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# CRIMINAL LAW & PROCEDURE

## POLICING FOR PROFIT: THE ABUSE OF FORFEITURE LAWS

By Darpana M. Sheth\*

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### Note from the Editor:

This article is about civil-forfeiture laws. As always, the Federalist Society takes no position on particular legal or public policy initiatives. Any expressions of opinion are those of the authors. The Federalist Society seeks to further discussion about the use of civil-forfeiture laws. To this end, we offer links below to other perspectives on the issue, and we invite responses from our audience. To join this debate, please email us at [info@fed-soc.org](mailto:info@fed-soc.org).

### Related Links:

- Overview of Asset Forfeiture Program, U.S. DEPARTMENT OF JUSTICE: <http://www.justice.gov/jmd/afp/>
  - David Pimentel, *Forfeitures Revisited: Bringing Principle to Practice in Federal Court*, 13 NEV. L.J. 1 (2012): <http://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1190&context=nlj>
  - CHARLES DOYLE, CRIME AND FORFEITURE, CONGRESSIONAL RESEARCH SERVICE (May 13, 2013): <https://www.fas.org/sgp/crs/misc/97-139.pdf>
  - Civil Asset Forfeiture, AMERICAN CIVIL LIBERTIES UNION: <https://www.aclu.org/criminal-law-reform/civil-asset-forfeiture>
  - Stephen J. Dunn, *Nothing Civil About Asset Forfeiture*, FORBES, Feb. 13, 2013: <http://www.forbes.com/sites/stephendunn/2013/02/18/asset-forfeiture-is-anything-but-civil/>
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### Introduction

Russ Caswell has owned and operated his family-run budget motel in Tewksbury, Massachusetts since he purchased it from his father in 1984.<sup>1</sup> Unencumbered by any mortgages or liens, the Motel Caswell is valued at over \$1.5 million.<sup>2</sup> Without any prior notice, the federal government filed a civil-forfeiture complaint against the motel claiming that it was used to violate federal drug laws.<sup>3</sup> Specifically, the government's complaint asserted that over the course of two decades, a small number of the motel's guests or their visitors surreptitiously engaged in various drug activities, unseen and unknown to Mr. Caswell at the time these events occurred.<sup>4</sup>

Mr. Caswell has never been charged with a crime.<sup>5</sup> Neither he nor any of his employees had any involvement with these isolated drug-related incidents. Moreover, Mr. Caswell unequivocally offered police assistance in curbing drug crimes on his property, including providing free motel rooms to police to conduct surveillance and perform controlled drug buys.<sup>6</sup> Nevertheless, under federal civil-forfeiture laws, Mr. Caswell still carried the burden of affirmatively proving that he was an innocent owner.

Welcome to the upside-down world of civil forfeiture and the all-too-real nightmare that Mr. Caswell and his family faced when the government tried to take their motel. Fortunately, after more than four years of litigation, Mr. Caswell won.<sup>7</sup> But his victory is unusual. All too often, property owners ensnared in forfeiture proceedings settle for a fraction of their properties'

worth or simply abandon hope of retrieval, particularly if the property's value is less than the costs of the legal battle.

Civil-forfeiture laws constitute one of the most serious assaults on private-property rights today. Based on a legal fiction that property can be guilty of a criminal activity, civil forfeiture enables law enforcement to take property, regardless of whether the property owner is guilty or innocent—or even whether the owner is charged with a crime.<sup>8</sup> And because they are civil proceedings, most of the constitutional protections afforded to criminal defendants, like the right to counsel, do not apply to property owners in civil-forfeiture cases.

This article provides a broad overview of the modern civil-forfeiture regime. After providing background on the origins of civil forfeiture, this article explains how the perverse financial incentives created by civil-forfeiture laws lead to “policing for profit” and create an environment ripe for abuse. Finally, the article discusses the need for additional procedural safeguards to protect against forfeiture abuse.

