

**Prepared Statement by Senator Chuck Grassley of Iowa  
Chairman, Senate Judiciary Committee  
Hearing on the Need to Reform Asset Forfeiture  
April 15, 2015**

Today the Senate Judiciary Committee will hold a hearing on the need for asset forfeiture reform. The issue is as old as our Constitution.

As Madison remarked in Federalist 51, “In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.”

Law enforcement is a principal means by which the government is enabled to control the governed. Civil asset forfeiture is an important and valuable tool for law enforcement to seize property associated with criminal activity. Civil asset forfeiture allows the government to seize and forfeit foreign owned boats and planes that were used to smuggle drugs. It can be used to seize assets controlled by entities tied to foreign terrorist organizations. And it can be used to forfeit the property of a defendant who dies before he is convicted.

The property that the government obtains through civil asset forfeiture can be used to compensate victims and otherwise deprive criminal organizations of funding.

We all recognize the value of civil asset forfeiture. Even in the midst of the current reform effort, no bill before Congress would abolish civil asset forfeiture and I wouldn’t support one. But as asset forfeiture is currently practiced, nothing is obliging the government to control itself. Just the opposite.

Civil asset forfeiture leads government to exceed its just powers over the governed. It encourages law enforcement to take short cuts. Rather than prosecute or even arrest, civil asset forfeiture enables law enforcement to seize property without any proof of wrongdoing. And the process creates perverse incentives.

Under adoption and equitable sharing, state and local law enforcement can seize property and ask the federal government to “adopt” the seizure as if it had been carried out by federal officials. If this occurs, the state or locality receives 80% of the value of the very property that they arranged to have forfeited. This incentivizes police to seize particular property to obtain a direct financial reward.

When this occurs without pursuing a criminal conviction, or even an arrest, the chances rise that the rights of innocent people will be violated.

A number of media reports have set forth a wide range of instances in which individual rights have been infringed, especially in traffic stops and in structuring cases, such as the Carole Hinders case from Iowa. Some of the extensive reporting was done by the Des Moines Register.

And the process of contesting forfeiture as it currently operates is a trap for the unwary. In 2000, Congress passed the Civil Asset Forfeiture Reform Act. CAFRA made some improvements for innocent owners and in establishing timeframes. But the most important procedural reforms were gutted at the behest of law enforcement. So the abuses that existed in 2000 have only grown. Iowans have raised their concerns about asset forfeiture with me. It is past time to take action to address them.

The Justice Department has issued policy guidance that it believes will end equitable sharing and eliminate forfeiture in structuring cases where there is no evidence of any other underlying crime. DOJ is mistaken. Their policies are full of loopholes.

Its policy would allow equitable sharing for joint task forces. It contains a so-called public policy exception for guns, ammunition, and child pornography.

I disagree.

When law enforcement encounters a crime, it should make an arrest and begin a prosecution. It is unacceptable for the federal government to seize and forfeit a gun, as the Justice Department would allow, not only without a conviction; not only without a prosecution, but not even with an arrest. And the Justice Department's structuring policy – which supposedly prohibits civil asset forfeiture when there is evidence only of structuring – allows agents to presume there's another underlying crime when they can't find evidence that there isn't one.

I have been disappointed with law enforcement's response to the call for reform. The Justice Department was invited to testify today, but they declined, claiming that they could not be ready in time. Two months ago they were ready and able to testify on this same subject before the House, but they demonstrated then that they were out of touch and unprepared for legislative reform.

I am troubled that the FOP's written testimony similarly dismisses the need for real reform and demonstrates the absurdity of a system of justice in which some in law enforcement appear to value funding their own operations over protecting civil rights. No one in law enforcement has offered constructive legislative alternatives. I hope that will change. Legislation is necessary.

It's necessary to end equitable sharing and its perverse incentives; to provide due process to individuals whose assets have been taken; to strengthen the burden of proof; to codify the IRS's new structuring policy; and to overturn a Supreme Court decision on criminal asset forfeiture.

A group of bipartisan, bicameral legislators is at work to develop a bill to reform asset forfeiture. But we should do so while recognizing the value of civil asset forfeiture. And we should continue to allow proceeds to flow to law enforcement, so long as there is no direct connection between any particular asset that is seized and the agency that seized the asset.

It is that dynamic that inherently makes the process flawed and that makes the government unable to control itself, to the detriment of the liberties of its citizens.

Beyond legislation, there are problems with the administration of asset forfeiture. Time and again, I have received reports of agencies at all levels of government spending asset forfeiture money at whim and with very little oversight.

In recent weeks, I heard from whistleblowers who allege that the Asset Forfeiture Division at the U.S. Marshals Service is spending asset forfeiture money on lavish office furnishings and facilities, like a \$22,000 conference table and a \$1.8 million training facility that lies unused nearly eleven months of the year.

Whistleblowers also allege that Asset Forfeiture Division resources have been used selectively to reward friends of senior management with agency jobs and lucrative contracting positions. This kind of cavalier spending is out of control.

At this point, I would ask unanimous consent to introduce into the record three letters. The first is a letter from the ACLU in support of bipartisan, bicameral asset forfeiture reform. The second is from the Leadership Conference on Civil and Human Rights, supporting reform of civil asset forfeiture laws. The third is a letter from 24 organizations outlining a statement of principles for achieving effective federal forfeiture reform.

Those organizations include the American Conservative Union Foundation, Americans for Tax Reform, the NAACP, and the National LGBTQ Task Force Action Fund. That letter asks us to take such action as eliminate equitable sharing and advance due process in forfeiture proceedings.

The Committee is fortunate to have knowledgeable witnesses today to share their experiences concerning asset forfeiture. I look forward to their testimony.