Commentary: Supreme Court speaks out on civil asset forfeiture

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The U.S. Supreme Court has unanimously held that states are subject to the Eighth Amendment's restriction on excessive fines — and the new ruling could have some significant effects on civil asset forfeiture cases in Utah.
For the uninitiated, civil asset forfeiture is a law that lets the government permanently take property from innocent people who haven't been charged with, let alone convicted of, a crime. It's a highly controversial practice that is defended by many in law enforcement.

The court's new position puts the government on notice that these practices cannot continue to the degree they have in the past. While the median value of property taken from Utahns under this law is just over $1,000, it is quite common to see cases where a violation of a minor drug law leads to a substantial taking of property.

Consider a recent example: that of Bryan Melchior, the owner of Utah Gun Exchange, whose marijuana possession is leading Sim Gill's office to try and permanently confiscate around $50,000 in cash and silver coins he had saved up and stored at home.
This is clearly excessive. The monetary fine for marijuana possession (a few thousand dollars at most) comes nowhere close to the amount of money prosecutors are trying to take from its owner. The court's new ruling can clearly have an impact in these cases, making it much harder for the state to argue that its far-reaching property grabs are justified.
Utah's own Supreme Court unanimously ruled last year in a civil asset forfeiture case as well — this one dealing with the state's circumvention of due process protections for the property owner. Kyle Savely, accused only of a minor traffic violation, was subjected to the loss of hundreds of thousands of dollars.
What really becomes interesting is looking at the specific cases themselves. For larger cases, a pattern emerges: prosecutors offer to split the money down the middle to settle the case. Rather than litigating to try and prove their case and give the defendant an opportunity to reclaim all the money, a path of least resistance is offered: take half the money and walk.
A good defense attorney will likely advise the property owner that because of the risk in moving forward, it may be more advantageous to settle and move on. And so it happens, over and over again — $59,050 seized leading to $29,525 being returned; $140,040 seized leading to $70,020 being returned; and many more such cases.

Excessive though these fines may be, the state knows that it can obtain lots of money with little work by offering this deal that allows them to score some cash without having to see the case through to the end.
The court's new ruling opens an opportunity for property owners to fight back in court and contest significant property takings that are disproportionately large relative to the underlying alleged criminal conduct. This is a fight that's not going away.
Indeed, the fight is playing out at Utah's Capitol, where Senate Bill 109 is attempting to further restrict this practice. In high drama, a representative from the Utah Attorney General's office showed up to the committee hearing with a brick of heroin and bundles of cash, arguing that the Legislature's attempts to restrict civil asset forfeiture was assisting the drug cartels and should therefore be halted.

As it turns out, the heroin was brown sugar and the cash was fake — but the point was well taken. Law enforcement clearly objects to any restriction of this activity, and claims that all property taken through forfeiture is implicitly guilty, without question or nuance. It's a claim that's simply false.
Objections from law enforcement notwithstanding, the court's unanimous opinion is the latest development in a longstanding trend against this problematic government policy. Indeed, Utahns already object. 69 percent of Utah voters passed Initiative B in 2000, which significantly restricted civil asset forfeiture, despite extremely vocal opposition from the law enforcement community. And according to a recent poll, 86 percent of Utah voters oppose civil asset forfeiture.

The court deserves strong praise for helping tighten the screws even further against a controversial government practice that is on its last legs. Perhaps soon, the Utah Legislature will be ready to follow the lead of several other states and eliminate this problematic practice outright.

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