### I. THE ORIGINS OF CIVIL FORFEITURE: HOW DID WE GET HERE?

Civil-forfeiture actions are *in rem* proceedings, meaning that the property itself is charged with a crime. The doctrine of *in rem* forfeiture arose from medieval ideas, rooted in the ancient law of “deodand.”<sup>9</sup> Kings, for instance, could seize an instrument that caused the death of another in order to finance the deceased's funeral mass.<sup>10</sup> The idea arose from a superstitious belief that objects acted independently to cause death.<sup>11</sup>

While the concept of deodand gives rise to the “guilty property” legal fiction, American forfeiture law did not arise strictly from this concept, but rather from the British Navigation Acts of the mid-17th century.<sup>12</sup> The Acts were passed during England's vast expansion as a maritime power and required imports and exports from England to be carried on British ships.

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\*Darpana M. Sheth is an attorney at the Institute for Justice and was part of the trial team that successfully defended Russ Caswell against a federal forfeiture action.

IF THE ACTS WERE VIOLATED, THE SHIPS OR THE CARGO ON BOARD COULD BE SEIZED AND FORFEITED TO THE CROWN REGARDLESS OF THE GUILT OR INNOCENCE OF THE OWNER.

Using the British statutes as a model, the first United States Congress passed forfeiture statutes to aid in the collection of customs duties, which provided 80 to 90 percent of the finances for the federal government during that time.<sup>13</sup> Civil forfeiture was introduced in American law through these early customs statutes and the power was upheld in early Supreme Court cases.<sup>14</sup>

## II. CIVIL FORFEITURE HAS EXPANDED DRAMATICALLY AND BECOME UNMOORED FROM ITS ORIGINAL JUSTIFICATIONS AS ENVISIONED BY THE FOUNDING GENERATION

Unlike its historical predecessors, modern civil-forfeiture law is no longer tied to seizing contraband or the practical difficulties of obtaining personal jurisdiction over an individual. Unmoored from its historical limitation as a necessary means of enforcing admiralty and piracy laws, the forfeiture power has not only grown into a commonly used weapon in the government’s crime-fighting arsenal, but morphed into a profit-seeking venture for the government that poses a grave threat to the rights of innocent property owners nationwide.

Modern civil-forfeiture laws, which trace their origins to the government’s war on drugs, differ from their predecessors in three key respects. First, modern civil-forfeiture laws are much broader in scope, covering not only illegal drugs and any conveyance used to transport them, but all manner of real and personal property connected to the alleged criminal activity.<sup>15</sup> Second, Congress and state legislatures have expanded forfeiture beyond alleged instances of drug violations to include myriad crimes at the federal and state levels. Today there are more than 400 federal forfeiture statutes relating to a number of federal crimes, from environmental crimes to the failure to report currency transactions.<sup>16</sup> Third, all states have statutory provisions for some form of civil forfeiture.<sup>17</sup>

## III. THE ABILITY OF LAW ENFORCEMENT TO RETAIN CIVIL-FORFEITURE PROCEEDS INEXORABLY HAS LED TO “POLICING FOR PROFIT”

As a direct result of federal and state law incentivizing law-enforcement officials to seize property under civil forfeiture, there has been an explosion of forfeiture revenue. This increase in revenue is attributable to three causes. First, federal forfeitures have grown exponentially. Second, state law-enforcement agencies have been getting more and more money through the federal equitable-sharing program, which pays state agencies up to 80 percent of the forfeiture proceeds for referring civil forfeitures to federal authorities. Finally, not only do state agencies directly benefit from forfeitures under equitable sharing, but forfeitures conducted under their own state laws also are on the rise.

First, the U.S. Department of Justice’s Assets Forfeiture Fund, the largest of the federal government’s forfeiture funds, illustrates how federal forfeitures have grown exponentially. In 1986, the second year after it was created, the fund took in \$93.7 million in proceeds from forfeited assets. By 2008, the fund for the first time in history topped \$1 billion in net assets,

*i.e.*, forfeiture proceeds free and clear of debt obligations and now available for use by law enforcement. And from fiscal years 2003 to 2011, the fund’s revenues more than tripled, growing from \$500 million in FY 2003 to \$1.8 billion in FY 2011.<sup>18</sup>

Second, payments under the federal equitable-sharing program have also grown dramatically. Under this program, state and local law enforcement share in the proceeds of federal civil-forfeiture actions they refer to federal authorities, and can use those proceeds as they see fit to support state law-enforcement activities.<sup>19</sup> According to the Government Accountability Office (GAO), in the last nine years, equitable-sharing payments to state and local law-enforcement agencies have more than doubled, growing from \$218 million in FY 2003 to \$445 million in FY 2011.<sup>20</sup> Notably, except for 2007, equitable-sharing payments outpaced payments to compensate victims.<sup>21</sup> Indeed, the GAO noted that when compared with Justice Department grant programs, equitable sharing is one of the largest “programs providing funds to state and local law enforcement activities.”<sup>22</sup> According to state and local law-enforcement officials interviewed by the GAO:

