The Impact Litigation Campaign to End Civil Forfeiture

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Just after dark on February 27, 2017, Eh Wah was pulled over for a broken tail light while driving through Muskogee, Oklahoma. Eh Wah was a shy 40-year-old man who had immigrated to the United States from a refugee camp on the Thai-Burmese border 20 years earlier. Eh Wah was returning home to Dallas for a short break from his work as the volunteer manager for a Burmese Christian band during their five-month-long charity tour of the United States to raise money for a Thai orphanage and a remote Burmese refugee college. With him in his car was over $53,000 in cash that the band had raised on the tour, stored in envelopes identifying the concert location and amount of money raised. Dozens of envelopes filled with cash donations for the Hsa Thoo Lei orphanage listed the orphanage's name, address, phone number, and email in English.

What seemed like a routine traffic stop suddenly became a full-blown narcotics investigation. After grilling Eh Wah about the details of his trip, sheriff’s deputies searched the car and found the envelopes filled with cash, but no drugs, paraphernalia, or any evidence of illegal activity. After a drug dog alerted on the cash, Eh Wah was interrogated for six hours before finally being released around midnight. The Muskogee County sheriff’s deputies kept all of the cash as suspected “drug proceeds.”

Two weeks later, without any further investigation, the Muskogee district attorney filed papers to permanently keep the money through civil forfeiture. And then Eh Wah, whose only prior run-in with the law was a 2001 traffic ticket, was charged with felony possession of drug proceeds based on a cursory five-sentence affidavit that failed to describe any illegal activity but stated that the money was seized due to “inconsistent stories” and “Wah unable to confirm the money was his.”

Eh Wah's story sounds like a nightmare, but it is a common one—emblematic of the Kafkaesque world of civil forfeiture, an inequitable legal labyrinth from which even orphans and refugees are not safe. Across the country, unsuspecting travelers at airports, train stations, and highways are pulled aside and subjected to this legalized form of highway robbery. Small businesses and individuals suddenly discover that all of their funds have been seized from their bank accounts on the suspicion that they are “structuring” their banking transactions to avoid reporting requirements. Homes are raided—and sometimes even seized and sealed on the spot—in searches for cash or contraband.

In recent years, civil forfeiture has become an increasingly prominent subject of public scrutiny, featured on Last Week Tonight with John Oliver and VICE, as well as in major feature stories and investigative series in the New Yorker, the New York Times, and the Washington Post.

The scope of modern forfeiture laws has also been questioned recently by at least two—ideologically very different—justices on
the U.S. Supreme Court. In March 2017, Justice Thomas wrote an unusual statement about the denial of certiorari in a civil forfeiture case, questioning whether civil forfeiture laws have come unmoored from traditional limitations, and explained why he was “skeptical that this historical practice is capable of sustaining, as a constitutional matter, the contours of modern practice.” Leonard v. Texas, cert. denied, 137 S. Ct. 847 (Mar. 6, 2017) (No. 16-122). A few months later, Justice Sotomayor, writing a unanimous opinion of the court, pointedly discussed the historic distinction between in rem and in personam forfeiture as a limitation on the scope of property subject to forfeiture in a case rejecting the applicability of joint and several liability to a federal criminal forfeiture. Honeycutt v. United States, 137 S. Ct. 1626, 1634–35 (2017).

This term, the Court heard argument in Timbs v. Indiana, a civil forfeiture case that presents the question of whether the Eighth Amendment’s Excessive Fines Clause is incorporated against the states under the Fourteenth Amendment. State v. Timbs, 84 N.E.3d 1179 (Ind. 2017), cert. granted, 138 S. Ct. 2650 (June 18, 2018) (No. 17-1091).

What Civil Forfeiture Is Not

To understand what civil forfeiture is, it is perhaps helpful to clear up a few common areas of confusion by explaining what civil forfeiture is not. The first key distinction is the difference between seizure and forfeiture. Seizure is the initial confiscation of property by law enforcement officers, generally based simply on a probable cause standard. Seizure does not terminate ownership, and not all seized property will even be subjected to forfeiture proceedings—some property may simply be seized to be used as evidence, for example. Forfeiture is the permanent termination of the prior owner’s property rights in the seized property when the government becomes the legal owner of the property.

