

02/12/2024

SB368

Opponent Testimony

Tim Tarkelly

Libertarian Party of Kansas Legislative Director

Judiciary Committee Chair Humphries and Committee members,

The Libertarian Party of Kansas supports the passage of HB 2606, a bill specifying that certain drug offenses would not trigger forfeiture, increasing the burden of proof before forfeiture can occur, and overall requiring more judicial oversight of forfeiture cases.

Criminal Asset Forfeiture, as it stands, violates our civil liberties and skews law enforcement objectives. Presumption of innocence is “one of the most basic requirements of a fair trial.”¹

In the status quo, law enforcement agencies can seize assets without filing criminal complaints, tasking the owners to then prove their innocence.² This is a complete reversal of how our criminal justice system is supposed to operate.

In some cases, law enforcement officials are actually trained to identify profitable seizures to fund department ventures, seize the assets, and then leverage those assets against a plea bargain, clearly prioritizing money over law enforcements’ stated objective: justice.³

Beyond philosophical notions of due process and civil liberties, Civil Asset Forfeiture directly hurts innocent people. Currently, a law-abiding citizen could have their property seized if it was misused by a third party, even when the owner had no knowledge of the crime being committed.⁴

This is a clear case in which criminal procedure would be the only appropriate venture, rather than civil asset forfeiture which punishes an individual who did nothing wrong, and violates both parties’ individual rights.

¹ Cornell Law School. (2020). Presumption of innocence. *Legal Information institute*.

² Dewan, S. (2014). Law lets IRS seize accounts on suspicion, no crime required. *The New York Times*, <https://nyti.ms/2jRAsXL>.

³ Sibilla, N. (2017). Leaked handbook reveals how ICE uses civil forfeiture to seize millions. *Forbes Magazine*, <https://tinyurl.com/4tmp3jd6>.

⁴ Harvard Law Review, Eds. (2018). Notes: How crime pays: The unconstitutionality of modern civil asset forfeiture as a tool of criminal law enforcement. *Harvard Law Review*, 131(8), <https://harvardlawreview.org/archives/vol-131-no-8/>.

Law Enforcement Agencies should be required to provide an appropriate amount of evidence before they can seize an individual's property. This bill allows for that possibility, and it ensures their focus is on the pursuit of criminals, rather than a pursuit of profits.

While we do support HB 2606, we see it as one step toward a larger goal. In order to preserve our God-given "civil privileges" and "the full enjoyment of our rights as American citizens," as promised by the Kansas constitution, we seek the full and permanent cessation of Civil Asset Forfeiture. This bill is but one step in a much larger journey. In the defense of freedom, we must claim every inch that presents itself to us.

We hope you will consider these points and vote to pass this bill.