[T]he equitable sharing program is extremely important because it helps fund equipment, training and other programs that they may otherwise not be able to afford. For example, one local law enforcement agency stated that salaries make up 96 percent of its annual budget. As a result, equitable sharing dollars allow them to purchase equipment they could not otherwise buy with the limited available annual budget.<sup>23</sup>

In FY 2011, New York received almost \$48.5 million, followed by California and Florida, receiving more than \$79 and \$38 million respectively.<sup>24</sup>

Finally, despite sparse data, forfeitures under state law have also grown dramatically. For example, in Florida, law-enforcement officials receive 85 percent of the funds generated from civil forfeitures under state law.<sup>25</sup> This strong profit incentive would lead one to predict that law-enforcement agencies in Florida will make substantial use of civil forfeiture at the state level, just as it does through equitable sharing. And this prediction is borne out by empirical evidence: In a mere three-year period from 2001 to 2003, Florida raked in more than \$100 million in forfeitures under state law and anywhere from \$16 million to \$48 million per year in the 2000s through equitable sharing.<sup>26</sup>

The exponential growth of federal and state forfeitures has led to self-financing, law-enforcement agencies that are no longer dependent on legislative appropriations and prone to systemic abuse. According to a survey of nearly 800 law-enforcement executives, nearly 40 percent reported that civil-forfeiture proceeds were a necessary supplement to their agency’s budget.<sup>27</sup> At the federal level, the Department of Justice has urged its lawyers to increase their civil-forfeiture efforts so as to meet the Department’s annual budget targets.<sup>28</sup>

The ability of law-enforcement agencies to self-finance contradicts the principle of separation of powers. As George Mason cautioned, “When the same man, or set of men, holds both the sword and the purse, there is an end of liberty.”<sup>29</sup> Or, as a recent report observed:

The dependency of police on public resources for their operations is an important check on police power. Self-generating revenues by the police through forfeiture potentially threatens the ability of popularly elected officials to constrain police activities.<sup>30</sup>

The result, is that, forfeiture funds “become[] off-the-books slush funds through which law enforcement agencies can self-finance, exempted from democratic controls.”<sup>31</sup>

In some states law-enforcement agencies have flouted state reporting requirements intended to serve as a minimal check on forfeiture abuse.<sup>32</sup> And the potential for serious abuse is not just theoretical. Law enforcement’s reluctance to give up forfeiture proceeds has led to illegality.<sup>33</sup> In November 2000, citizens of Utah passed an initiative requiring forfeiture proceeds to be deposited into the state’s Uniform School Trust Fund.<sup>34</sup> Ignoring this law, prosecutors in three counties diverted nearly a quarter of a million dollars into their own accounts. Only under the threat of a lawsuit did the prosecutors capitulate. Subsequently, police and prosecutors persuaded the legislature to nullify the voter-approved initiative, so that all forfeiture proceeds were again directed to law enforcement.<sup>35</sup>

The lack of oversight has even led to the personal use of seized property. In 2003, top Tampa Bay police officers used seized cars for their own personal use.<sup>36</sup> The seized fleet consisted of some 42 cars, including a Lincoln Navigator, a Ford Expedition, and a \$38,000 Chevy Tahoe. Forfeiture has also been abused to make highly questionable purchases:

- In Montgomery County, Texas, \$400 on tequila, rum, and kegs and \$139 on a margarita machine;
- In Romulus, Michigan, \$40,000 in forfeiture funds on marijuana, alcohol, and prostitutes;
- In Camden County, Georgia, \$90,000 on a Dodge Viper for the county’s Drug Awareness and Resistance Education program;
- In Fulton County, Georgia, football tickets for the district attorney’s office; and
- In Webb County, Texas, \$20,000 for TV commercials for the district attorney’s re-election campaign.<sup>37</sup>

Far from being cherry-picked examples of a few “bad apples” in law enforcement, these cases show that the potential for abuse is systemic because incentives matter.<sup>38</sup> Just as private citizens are motivated by self-interest, so too are government officials.<sup>39</sup> Government officials attempt to maximize the size and budget of their agency, which will benefit everyone within the agency through higher salaries, greater job security, better equipment, and increased power and prestige. These incentives affect even the most well-intentioned law-enforcement officers. Because, in contrast to private citizens, government officials can use force to achieve their ends, it is a constant threat that those in positions of power will use that force to serve their own interest at the expense of the larger public. This concern reaches its zenith when government officials stand to benefit themselves by seizing private property.