The second key distinction is between civil forfeiture and criminal forfeiture. Criminal forfeiture is an in personam proceeding that occurs after a criminal conviction and generally takes place during the sentencing phase of a criminal proceeding. Because criminal forfeiture is in personam, only the property of the convicted criminal is supposed to be forfeited via criminal forfeiture. In contrast, civil forfeiture is an in rem proceeding—a proceeding against the property itself—and does not require a criminal conviction in most states, much less a conviction of the property’s owner. Instead, property is permanently forfeited if the government can show by a preponderance of the evidence that the property was connected to a forfeitable offense.

Thus, in the topsy-turvy world of civil forfeiture, property owners can lose their property without even being charged with a crime. And, because civil forfeiture is not a criminal proceeding, property owners are not entitled to the protections accorded to criminal defendants, like the right to counsel, and their decision to exercise their Fifth Amendment right against self-incrimination may be used against them. Moreover, innocent third-party property owners—such as a mother who lets her son borrow her car—typically bear the burden of proving their own innocence and lack of knowledge that the property might be used for illegal purposes.

Civil forfeiture dates back to early Anglo-American maritime law (and even before that to the medieval concept of deodand, by which an object that caused someone’s death would be forfeited to the crown) and operates on the legal fiction that the property
itself is “guilty” of participating in a crime. As the U.S. Supreme Court explained in an oft-cited early 19th-century case involving the seizure of the brig Palmyra for piracy, “[t]he thing [was] primarily considered as the offender, or rather the offence [was] attached primarily to the thing.” The Palmyra, 12 Wheat. 1, 14 (1827). As a result, most forfeiture cases are titled with the property listed as the defendants, leading to case names like United States v. One 1974 Cadillac Eldorado Sedan and United States v. One Book Called Ulysses.

Originally limited to admiralty issues involving smuggling and piracy—where a ship’s owner might be overseas and thus outside a government’s jurisdiction, while the ship itself was in custody—the use of forfeiture laws expanded during Prohibition. Civil forfeiture expanded dramatically again under the Comprehensive Crime Control Act of 1984, which allowed law enforcement agencies to keep the proceeds of forfeited property, creating a very strong, if perverse, incentive. As a result, forfeitures exploded. Today, federal forfeitures exceed $5 billion per year, more than the $3.5 billion lost annually to burglary.

Strategies for Ending the Practice

In 2014, the Institute for Justice (IJ), the national public interest nonprofit law firm where I work, announced our National Initiative to End Forfeiture Abuse with the explicit goal of ending civil forfeiture as it currently exists. Our two primary aims are to eliminate the possibility that someone could have his or her property forfeited without first being convicted of a crime and to dismantle the perverse profit incentive that drives forfeiture abuse. We also want to ensure that there are procedural protections such as an opportunity for property owners to promptly challenge the seizure of their property and to seek to have it released to them on an interim basis while the forfeiture proceedings are pending.

Since 2014, we have made substantial progress through legislative reforms, public advocacy, and litigation: A majority of states—29 plus the District of Columbia—have reformed their civil forfeiture laws, including 15 states that now require a criminal conviction for most or all forfeitures. Over 300 editorials in major newspapers have editorialized against civil forfeiture, and a large majority of Americans—84 percent in a December 2016 poll conducted by the Cato Institute and YouGov—oppose civil forfeiture and support reforms. IJ has won about a dozen cases challenging different aspects of civil forfeiture. Our central strategy is impact litigation, which allows us not only to achieve just results for individual clients but also to highlight the invidiousness of the practice we’re challenging.

