

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051  
MINORITY (202) 225-5074

<https://oversight.house.gov>

### Opening Statement of Chairman Jamie Raskin Hearing on “Forfeiting Our Rights: The Urgent Need for Civil Asset Forfeiture Reform” December 8, 2021

Good morning. Thank you to our witnesses for joining us today and thanks to all the Members who are participating in this critical hearing. I want to thank my friend, the Ranking Member, Congresswoman Mace, and her staff for working closely with us in coordinating today’s hearing.

This important bipartisan hearing will be the first that Congress has held in nearly seven years focused on the need to reform the use of our civil asset forfeiture laws. Civil asset forfeiture is a tool used widely by federal, state, and local law enforcement to seize assets that are believed to be connected to a criminal activity either as an instrument of criminal activity or a proceed of criminal activity. Law enforcement, under the civil asset forfeiture laws, can seize money, cars, vans, boats and other vehicles, even peoples’ homes and offices, and then keep the cash or sell the property to augment their agency budgets, auto fleets, their holiday party and social activity funds, athletic and gymnastic facilities, and other government activities and facilities.

**Because these laws often lack the bare minimum of due process protections, many of these operations are, in fact, trampling every major component of constitutional due process. Law enforcement agents can seize and permanently deprive people of their assets without ever arresting them, much less charging them with a crime, much less convicting them of a crime. That’s why we called this civil asset forfeiture, because the state is not going through the ordinary criminal process and sustaining the burden of proving beyond a reasonable doubt someone is committing a crime. Rather, people’s property is just being seized, and again, you don’t have to prove beyond a reasonable doubt—or even by a preponderance of evidence—in court first that the property is somehow tainted by crime. You don’t have to even charge the person, you don’t even have to arrest the person.**

The state is just seizing the property. Law enforcement agents can seize and forfeit assets of innocent third-party owners even if the person whose property is being seized had no knowledge that their property was being allegedly used in connection to a suspected crime. Under this system, a grandmother’s car or a parent’s apartment can be seized if police suspect the grandchild or child of possessing drugs or committing some other kind of criminal offense on the property. That is an outrageous breach of the most basic concepts of civil justice and due process and property rights.

**Too often, these seizures become permanent. Even if charges are never brought against a person whose assets are seized, even if criminal charges are never even brought, it can be extremely difficult—virtually impossible—to recover your property. So, civil asset forfeitures flip the constitutional standards of a citizen’s presumption of innocence and the government’s duty or burden to prove guilt on their head—just flip it over and thus constitute a massive deprivation of due process rights.**

In most cases, law enforcement can seize and keep the property using a very low evidentiary burden—even if it does get to court, even if the person whose property is seized finds a lawyer, pays to go, even then the lowest evidentiary burden of reasonable suspicion of crime is used and hearsay is often used in the process. Conversely, the property owner must be the one who goes to court and affirmatively proves assets were not connected to a crime, or that they had no knowledge that they were connected to a crime. Your property, in essence, is presumed guilty. This is a scandalous inversion of due process.

And because these are civil—rather than criminal—actions, poor Americans, who are caught up in this process, have no right to appointed counsel. The civil forfeiture procedures are bewilderingly complex to navigate for laypeople—a single filing error could result in permanent forfeiture—and the value of seized assets is often less than it would cost to hire an attorney, in the case of someone just having a small amount of money taken from them on the street, for example. As a result, civil asset forfeitures are rarely challenged, and a successful challenge is even more rare.

**Meanwhile, law enforcement agencies in many states keep the proceeds from forfeited assets, leading to massive windfalls in some police department or sheriff department budgets. This is true even in states that have abolished civil asset forfeiture, because of a massive loophole in federal law we will discuss today, called the “adoption” and “equitable sharing” programs. Under this program, seizures made by state and local law enforcement can be “adopted” by a federal agency for forfeiture, and up to 80% of those revenues can “equitably shared” and returned to the seizing agency.**

**This creates a perverse profit incentive because law enforcement agencies can keep the revenues from forfeitures with little, if any, oversight as to how that money is being spent. In 2018, federal and state law enforcement seized and forfeited more than \$2 billion worth of cash and assets from Americans using these processes. From 2000 to 2018, state and federal agencies obtained more than \$68.8 billion through forfeitures.**

Despite these massive sums, high-value forfeitures remain the exception, not the rule. In fact, most seizures—usually cash or vehicles—are for quite low values and are taken from people primarily living in communities of color and low-income areas. Between 2015 and 2019, the average forfeiture amount under state law was \$1,276 per incident. In several states, the median amount forfeited is far less—half of all forfeitures in Michigan were less than \$423 in a two-year period, and in Pennsylvania they were less than \$369 in 2018.

Moreover, numerous studies reflect that communities of color are disproportionately affected. For instance, between 2012 and 2018, more than half of the forfeitures occurring in Philadelphia came in four low-income Black and Latino majority zip-codes. Between 2014 and 2016, 65% of the people targeted for forfeiture in South Carolina were African-American men, despite their making up just 13% of the state’s population. A 2016 ACLU of California study found that 85% of equitable sharing payments went to law enforcement agencies serving majority-minority communities. We cannot have an honest conversation about civil asset forfeiture without acknowledging its connection to greater issues of the targeting of communities of color by law enforcement.

In 2015, then-Attorney General Holder issued an order that curbed federal adoptions to a limited degree and prohibited equitable sharing revenues from being spent on militarized equipment. Even though these limitations were applied narrowly, they were rescinded by Attorney General Jeff Sessions in 2017.

It is time for the Department of Justice to reinstate the protections provided by the Eric Holder Memorandum and to conduct a comprehensive review of its civil forfeiture program to ensure that basic civil rights and liberties are protected.

**This is not enough. We need lasting legislative reform that cannot be rolled back with the stroke of a pen. Thankfully, there is near universal recognition that the practice of civil asset forfeiture is rife with abuse and ripe for reform. Since 2014, 36 states and the District of Columbia have taken steps to their regimes, and four states—Maine, Nebraska, New Mexico, and North Carolina—have eliminated it entirely. But these efforts are being undermined by federal equitable sharing, which is like a runaround or an end run, and we need to deal with it by passing the sweeping reforms contained in the FAIR Act.**

**Congress must act to ensure lasting reforms to federal civil asset forfeiture programs. I am proud to be the lead Democratic cosponsor of H.R. 2857, the FAIR Act, introduced by my good friend Congressman Tim Walberg of Minnesota. This bill will, among other things, raise the level of proof required by the government to keep a forfeiture to clear and convincing evidence; it requires all revenues to be deposited in the general Treasury fund rather than be returned directly to state and local law enforcement agencies. I**

**am pleased, as well, that many of my colleagues on this Committee have joined Mr. Walberg and me in cosponsoring this bill. This is how Congress should be operating in the interests of protecting the rights of all Americans rather than engaging in constant habits of partisan polemic and invective.**

I hope that we can continue working together to confront the mostly invisible but still outrageous injustice that civil asset forfeiture imposes on so many Americans. And I look forward to hearing the testimony of our distinguished witnesses today.

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Contact: Nelly Decker, Communications Director, (202) 226-5181