#### IV. THE PERVERSE FINANCIAL INCENTIVES CREATED BY ALLOWING LAW ENFORCEMENT AND PROSECUTORS TO DIRECTLY BENEFIT FROM CIVIL FORFEITURES WARRANT ADDITIONAL PROCEDURAL SAFEGUARDS

Because law-enforcement and prosecutors are permitted to retain proceeds, there is a perverse incentive to seize property first and ask questions later. Consequently, prosecutors have little impetus to appropriately weigh competing interests or the defendant’s rights or hardships.<sup>40</sup> Worse, the potential for abuse is heightened by the lack of procedural safeguards at each step of the civil-forfeiture process.

The first step in the civil-forfeiture process is typically “seizure.” For the police to seize an individual’s property, most jurisdictions require that the officer merely have “probable cause” to believe the property is subject to forfeiture. The laws in some jurisdictions, however, have additional requirements before real property, such as a home, can be seized. What happens after a seizure depends on the jurisdiction, the type of property seized, and the type of forfeiture that is being sought. Prosecutors or district attorneys may initiate forfeiture proceedings in court. A judge will then determine if the assets are to be forfeited; if forfeited, ownership of the assets is transferred to the government. State and federal law then dictates what can be done with the property or, if sold, its proceeds.

Because of the direct financial stake that public officials and agencies have in the outcome of forfeiture proceedings, additional procedural safeguards are warranted. The lack of a pretrial evidentiary hearing, non-demanding standards of proof required of the government, and burdens placed on innocent owners combine to create a serious risk of erroneous deprivation of property by the government.

##### *A. The Due Process Clause Guarantees Property Owners the Right to an Immediate Post-Deprivation Hearing*

The Due Process Clause of the Fifth Amendment guarantees that “[n]o person shall . . . be deprived of life, liberty, or property, without due process of law.”<sup>41</sup> This constitutional command protects individuals and their property against arbitrary government action by ensuring procedural fairness.<sup>42</sup> But civil-forfeiture cases—where the government can keep and retain property pending trial or a challenge to the seizure—run afoul of this constitutional guarantee. Often, property owners entangled in forfeiture proceedings are forced to abandon the fight for their property because the cost of legal assistance is greater than the value of the property. For example, 22-year-old Frederick Simms’s vehicle was seized in 2011 without any hearing and retained during his criminal trial. Even after being acquitted of all charges, he needed to pay \$800 for the opportunity to contest the seizure at the ensuing civil-forfeiture trial. Worse, the forfeiture trial did not commence until six months after the acquittal and was expected to last over a year. Mr. Simms’s reaction is telling of the typical hardships faced by property owners:

I cannot afford to pay \$800 to try to get my car back. All of the money I make from my [\$12 hourly] wages goes to transportation, rent, daycare, utilities, groceries, car insurance, and the \$360 a month I pay on the car loan .

. . . for a car I can't even use.<sup>43</sup>

Fortunately for Mr. Simms, a federal court ruled that due process required immediate release of his car pending forfeiture proceedings.<sup>44</sup>

Allowing the government to carry out potentially debilitating seizures or restraints of property without an adequate opportunity to be heard eviscerates the fundamental guarantee of the Due Process Clause. Affording individuals a chance to contest the basis for the deprivation prevents mistaken deprivations of property caused by arbitrary government encroachment. Moreover, to be of value, the opportunity to be heard must be afforded at a meaningful time and in a meaningful manner. The right of individuals to be free from arbitrary government interference with their property is deeply rooted in our constitutional history and the government cannot withhold a person's property for months without promptly giving him an opportunity to challenge the basis for the government's action. But this is exactly what happens in civil-forfeiture actions. Meaningful judicial oversight is necessary to protect against unwarranted and erroneous deprivations of property.