An essential aspect of effective impact litigation is sound client selection. Although we frequently come across innocent forfeiture victims, we do not have the resources to represent everyone. At IJ, we want to make our clients the “poster children” for a given issue, and so we look for sympathetic clients who can effectively tell their story to reporters and to the public. Sometimes we hit the jackpot. In our Muskogee, Oklahoma, case, we ended up representing a Thai orphanage for displaced refugees, a church, and a Christian band from Burma on a charitable fundraising trip. After all, if even orphans and refugees are not safe from civil forfeiture, no one is safe from civil forfeiture.

It is also essential to vet potential clients thoroughly to ensure that there is nothing in their background that could distract from the actual legal issues in their case. In forfeiture cases, this process is particularly demanding because there is generally at least an implicit accusation that they or their property were involved in criminal activity. Accordingly, we conduct a very thorough due diligence review of each potential client covering everything from criminal background checks to employment history to a review of credit issues.

We also must conduct case-specific investigations about the basis for the seizure. For example, for clients who are innocent third-party owners of seized property, such as a parent whose car was seized while being borrowed by a child, we need to investigate whether the parent was (or should have been) aware of any underlying criminal activity the child may have been involved in. For seizures of cash, we often dig through years of tax returns, bank statements, and other financial documents to confirm the legitimate source of the cash. Although not always necessary, we also review any documentation a potential client may have regarding a legitimate purpose for the seized cash, such as purchase contracts, earnest money payments, or communications with a seller about the prospective purchase of a vehicle, real estate, or a piece of equipment.

Litigation—especially impact litigation—depends on far more than just what happens in the courtroom. We also tell all our clients that we litigate their case not only in the court of law but also in the court of public opinion by telling their story to journalists, legislators, policy makers, and the public. In the context of civil forfeiture, we want everyone to know how outrageous our latest case is and potentially shame law enforcement and prosecutors into dropping the case and, ideally, changing their seizure or forfeiture policy. As part of this strategy, we typically work in advance with a major media outlet to give the media outlet an embargoed exclusive about the case, with an opportunity to interview us and our clients. Then we announce our involvement in the case as part of a “case launch” with a coordinated release of a video about the case produced by our in-house production team, the publication of the exclusive feature, and a webpage with a press release, media backgrounder, case documents, and photos of our clients.

We employ this two-pronged strategy because it can sometimes produce faster, more cost-effective victories for our clients.
and because it can also bring about lasting change. For example, we were able to secure coverage in the New York Times for client Carole Hinders, the owner of a Mexican restaurant in Spirit Lake, Iowa, whose business bank account was seized by the Internal Revenue Service (IRS) on the suspicion that she “structured” her bank deposits. She had done nothing wrong by regularly depositing the cash receipts from her restaurant, but the IRS suspected that she was attempting to avoid the requirement that deposits of $10,000 or more be reported to the IRS by making multiple small deposits. The IRS had already received extremely negative publicity from our prior “structuring” forfeiture cases on behalf of the owners of other small businesses across the country—including a grocery store, a gas station, a convenience store, and a wholesale distributor. Apparently anticipating another firestorm of criticism, the IRS not only returned Carole’s money but also announced a change in its seizure policy in the very same New York Times article covering her case. Now, the IRS no longer attempts to forfeit bank accounts based on what it calls “legal source” structuring—that is, money that comes from a legitimate business.

When placed under substantial public scrutiny for a given seizure or forfeiture, the government is often shamed into returning the seized property, sometimes within hours of the announcement. In our Muskogee case, for example, the Washington Post feature was posted online at around 9:30 a.m., and by 3:30 p.m., we received a call from the Muskogee district attorney saying that they would be dropping the criminal charge and the forfeiture case and that they wanted a mailing address so that they could send out the check that very afternoon!

While sudden victories like this are obviously great developments for our clients, they do not establish legal precedent that can be used to help others and prevent the continuing widespread abuse of forfeiture laws. These quick surrenders generally moot our client’s case, so they no longer have standing to challenge specific forfeiture practices or procedures that we may have challenged in our pleadings. Because our institutional goal is to bring about systemic change, we began looking for ways to overcome this recurring mootness problem. While there are doctrines that permit review of mooted cases, such as cases that are capable of repetition yet evading review, they are often not applied consistently, and so we are reluctant to put all our eggs in that basket. Instead, we have increasingly gone on the offense by filing federal class action lawsuits on behalf of classes of plaintiffs affected by the same civil forfeiture policies to ensure that our cases can overcome mootness obstacles and proceed to a final resolution on the merits.

