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Civil Asset Forfeiture: Drugs, Due Process, and State Sovereignty

"Most Americans don't realize it's this easy for police to take your cash." That was the headline of a story published October 1 in the *Washington Post*.

The topic under that title is civil asset forfeiture and how it is being misused by law enforcement (federal and local) to deprive Americans of their property.

For those readers unfamiliar with this tyrannical transfer of wealth, a constitutional violation known euphemistically as "asset forfeiture," here's the *Washington Post's* summary included in another article published in the *Post* earlier this year:

> Since 2008, thousands of local and state police agencies have made more than 55,000 seizures of cash and property worth $3 billion under a civil asset forfeiture program at the Justice Department called Equitable Sharing.
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> With this kind of money up for grabs, it is little wonder that the plague of asset forfeiture has spread across the 50 states.

Paul-Martin Foss, president and executive director of the Carl Menger Center for the Study of Money and Banking, an Arlington, Virginia-based think tank dedicated to educating the American people on the importance of sound money and sound banking, wrote:

> Hardly a week goes by without a mention of some innocent person who is arrested and/or imprisoned for violating an unconstitutional law, an arcane regulation, or simply being in the wrong place at the wrong time. For completely innocuous conduct, they find themselves at the mercy of an uncaring, unfeeling bureaucratic apparatus that chews them up and spits them out.

As with so many of the other ongoing assaults on the vestigial liberty enjoyed by Americans, civil asset forfeiture is justified by its perpetrators as a means of keeping the people safe.

The program has enabled local and state police to make seizures and then have them "adopted" by federal agencies, which share in the proceeds. It allowed police departments and drug task forces to keep up to 80 percent of the proceeds of adopted seizures, with the rest going to federal agencies.

Civil forfeiture procedures are based on the premise that a person's property can be complicit in the commission of a crime. This is laughable and legally unreasonable. The Constitution was specifically written to protect citizens from this and all other forms of unreasonable searches and seizures (Fourth Amendment), as well as to place due process protections between the governors and the governed (Fifth Amendment).

As was contemplated by the drafters of the Constitution, legislatures in a few states are passing laws to stand as barriers between the people and a despotic federal government.

Lawmakers in New Mexico and Montana have already interposed, curtailing the power of the practice significantly. Similar measures are working their way through the Ohio House of Representatives.

Both houses of the state legislature in Michigan have passed bills placing higher evidentiary hurdles in the path of police attempting to seize assets. The state Senate has approved a compromise version of the measure and if their colleagues in the House follow suit, the bill will be sent to the governor.

In Arizona, an effort to bring "transparency and accountability" to the civil forfeiture process is being attacked by the Arizona Prosecuting Attorneys' Advisory Council. The group argues that any reform in the policy could weaken police and prosecutors' ability to keep criminals from profiting from their unlawful enterprises.

Recently, a bill aimed at reducing the impact of civil asset forfeiture was killed in California, though, after the federal government reminded the state of its dependence on the plutocrats on the Potomac. As the Tenth Amendment Center reported on September 23:

> Documents uncovered by the Institute for Justice reveal federal officials have inserted themselves into efforts to reform state asset forfeiture laws, working behind the scenes to ensure states continue to participate in the federal forfeiture program.
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> As reported by TechDirt, emails from Department of Justice and Treasury Department officials appear to urge local law enforcement to fight reform efforts by pointing out just how much money these agencies will "lose" if they can't buddy up with the feds. In fact, information from the emails popped up in lobbying letters sent to legislators in California.

This meddling confirms what Americans already know: Washington considers the states nothing more than administrative subordinates whose continued existence is tolerated only so long as they faithfully facilitate the execution of the millions of mandates of the multitude of federal programs.

As the partnership in the civil asset forfeiture practice proves, most states seem content to play this role.

In January, then-Attorney General Eric Holder issued a regulation requiring local and state police to have a warrant before using federal law to seize private property under a civil asset forfeiture scheme.

While there is an obvious constitutional problem with Holder's declaration — the federal government has no authority to dictate to the states how to run their law enforcement — the bigger problem is the exemptions placed by Holder in the new policy.

In a statement, the Justice Department explains the exemptions:

> The Attorney General ordered that federal agency adoption of property seized by state or local law enforcement under state law be prohibited, except for property that directly relates to public safety concerns, including firearms, ammunition, explosives and property associated with child pornography.

Now, no one will defend anything or anyone peddling, promoting, or in any way participating in the exploitation of children, but it's the items enumerated earlier in that list that are genuine cause for concern.

Under the terms of the new Justice Department directive, local police are not only allowed, but they are

encouraged to continue confiscating weapons and ammunition from citizens not accused of any crime.

The Second and Fifth Amendments are repealed in one reportedly benign, even beneficial, bureaucratic fiat.

Of all the possessions police are still given the green light to grab, it seems suspicious that guns and ammunition are topping the list, especially in light of the Obama administration's multi-pronged assault on the natural right to keep and bear arms.

When it comes to civil asset forfeiture, the layers of constitutional violations multiply. Americans — who have been denied due process — are subjected to a financially crippling and liberty-depriving process of defending the ownership of their property. Such tyranny is anathema to the rule of law and the protections bequeathed to us by our Founders.

Some conservatives may argue that while it is sometimes misused, the power of civil asset forfeiture should be retained by police in order to punish "drug dealers."

Unsurprisingly, there is another constitutional problem in that premise, as well.

In the Constitution, the federal government was granted a "few and defined" powers. These powers were listed (enumerated) so as to bind those who would obtain any sort of authority in the manifold offices of the federal government.

In *The Federalist,* Alexander Hamilton explained that if the federal government acted outside the scope of its constitutional authority, then those acts were not laws; they were mere usurpations and they deserved to be treated as such.

Although it is unpopular in some conservative circles to talk about, the so-called "war on drugs" is one example of an area where the federal government has absolutely no constitutional authority to act.

Americans would go a long way toward eliminating the evil of civil asset forfeiture by demanding that their federal representatives repeal the full panoply of federal drug regulations: "laws" that incentivize the "policing for profit" that fuels the forfeiture scheme.