

Diverse Coalition Urges Mountain State Lawmakers to Reform Civil Asset Forfeiture

October 24, 2018

Dear Members of the West Virginia Legislature,

On behalf of the members of our respective organizations, we ask you to stand up for the rights of law-abiding West Virginians by reforming our state's well-intentioned but ultimately broken civil asset forfeiture system. This is especially timely given the federal equivalent is now wrongly coming after West Virginia farmers.

Unfortunately, both state and federal civil asset forfeiture laws make Americans' property rights vulnerable to government overreach by allowing innocent citizens' property to be seized and permanently kept by law enforcement without ever charging, let alone convicting the individual of a crime. These unfair seizures can include cash, vehicles, family homes, businesses—anything the government thinks might be somewhat related to a crime. To get their property back, citizens must prove their innocence in a civil proceeding, even if a criminal proceeding has found them not guilty. This turns our justice system's traditional presumption of innocence upside down.

A recent federal example of the severe shortfalls of civil forfeiture has hit close to home. The U.S. Attorney for the Southern District of West Virginia recently filed a civil lawsuit against a West Virginia industrial hemp farmer. The suit threatens heavy fines, the seizure of commodities and an injunction against further cultivation. In other words, it seeks to destroy the farmer's livelihood. The reason? The civil lawsuit claims the farmer violated the Control Substance Act by growing "marijuana."

Referring to industrial hemp as marijuana is simply inaccurate. Industrial hemp farming is not illegal. This ham-handed lawsuit hinges on the procurement of hemp seeds, which state code is silent on.

At least three states have concluded that interstate transportation of industrial hemp seeds between pilot program states -- established in the Agricultural Act of 2014 to allow the growth and cultivation of industrial hemp largely be regulated by the states-- is not a violation of federal law. Law-abiding farmers, and any innocent person, should not be subject to this type of government overreach at the state or federal level.

State policies allow West Virginia police to facilitate federal forfeitures by participating in the federal Equitable Sharing program, which splits seized property from joint investigations. Between 2000 and 2013, West Virginia authorities seized almost \$60 million this way, the 13th highest total in the country. State law also lets local law enforcement agencies keep the proceeds of civil asset forfeitures, creating incentives for more seizures to supplement budgets, subverting West Virginians' constitutional rights and policymakers' funding roles all at once.

These distortions of due process take place with almost no transparency or accountability. Our state law doesn't require reports on civil seizures, so it's difficult for the public to know how many forfeitures take place or how seized funds are spent. It's clear that state and federal lawmakers should end the practice of civil asset forfeiture in lieu of constitutionally sound

alternatives such as requiring an individual to actually be convicted of a crime before seized property could be permanently retained by the government.

That is why our organizations urge the West Virginia Legislature to help ensure that hardworking Mountaineers' property rights are safeguarded, and that all West Virginians are protected from the well-intentioned but abused system of civil asset forfeiture. It is time we end this practice in the Mountain State.

Sincerely,

Jason Huffman
West Virginia State Director
Americans for Prosperity

Mark Holden
Chairman
Freedom Partners

Eli Baumwell
Policy Director
American Civil Liberties Union-WV

Adam Brandon
President
FreedomWorks

Hon. Kent Leonhardt
Commissioner
West Virginia Agriculture Department

Maj. Neill Franklin (Ret.)
Executive Director
Law Enforcement Action Partnership

Gary Zuckett
Executive Director
West Virginia Citizen Action Group

Marc A. Levin
Vice President
Right on Crime