Class actions are particularly resistant to mootness issues because of the “relation back” doctrine, which says that class claims relate back to the date that a motion for class certification is filed and thus prevent defendants from mooting the entire case by “picking off” class representatives with settlement offers designed to settle their individual claims. See, e.g., Sosna v. Iowa, 419 U.S. 393, 402 (1975); Deposit Guar. Nat’l Bank, Jackson, Miss. v. Roper, 445 U.S. 326, 339 (1980). Although the exact parameters of the “relation back” doctrine remains a subject of dispute, federal courts generally permit class actions to continue even after the claims of class representatives have been mooted, so long as a motion to certify the class is pending or is timely pursued after the filing of the complaint. Accordingly, we generally try to file our motion for class certification when, or shortly after, we file our class action complaint. If we’re able to obtain additional information through class discovery, then we can always amend our class-certification motion at a later point.

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A recent successful example of this strategy is our four-year-long class action lawsuit challenging Philadelphia’s civil forfeiture machine, which was among the most abusive in the nation. Among other outrageous practices, Philadelphia sent all civil forfeiture cases to a courtroom run by prosecutors—not judges—who repeatedly “relisted” cases by telling property owners to come back at another date, until they finally stopped showing up and lost their property by default. To put an end to this and other abusive practices, we filed a federal class action complaint with several lead plaintiffs representing about 25,000 members of the class who had been victimized by civil forfeiture. We initially brought suit against the City of Philadelphia and its District Attorney’s Office, but we later added a court system, the First Judicial District of Pennsylvania, after it became clear that it was complicit in these practices and that its involvement was necessary to fully correct them.

The Philadelphia defendants attempted to return the property of our lead plaintiffs in an effort to moot the lawsuit, but the class action continued because we had filed our motion for class
certification contemporaneously with our class action complaint; thus, the claims related back to the date of that initial filing. After overcoming multiple motions to dismiss, we managed to obtain class certification on one of the claims and settled two of the other claims: Philadelphia agreed to no longer seize and seal people’s homes without notice, suddenly evicting families from their homes, and to no longer require them to agree to unconstitutional conditions—such as not allowing family members to live with them—as a condition of letting them back in their home.

The case is currently awaiting approval of a class-wide settlement that would completely overhaul Philadelphia’s civil forfeiture procedures and establish a $3 million settlement fund to provide restitution to victims from the past six years.

**Dismantling the Machine**

While our ultimate goal is to end civil forfeiture altogether, dismantling America’s civil forfeiture machine is a daunting task that must be done piece by piece. Accordingly, we have focused our litigation on attacking specific unjust procedures or practices that independently violate due process or other provisions of the Bill of Rights, such as the “innocent owner” burden, the absence of a prompt post-seizure hearing, and the imposition of forfeitures that constitute excessive fines.

One particularly troubling aspect of civil forfeiture laws involves the burden of proof placed on innocent third-party property owners whose property was allegedly used by others to commit a crime, such as a mother who lets her son borrow her car, which is later seized when the son is arrested for driving under the influence. While there is generally an “innocent owner” defense available in such situations, federal law and most state laws place the burden on these property owners to effectively prove their own innocence and lack of knowledge about any criminal activity in order to get their property back. See, e.g., 18 U.S.C. § 983(d)(1) (“The claimant shall have the burden of proving that the claimant is an innocent owner by a preponderance of the evidence.”). This flips the presumption of innocence on its head, presenting a serious threat to due process.