#### *B. The Government's Burden of Proof for Seizing Property Is Low*

The standard of proof—the initial hurdle the government must overcome before seizing property—is alarmingly low. Only four states require that law enforcement use the rigorous “beyond a reasonable doubt” standard before seizing property. On the other hand, 14 states only require “probable cause”—that there is reasonable belief that the individual has violated the law—before law enforcement can take property. Twenty-seven states and the federal government use the “preponderance of evidence” standard, which although slightly more demanding than “probable cause,” only requires that the government believe it is more likely than not that the property is connected to criminal activity in order to justify seizure. Finally, 13 states use the “clear and convincing” standard, which is more rigorous than “probable cause” or “preponderance,” but less demanding than “reasonable doubt.”<sup>45</sup>

In short, in the vast majority of states and at the federal level, the standard of proof required to forfeit an individual's property is lower than the standard required to prove that the individual was guilty of the criminal activity that supposedly justified the forfeiture in the first place. Given this situation, it is not surprising that upwards of 80 percent of forfeitures occur absent a prosecution.<sup>46</sup>

#### *C. In Most Jurisdictions, Because the Burden of Proof Is on the Innocent Owner, They Are Effectively Guilty until Proven Innocent*

Not only are most civil forfeitures subject to a standard of proof less demanding than that required for criminal guilt, but in most states, property owners are effectively guilty until proven innocent.

In 1996, the U.S. Supreme Court held in *Bennis v. Michigan*<sup>47</sup> that property owners do not have a constitutional right to an “innocent owner” defense in civil-forfeiture actions. In *Bennis*, a wife's car was used without her knowledge by her husband to secure the services of a prostitute. The husband was arrested and the car seized. Under Michigan law, vehicles

used for such purposes were subject to seizure and forfeiture. Furthermore, Michigan law did not provide for a defense based on an owner's lack of knowledge about the use of the vehicle for illegal purposes—in other words, a defense that the owner is innocent, and therefore the property should not be forfeited. The wife appealed the forfeiture of the vehicle, and the U.S. Supreme Court ruled against her.

The critical public and political reaction to this ruling, as well as media reports of questionable forfeiture actions, led to the inclusion of an innocent owner defense in the 2000 Civil Asset Forfeiture Reform Act (CAFRA) that now applies to all federal forfeiture actions. In addition, all remaining states that previously did not have an innocent owner defense, including Michigan, eventually passed legislation barring the forfeiture of property belonging to an innocent owner.

However, in most states and at the federal level, the burden is on the owner to establish her innocence to exempt the property from forfeiture. This is the exact opposite of the dictum “innocent until proven guilty” that applies in criminal cases. Only six states require the government to bear the burden of establishing that the owner is not innocent for forfeiture of all kinds of property and in six other states the burden depends on the property in question (*e.g.* the burden is on the government when the forfeited property is real property, but on the owner when the property is cash). This stands in stark contrast with the thirty-eight states where the burden is on the property owner to establish his innocence.

#### **Conclusion**

Private property is one of this nation's most cherished principles, yet it is under attack by modern civil-forfeiture laws. The overriding goal for both prosecutors and police should be the fair and impartial administration of justice. However, civil forfeiture, which has become unmoored from its original intent, dangerously shifts law-enforcement's priorities toward the pursuit of property and profit. By distorting law-enforcement priorities and creating agencies funded outside the legislative process, federal and state forfeiture systems have eviscerated accountability and led to systemic abuse. And this opportunity for abuse is exacerbated by the lack of procedural safeguards in place to protect innocent property owners. The lack of a prompt hearing, the low hurdle that the government must overcome in order to seize property, and the innocent owner burden create a high risk of erroneous deprivation. Stacking the deck so heavily in the government's favor conflicts with constitutional guarantees of fairness rooted in the Due Process Clause, and with prosecutors holding all the cards, prompt and meaningful judicial oversight is a crucial check against unjust deprivations of property.

#### **Endnotes**

1 United States v. 434 Main St., Civ. A. No. 09-11635-JGD, 2013 WL 308981, \*1, \*2 (D. Mass. Jan. 24, 2013).

2 *Id.* at \*2.

3 *Id.* at \*2.

