local and state law enforcement also uses civil asset forfeiture as a significant revenue stream. The *Post* reports,

Police agencies have used hundreds of millions of dollars taken from Americans under federal civil forfeiture laws in recent years to buy guns, armored cars and electronic surveillance gear. They have also spent money on luxury vehicles [and] travel.

Some states have recognized the abuse, both real and potential, perpetrated in the name of the War on Drugs, and have passed laws to reduce the incentives for abuse. Oklahoma State Senator Kyle Loveless has introduced SB 838 to address the problem in his state. “Reform of civil asset forfeiture is not a partisan issue,” he explained. “It is a constitutional issue. Justice should be dealt out in a courtroom, not on the shoulder of a highway.”

Many in Oklahoma law enforcement, and their supporters, are fighting back against the proposal by Loveless, which will most likely be considered in an interim study after the legislative session ends, and possibly brought up at the next session in 2016. As his bill stands now, it states that a person would have to be convicted of a crime before the government could seize his property. Loveless explained: “The current statute states that people whose assets are seized are assumed guilty until proven innocent.” His bill would also guarantee a jury trial for anyone whose assets have been seized, as Oklahoma does not presently provide that protection.

Loveless also wants to raise the threshold for seizing assets. As it stands now, the state must have only a suspicion that the property of the accused is being used for illegal purposes. The portion of the bill that has caused the most consternation among many in law enforcement is the proposal to have any proceeds from seizures go to the state’s general fund. As it stands now, the proceeds go directly to the agency making the seizure — clearly an opportunity for abuse. As the *Oklahoman* newspaper noted, “The state’s broad statutes can create an incentive for law enforcement to carry out seizures that may not be fully warranted.”

Canadian County (Okla.) Sheriff Randall Edwards was especially vocal against the legislation introduced by Loveless, calling it the “most asinine and devastating bill I have ever seen for this state and local law enforcement.”

Some have argued that Oklahoma does not have the problems found in other states; however, the Institute for Justice assigned a D- to the state for its abuses of the civil asset forfeiture law. One audit of Equitable Sharing Funds found that the Oklahoma Highway Patrol had almost \$2 million in unallowable expenditures relating to salaries, overtime pay, construction, and fees paid to contractors. It was even discovered that two Ford F-150 pickups had been used by non-law enforcement personnel.

Perhaps the statement of the chief of police in Oklahoma City sums up the problem. Chief Bill City defended the program, explaining, “We almost totally fund all of our covert operations in dealing with narcotics and other issues with asset forfeiture funds.”

The incentive for abuse is obvious, whether it be in the War on Drugs or the seizure of money by the IRS — at the federal, state, or local level.

The bottom line is that no U.S. citizen should ever have to prove his innocence, or the innocence of his property.



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