Our due process challenge to this “innocent owner” burden recently found additional support in the Supreme Court’s ruling in *Nelson v. Colorado*, 137 S. Ct. 1249 (2017) (No. 15-1256). In a 7–1 decision written by Justice Ginsburg, the Court struck down Colorado statutes requiring criminal defendants whose convictions were reversed or vacated to prove their own innocence by clear and convincing evidence in order to be repaid for any fines, penalties, court costs, or restitution that they paid as part of their now-invalidated conviction. *Id.* at 1255. Finding that this scheme did not comport with due process, the Court explained that “Colorado may not presume a person, adjudged guilty of no crime, nonetheless guilty *enough* for monetary exactions.” *Id.* at 1256. Like the monetary exactions found unconstitutional in *Nelson*, forfeitures of property owned by third parties impose a punitive penalty even though the owners have not been adjudged guilty of any crime.

Following *Nelson*, we obtained an important ruling striking down the innocent-owner burden in Albuquerque, New Mexico, where city officials had continued seizing and forfeiting vehicles in defiance of New Mexico’s recent elimination of civil forfeiture. In that case, Arlene Harjo challenged Albuquerque’s forfeiture program after her 2014 Nissan Versa was seized and held for over 200 days in an impound lot because her son borrowed the car and was arrested for driving while intoxicated. The city attempted to permanently forfeit the car, and Arlene appeared at an administrative hearing to explain that her son had borrowed her car many times without incident, but the hearing officer dismissed her pleas, stating, “Well, your trust was misplaced.”

The city told Arlene it would forfeit her car unless she paid $4,000 and agreed to immobilize the car for 18 months. Instead, she sued in federal court, challenging the requirement that she must prove her own innocence (and the city’s profit incentive). In July 2018, the U.S. District Court held, in part, that Albuquerque’s civil forfeiture ordinance “violates due process by depriving car owners of their property unless they prove their innocence.” *Harjo v. City of Albuquerque*, No. 1:16–CV–01113–JB–JHR, 2018 U.S. Dist. LEXIS 127905, 326 F. Supp. 3d 1145, at *33, slip op. at 74 (D. N.M. July 28, 2018).

**A Lack of Prompt Hearings**

Another issue that creates particular hardship for victims of civil forfeiture is their inability to obtain a prompt hearing to challenge probable cause or seek the interim return of their property while the case proceeds on the merits. This is particularly difficult in vehicle seizures, where the owner may depend on the car to get to work, take children to school, run errands, and the like. Federal law provides for a limited hardship hearing in such circumstances, see 18 U.S.C. § 983(f), but many states have no such laws.

For real property, federal due process requires states to provide notice and an opportunity to be heard before the seizure for civil forfeiture, absent exigent circumstances. *United States v. James Daniel Good Real Prop.*, 510 U.S. 43 (1993). In our Philadelphia class action, we leveraged *James Daniel Good* to bring about an early settlement related to seizures of real estate, in which the city agreed to, inter alia, stop conducting surprise “seize and seal” seizures of homes and instead provide notice and a hearing. But *James Daniel Good* did not resolve the question of post-seizure hearings for seizures of personal property.

The Supreme Court appeared poised to resolve whether due process requires a prompt hearing after warrantless seizures of personal property when it granted certiorari in a case in which

However, there has been significant guidance from the lower courts in cases such as *Krimstock v. Kelly*, in which then Judge Sotomayor wrote an opinion for a unanimous Second Circuit panel holding that due process requires a prompt post-seizure hearing for vehicle owners whose vehicles were seized for civil forfeiture after the driver was accused of driving while intoxicated or for other alleged crimes for which the vehicle was an instrumentality. 306 F.3d 40, 44 (2d Cir. 2003). Noting that “[a] car or truck is often central to a person’s livelihood or daily activities,” *id.*, the Krimstock opinion held that vehicle owners “must be given an opportunity to test the probable validity of the City’s deprivation of their vehicles pendente lite, including probable cause for the initial warrantless seizure.” *Id.* at 70.