- 4 *Id.* at \*1. See also *United States v. 434 Main St.*, Civ. A. No. 09-11635-JGD, Claimant's Post-Trial Br. at 1.
- 5 *434 Main St.* at \*2.
- 6 Claimant's Post-Trial Br. at 1; *434 Main St.* at \*3-4.
- 7 *Id.* at \*19-22 (holding government lacked sufficient evidence to prove motel was substantially connected to drug crimes to support forfeiture and concluding that the government never should have filed the case in the first place.).
- 8 The U.S. Department of Justice defines forfeiture as "the taking of property derived from a crime, involved in a crime, or that which makes a crime easier to commit or detect without compensating the owner." U.S. DEPT OF JUSTICE, GUIDE TO EQUITABLE SHARING FOR STATE AND LOCAL LAW ENFORCEMENT AGENCIES 8 (2009), available at <http://www.justice.gov/usaof/ri/projects/esguidelines.pdf>.
- 9 Donald J. Boudreaux & A.C. Pritchard, *Civil Forfeiture and the War on Drugs: Lessons From Economics and History*, 33 SAN DIEGO L. REV. 79, 79-135. (1996).
- 10 *Id.*
- 11 *Id.*
- 12 *Id.*; Michael Schecter, *Fear and Loathing and the Forfeiture Laws*, 75 CORNELL L. REV. 1151, 1151-1183 (1990); James R. Maxeiner, *Bane of American Forfeiture Law: Banished at Last?*, 62 CORNELL L. REV. 768, 768-802 (1977).
- 13 Maxeiner, *supra* note 12, at 782.
- 14 See, e.g., *The Palmyra*, 25 U.S. (12 Wheat.) 1 (1827).
- 15 See, e.g., 21 U.S.C. § 881(a)(7) (subjecting to forfeiture all real property "used, or intended to be used, in any manner or part, to commit, or facilitate the commission of" a drug crime).
- 16 See U.S. DEPT OF JUSTICE CRIMINAL DIV., ASSET FORFEITURE AND MONEY LAUNDERING SECTION, SELECTED FEDERAL ASSET FORFEITURE STATUTES (2006), available at <http://www.justice.gov/criminal/foia/docs/afstats06.pdf>.
- 17 See generally Steven L. Kessler, *CIVIL AND CRIMINAL FORFEITURE: FEDERAL AND STATE PRACTICE* (2012) (discussing each state's civil-forfeiture provisions).
- 18 U.S. Gov't Accountability Office, GAO-12-736, *JUSTICE ASSETS FORFEITURE FUND: TRANSPARENCY OF BALANCES AND CONTROLS OVER EQUITABLE SHARING SHOULD BE IMPROVED* 11 (2012), available at <http://www.gao.gov/assets/600/592349.pdf> [hereinafter GAO-12-736 REPORT].
- 19 See generally DICK M. CARPENTER II, PH.D., LARRY SALZMAN & LISA KNEPPER, *INEQUITABLE JUSTICE: HOW "EQUITABLE SHARING" ENCOURAGES LOCAL POLICE AND PROSECUTORS TO EVADE STATE CIVIL FORFEITURE LAW FOR FINANCIAL GAIN* (2011), available at [http://www.ij.org/images/pdf\\_folder/private\\_property/forfeiture/inequitable\\_justice-mass-forfeiture.pdf](http://www.ij.org/images/pdf_folder/private_property/forfeiture/inequitable_justice-mass-forfeiture.pdf) (analyzing federal equitable-sharing program).
- 20 GAO-12-736 REPORT, *supra* note 18, at 15.
- 21 *Id.* at 15 tbl. 1.
- 22 *Id.* at 15.
- 23 *Id.*
- 24 *Id.* at 44 app. I fig. 7.
- 25 MARIAN R. WILLIAMS, PH.D. ET AL., *POLICING FOR PROFIT: THE ABUSE OF CIVIL ASSET FORFEITURE* 53 (2010) [hereinafter *POLICING FOR PROFIT*], available at [http://www.ij.org/images/pdf\\_folder/other\\_pubs/assetforfeituretoemail.pdf](http://www.ij.org/images/pdf_folder/other_pubs/assetforfeituretoemail.pdf). In the majority of states, law-enforcement agencies keep 100 percent of forfeiture proceeds. *Id.* at 17.
