

U.S. Congress: Reps. Sensenbrenner and Conyers urge AG Sessions to reconsider DOJ policies on asset forfeiture

Posted on Friday, Aug 4, 2017

>> **WisPolitics is now on the State Affairs network. Get custom keyword notifications, bill tracking and all WisPolitics content. [Get the app or access via desktop.](#)**

Contact:

[Nicole Tieman, 202-225-5101](#)

[Shadawn Reddick-Smith, 202-225-6906](#)

WASHINGTON, D.C. – Today, Congressmen Jim Sensenbrenner (R-Wis.) and John Conyers (D-Mich.) sent the following [letter](#) to United States Attorney General Jeff Sessions to express concerns and objections to his proposal to expand the Department of Justice’s civil asset forfeiture program. The letter also urges AG Sessions to reconsider his newly-announced policies.

Congressman Sensenbrenner: “Expanding the federal civil asset forfeiture program is a step in the wrong direction and I urge Attorney General Sessions and his Department of Justice to reconsider. I am a supporter of *criminal* asset forfeiture – the seizure of property after the conviction of crime—but with civil asset forfeiture, law enforcement has a direct economic incentive to take people’s property without ever even charging them with a crime. We need to add more due process to forfeiture proceedings. Expanding forfeiture without increasing protections is, in my view, unconstitutional and wrong.”

Congressman Conyers: “I am deeply disappointed by the Justice Department’s recent move to reverse its ban on adoptive seizures. The prior policy, which was instituted in January of 2015, greatly curtailed this practice, which provides financial incentives for law enforcement to seize the property – including the homes – of

individuals who may not even be guilty of a crime. I call on Senator Sessions to withdraw the new policy, which is contrary to the growing bipartisan effort to reform our civil forfeiture laws and practices. Indeed, the time has come for Congress to enact the DUE PROCESS Act, a bipartisan bill to significantly alter these laws and increase protections for innocent property owners.”

Full text provided below:

Dear Attorney General Sessions:

We write to express strong objections to your decision to reverse the Department of Justice’s policies curtailing adoptive seizures. Under this process, state and local law enforcement can receive up to 80 percent of forfeiture proceeds for simply transferring seized property to federal authorities to pursue forfeiture under federal law.

This practice has been criticized as a “bounty” system because it perversely incentivizes state and local law enforcement to seize the property of individuals who may not even be guilty of a crime. Furthermore, in states that restrict civil forfeiture, the policy raises serious federalism concerns by allowing state law enforcement to pursue forfeiture in circumvention of protections provided by state law.

The prior policy issued in January 2015 substantially curtailed adoptive forfeitures. In announcing your decision to reverse these reforms, you claimed to implement “safeguards.” None of these steps, however, will provide any meaningful degree of protection against abuse.

The first two steps outlined in the Policy Directive issued by the Criminal Division’s Money Laundering and Asset Recovery Section, concerning review of seizures and probable cause determinations, are merely internal assessments that make us no more comfortable with adoptive seizures than we were prior to their curtailment three years ago.

Curiously, the third step would provide additional limitations on certain adoptions, but only for cases of less than or equal to \$10,000 – reflecting your decision that higher-dollar cases are somehow less deserving of protections against abuse. In any event, even this degree of protection for the lower dollar cases is largely illusory as the Policy Directive provides that a federal prosecutor in the U.S.

Attorney's Office may simply waive the additional procedures in individual cases.

Lastly, the Policy Directive admonishes that the Department should "proceed with particular caution" in seeking the forfeiture of people's homes if they were "not implicated in criminal conduct." We cannot emphasize enough how stunningly inappropriate and brazen it is for the Department to engage in such a practice. That officials charged with the responsibility of protecting the rights of our citizens would contemplate taking personal residences of innocent homeowners underscores our lack of faith in the discretion to be exercised by Department officials in the prior three "safeguards."

Civil forfeiture, at the federal level and also through adoptive seizures, requires significant reform if it is to continue at all. It has become increasingly apparent that the procedures in federal law governing civil forfeiture are fundamentally inadequate. Forfeiture reform has long been a bipartisan issue, raising serious concerns about fairness and due process on both sides of the aisle.

Congress last enacted reform to these laws in 2000, under the Civil Asset Forfeiture Reform Act, sponsored by the late Representative Henry Hyde. We have learned much since passage of that law and have introduced bipartisan legislation, entitled the DUE PROCESS Act, to responsibly increase procedural protection for innocent owners.

We should be reforming civil forfeiture, not expanding it. Therefore, while we pursue legislation on this issue, we ask that you withdraw the newly-announced changes to the Department's adoptive seizure policies.

Although we believe this new policy should be rescinded, we would like additional information concerning the rationale for some of its provisions and your plans to implement them.

1. As discussed above, the Department's Policy Directive admonishes that the Department should "proceed with particular caution" in the forfeiture of people's homes if the owners' were "not implicated in criminal conduct."
 - a. What additional oversight does the Department propose to protect innocent homeowners from seizure of their homes?
 - b. In what circumstances would the Department consider it appropriate to seize a

person's home when that person is not implicated in any criminal conduct?

c. Does the Department advise any particular caution for seizure of a person's home based on relatively minor criminal conduct?

2. The Department's policy would appear to allow federal adoptions in violation of state law.

a. If law enforcement is operating in a state that has banned forfeiture, does the Department consider it appropriate for law enforcement to rely on federal law in circumvention of the laws of their state?

b. Would the Department consider federal adoption of a state forfeiture appropriate if the forfeiture were based on simple possession of marijuana in a state that has legalized the drug?

3. Why did the Department propose safeguards exclusively on adoptions valued at less than \$10,000? Are higher value forfeitures worthy of less protection? Does this incentivize law enforcement to seize higher value property?

Please reply with written answers to these questions by August 15, 2017.

Sincerely,

F. James Sensenbrenner, Jr.
Member of Congress

John Conyers, Jr.
Member of Congress