



Written by [Joe Wolverton, II, J.D.](#) on November 1, 2011

Do Federal Forfeiture Laws Violate Tenth Amendment?

In an unusual twist on the now typical scenario of a state government refusing to accede to the demands of an overreaching federal authority, the most recent defense of the right of a state to be self-governing is coming from a private citizen.

Russell Caswell's family has owned the Motel Caswell in Tewksbury, Massachusetts, for nearly half a century, but because of a drug deal carried out by a guest, the federal government is claiming the right to seize the property and wrest the inn from the Caswell family.



Mr. Caswell, 68, is not going down without a fight, however. He is determined to keep the \$57-a-night motel in the family. Caswell's position is buoyed by a recent Supreme Court decision where a similar issue was raised. Put simply, Caswell's legal team avers that the Department of Justice cannot seize property where the owner of the property is not accused of any crime. In the present case, Mr. Caswell is not charged with any crime. For its part, the DOJ is seeking application of a law that authorizes seizure of property where the property is the site of criminal activity.

In 2009, the Department of Justice filed suit in federal court seeking forfeiture of the motel based on the allegation that drugs were sold on the premises.

The DOJ complaint cites seven police investigations from 2001 to 2008 that led to at least eight convictions for drug-related crimes. In the suit, Attorney General Holder declares that the motel has been investigated for drug-related activity over 100 times since 1994.

Just how a small, 56-room motel in a small town came to the attention of the Justice Department is perhaps the most critical part of this tale of federal tyranny. Some say that it was the greed of local law enforcement that drew the attention of the federal government.

According to filings made in the case, the Tewksbury (Massachusetts) Police Department gave the feds the tip regarding the drug-related activity allegedly happening at the motel and in return for its cooperation the department stands to receive as much as 80 percent of the proceeds from the sale of the property under a federal forfeiture program known as "equitable sharing."

The terms of this arrangement dictate that a portion of the money gained from the sale of seized property goes to the local agency that assisted the feds in their prosecution.

Published reports indicate that payments doled out under the program last year exceeded \$500 million, an increase of 75 percent from the past decade.

Curiously, the spokesman for the Tewksbury Police insists that the feds were involved before they ever started helping the case along. When pressed for details of the relationship, reporters were told to contact the U.S. Attorney's office in Boston. That office responded to questions by insisting that the case "has nothing to do with any financial considerations."



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Such a claim is difficult to believe, however, in light of the well-chronicled budget crises that are gripping so many municipalities throughout the United States. An irrefutable and unforgettable aspect of this pandemic financial floundering is that there is ample and convincing evidence that the federal government's manipulation of the money supply through the unconstitutional Federal Reserve was the genesis of the boom/bust cycle that is at the bottom of the crisis.

His latest attempt to halt the federal government's huge boots from trampling the boundaries between it and the sovereign states comes at a critical moment. According to published information, the government of the United States has seized over \$2.5 billion in personal and real property as a result of over 15,000 forfeiture suits brought against citizens. Shockingly, applicable federal law permits such seizures in any case where the property can be shown to have been "stained by crime," regardless of the innocence of the legal owner of it.

"People shouldn't lose their property if they haven't been convicted of any crime," said Scott Bullock, one of Russell Caswell's attorneys. "Mr. Caswell hasn't even been accused," he continued.

Caswell's attorneys and those groups aiding them insists that there is no constitutional basis for the over 400 federal statutes currently in effect that grant power to federal agents to seize property from a laundry list of crimes that includes drug trafficking, the charge at issue in the Caswell case.

On the other hand, lawyers for the government assert that the myriad of seizure and forfeiture laws are necessary to vex drug dealers and their operations from growing large, and to keep all illegal outfits from profiting from their unlawful activities. Citizens, they insist, are better off with these weapons in the federal law enforcement arsenal.

Despite the denials of local cops, Mr. Caswell is convinced that the lure of easy money drove them to call in the federal authorities.

Sadly, in 2011, drug busts are routine for even small town police forces. Dockets of local court rooms are packed with accused drug offenders and this tragic experience should preclude the need for additional resources from Washington.

Why, then, would the Tewksbury Police feel compelled to enlist the aid of the federal government? Perhaps its the \$1 million estimated value of the motel and land that Mr. Caswell owns outright with no outstanding mortgage or other encumbrance.

Currently, the Department of Justice has convinced a federal judge to place a lien on the property prohibiting its sale or use as collateral pending the issuing of an ultimate ruling in the case.

The Institute of Justice intends to file a motion in the case asking a federal judge to dismiss the case until the constitutionality of the equitable sharing program can be judicially determined.

In a brief filed concurrent with the motion, Caswell's lawyers argue that the equitable sharing program "exceed(s) the lawful powers of the federal government as limited by the 10th Amendment."

The 10th Amendment to the Constitution states:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Mr. Caswell's legal counsel are confident in their position based on a Supreme Court decision handed down earlier in the year wherein the justices unanimously held that private citizens may invoke the protections of the Tenth Amendment against usurpations of the federal government. Prior to this key



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ruling, only state agencies were given standing to raise the constitutional issue of the right of states to govern themselves based on Tenth Amendment claims.

Following the precedent set in that earlier case (a case involving a private citizen's claim that state law enforcement was barred by the Tenth Amendment from enforcing federal laws based on treaties), Mr. Caswell's attorneys have argued that the equitable sharing program is violative of the Tenth Amendment as it "illegally usurps a state's power to run its own asset forfeiture system by giving police an incentive to work with the federal government ahead of state authorities."



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