- 26 *POLICING FOR PROFIT*, *supra* note 25, at 53. These figures may overlap, as it is not clear whether Florida included equitable-sharing revenue in its response to freedom-of-information requests.
- 27 John L. Worrall, *Addicted to the Drug War: The Role of Civil Asset Forfeiture as a Budgetary Necessity in Contemporary Law Enforcement*, 29 J. CRIM. JUST. 171, 179 (2001).
- 28 Exec. Office for U.S. Attorneys, U.S. Dep't of Justice, 38 United States Attorneys' Bulletin 180 (1990).
- 29 George Mason, *Fairfax County Freeholders' Address and Instructions to Their General Assembly Delegates* (May 30, 1783), in Jeff Broadwater, GEORGE MASON: FORGOTTEN FOUNDER 153 (2006).
- 30 Jefferson E. Holcomb, Ph.D., Tomislav V. Kovandzic, Ph.D. & Marian R. Williams, Ph.D., *Civil Asset Forfeiture, Equitable Sharing, and Policing for Profit in the United States*, 39 J. CRIM. JUST. 273, 283 (2011).
- 31 ERIN NORMAN & ANTHONY SANDERS, *FORFEITING ACCOUNTABILITY: GEORGIA LAW ENFORCEMENT'S HIDDEN CIVIL FORFEITURE FUNDS* 1 (2011), available at <http://www.ij.org/forfeiting-accountability-2>.
- 32 *Id.*
- 33 See, e.g., 1 DAVID B. SMITH, *PROSECUTION AND DEFENSE OF FORFEITURE CASES* ¶ 7.02[2] (2012) (discussing conspiracy between Missouri law enforcement and Drug Enforcement Agency to thwart state law requiring judicial approval before federal government may adopt a state forfeiture case).
- 34 Patty Henetz, *Prosecutors, Police Reluctantly Comply With Asset Seizure Law*, THE ASSOCIATED PRESS STATE & LOCAL WIRE, July 17, 2003.
- 35 *Id.*
- 36 Robyn E. Blumner, *Police too addicted to lure of easy money*, ST. PETERSBURG TIMES, Aug. 17, 2003, at D7.
- 37 Nick Sibilla, *The 14 Most Ridiculous Things Police Bought With Asset Forfeiture*, Buzzfeed, <http://www.buzzfeed.com/nicks29/the-14-most-ridiculous-things-police-bought-with-a-4y3w>; *POLICING FOR PROFIT*, *supra* note 25, at 18.
- 38 For more stories on the systemic abuse of civil forfeiture, see Sarah Stillman, *Taken*, THE NEW YORKER (Aug. 2013), available at [http://www.newyorker.com/reporting/2013/08/12/130812fa\\_fact\\_stillman?currentPage=all](http://www.newyorker.com/reporting/2013/08/12/130812fa_fact_stillman?currentPage=all).
- 39 JAMES BUCHANAN & GORDON TULLOCK, *THE CALCULUS OF CONSENT* (1962) (discussing the universality of the self-interest axiom and its implications for public policy decision-making).
- 40 See *Morrison v. Olson*, 487 U.S. 654, 728-29 (1988) (Scalia, J., dissenting) (warning of potential for abuse when prosecutors do not have to weigh competing interests); *United States v. Kaley (Kaley II)*, 677 F.3d 1316, 1331 (11th Cir. 2012) (Edmondson, J., concurring).
- 41 U.S. CONST. amend. V.
- 42 See, e.g., *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974).
- 43 *Federal Judge Overrules DC Car Seizure*, THE NEWSPAPER.COM (July 11, 2012), <http://www.thenewspaper.com/news/38/3840.asp>.
- 44 *Simms v. District of Columbia*, 872 F. Supp. 2d 90, 104-05 (D.D.C. 2012).
- 45 *POLICING FOR PROFIT*, *supra* note 25, at 20, 22.
- 46 Bruce L. Benson, David W. Rasmussen & David L. Sollars, *Police Bureaucracies, Their Incentives, and the War on Drugs*, 83 PUB. CHOICE 21-45 (1995); Eric D. Blumenson & Eva S. Nilsen, *Policing for Profit: The Drug War's Hidden Economic Agenda*, 65 U. CHI. L. REV., 35-114. (1998).
- 47 *Bennis v. Michigan*, 516 U.S. 442 (1996).