*Krimstock* and other cases like it have opened the door to challenging the absence of a prompt post-seizure hearing in several states. Most notably, in our Philadelphia class action, we secured as part of the yet-to-be-approved settlement a guarantee of a prompt post-seizure hearing for those who have their property seized in Philadelphia. Under the terms of this agreement, Philadelphia courts will now provide a post-seizure hearing within 10 business days after a property owner files a motion seeking such a hearing. At the same time, we continue to seek to make additional precedent further establishing the right to a prompt post-seizure hearing.

**Excessive Fines**

A third issue that arises frequently in civil forfeiture cases is excessive fines. The value of property taken through civil forfeiture often far exceeds the maximum criminal penalty that could be imposed following a conviction. In *United States v. Bajakajian*, 524 U.S. 321 (1998), the Supreme Court held that criminal forfeitures are punitive and thus subject to the Eighth Amendment’s Excessive Fines Clause. In that case, Syrian immigrant Hosep Bajakajian had over $357,144 seized from his luggage while traveling to Cyprus because he failed to declare it while departing the United States, in violation of federal currency reporting requirements that require cash amounts of more than $10,000 to be reported to U.S. Customs and Border Protection upon departure. *Id.* at 324–25. The money was not alleged to have been involved in any other criminal activity, so the sole crime was the reporting offense. *Id.* at 337–38. Under the Sentencing Guidelines, the maximum sentence that Bajakajian could have faced was six months in prison and a fine of $5,000. *Id.* Because a $357,144 criminal forfeiture would have been “many orders of magnitude” greater than the maximum $5,000 fine, the Court concluded that “such a forfeiture would be grossly disproportional to the gravity of the offense.” *Id.* at 339–40.

In our civil forfeiture litigation, we have sought to expand the application of *Bajakajian* to civil forfeitures where the value of the property seized is “grossly disproportional” to the gravity of the alleged offense. Most notably, we have elevated this issue once again to the Court’s attention in *Timbs v. Indiana*, in which it was argued this term.

*Timbs* is about whether, and how, the Excessive Fines Clause is incorporated against the states. Indiana resident Tyson Timbs used the proceeds from his recently deceased father’s life insurance to purchase a sport utility vehicle (SUV) for about $42,000. A short time later, he became addicted to opioid medication and turned to the black market when his prescription expired. After a confidential informant put him in touch with undercover officers, he was arrested in the SUV during a sting operation for selling a small amount of drugs. He pleaded guilty and served one year of house arrest, was sentenced to five years of probation, and paid $1,200 in court fees. The State of Indiana—acting through a private law firm working on a contingency-fee basis—then attempted to forfeit his SUV, which was seized during the arrest, using civil forfeiture. The seizure of Timbs’s car made it difficult for him to comply with the terms of his probation.

Timbs challenged the forfeiture as a violation of his right to be free from excessive fines under the Eighth Amendment. The state trial court found for Timbs, noting that the seized property was worth four times more than the maximum $10,000 statutory fine Timbs faced, and thus was excessive and grossly disproportional to the gravity of the offense. The trial court was affirmed by the state court of appeals, but the Indiana Supreme Court declined to treat the Excessive Fines Clause as incorporated against the states and reversed. See *State v. Timbs*, 84 N.E.3d 1179, 1184 (Ind. 2017).

Representing Timbs, we petitioned for certiorari on whether the Eighth Amendment’s Excessive Fines Clause is incorporated against the states under the Fourteenth Amendment, arguing that it is incorporated under both the Due Process Clause and the Privileges or Immunities Clause. The Supreme Court granted certiorari and heard argument on November 28, 2018. (On February 20, 2019, shortly before this issue of *Litigation* went to press, the Court ruled that the Constitution’s ban on excessive fines does also apply to states.)

**The Profit Incentive**

In addition to focusing on specific forfeiture procedures that violate due process, we remain mindful of the fact that the extremely high number of seizures and forfeitures is driven by
the profit incentive, which distorts law enforcement priorities. Unsurprisingly, when law enforcement agencies and prosecutors are able to keep up to 100 percent of the proceeds from property they forfeit, they make forfeiture a much higher priority. To truly limit abuse of forfeiture laws, we must eliminate this profit incentive. Accordingly, we have repeatedly challenged this profit incentive itself as a systemic violation of due process, and those efforts are beginning to bear fruit.

While the principle that judges may not have a financial incentive in the outcome of cases they preside over is both intuitive and well known, less known is the fact that this same principle applies to prosecutors and law enforcement officers. Although the case law on due process and financial incentives for prosecutors and law enforcement officers is just beginning to develop, the U.S. Supreme Court offered guidance in Marshall v. Jerrico,

Our legal arguments on the unconstitutionality of civil forfeiture’s profit incentive were recently adopted by a federal district court.

Inc. In that case the Court rejected a due process challenge to an administrative enforcement scheme that directed penalties for child labor law violations to the enforcing agency, because the funds collected made up substantially less than 1 percent of the budget of the Employment Standards Administration of the Department of Labor and the salary of the relevant official was fixed by law and did not fluctuate based on penalties collected. 446 U.S. 238, 250 (1980). Explaining the narrow scope of its ruling, the Court noted that “traditions of prosecutorial discretion do not immunize from judicial scrutiny cases in which the enforcement decisions of an administrator were motivated by improper factors.” Id. at 249. The Court explained that such “improper factors” included both institutional and personal interests, such as when enforcement decisions are “distorted by the prospect of institutional gain as a result of zealous enforcement efforts” or “[a] scheme injecting a personal interest, financial or otherwise, into the enforcement process [which] may bring irrelevant or impermissible factors into the prosecutorial decision.” Id. at 250.

Following the Court’s guidance in Marshall v. Jerrico, we have repeatedly brought due process claims (and raised affirmative defenses) challenging forfeiture programs that create institutional or personal financial incentives likely to distort enforcement behavior, such as when a significant percentage of an agency’s budget is derived from forfeiture proceeds or when forfeiture proceeds are used to pay for law enforcement officers’ or prosecutors’ salaries, overtime, and other benefits. These efforts are beginning to pay dividends.

In our Philadelphia class action, for example, our profit-incentive claim survived multiple motions to dismiss, and a class was even certified to bring this claim. Although the settlement of the case is pending approval, the consent decree provides that the city may no longer direct funds from forfeiture to law enforcement use and must disgorge the remaining money from the city’s forfeiture fund to provide restitution to victims.

Our legal arguments on the unconstitutionality of civil forfeiture’s profit incentive were recently adopted by a federal district court in our challenge to Albuquerque’s civil forfeiture program. The landmark 105-page opinion by Judge James O. Browning found that “the City of Albuquerque has an unconstitutional institutional incentive to prosecute forfeiture cases, because, in practice, the forfeiture program sets its own budget and can spend, without meaningful oversight, all of the excess funds it raises from previous years.” Harjo v. City of Albuquerque, No. 1:16-CV-01113-JB-JHR, 2018 U.S. Dist. LEXIS 127905, 326 F. Supp. 3d 1145, at *1, slip op. at 2 (D. N.M. July 28, 2018). The court further explained that “there is a realistic possibility that the forfeiture program prosecutors’ judgment will be distorted, because in effect, the more revenues the prosecutor raises, the more money the forfeiture program can spend.” Id. at *35, slip op. at 77.

Conclusion

Many early legal victories have been won to limit civil forfeiture, and public opinion remains strongly supportive of forfeiture reform, according to an October 15, 2018, poll by IJ and YouGov finding that 76 percent of Americans are more likely to vote for candidates who support forfeiture reform. Nonetheless, much work remains in our campaign to end civil forfeiture. Strategic impact litigation requires patience and perseverance coupled with a sound litigation strategy. Our multi-prong strategy for attacking various procedural aspects of civil forfeiture laws while also challenging the profit incentive that lies at the root of forfeiture abuse provides essential flexibility. We are able to test cutting-edge constitutional theories while also extending existing precedent to challenge unjust procedures. There will no doubt be many further challenges as we continue this campaign, but we remain confident that something as inherently abusive as civil forfeiture can be brought to an end.