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## Arizona's overreaching Civil Forfeiture Laws have been Amended

At long last, Arizona has made significant changes to its infamous overreaching Civil Forfeiture Laws. Despite significant push back from prosecutors, Governor Doug Ducey signed into law HB2477 on April 13, 2017. The new law raises the burden of proof in civil forfeiture cases such that prosecutors are now required to show "clear and convincing evidence" to a judge that property the State wants to seize is connected to criminal activity. The new standard is a more rigorous standard than the previous standard of allowing seizures based on "preponderance of the evidence." Under the old standard, the State only had to show that it was "more likely than not" that the property was linked to a crime. Now, the State must now persuade the Court that the property's connection to criminal activity is "highly probable." While such standard is higher than the previous one, it is lower than the standard for proof "beyond a reasonable doubt," required in all criminal cases.

HB2477 also establishes strict reporting requirements for the State. Arizona's prosecuting agencies must now carefully account for what they seize, and how the monies derived from such seizures, are spent. In years past, there was very little data about what happened to the the hundreds of millions of dollars seized by the State.

Over the last forty years, civil forfeiture systems nationwide have grown exponentially, and now constitute a significant source of funding for law enforcement operations. Many critics contend that civil forfeiture creates a perverse set of incentives for both law enforcement agencies, and the elected officials who set their budgets. Not only is civil asset forfeiture profitable for law enforcement agencies, it can, in most cases, be an easy source of revenue. Generally, only about 20% of property owners who have their property seized ever attempt to get it back. Even if the owner successfully challenges the forfeiture, there is little extra cost or burden to the agency for its "loss." Thus, asset forfeiture presents law enforcement agencies with a relatively low-risk way to supplement their budgets. Allowing those who seize property to keep the proceeds is an obvious conflict of interest. This system encourages police and county sheriffs to aggressively seize assets in order that they may continue to fill their own coffers.

Arizona's law enforcement agencies have seized nearly \$200 million in personal property during the past five years - almost all of it cash - from people who may never be charged or convicted of a crime. Regulation of this program has been inconsistent, and the reports designed to inform government officials about how and when the money is used are often missing data. While there

are many other issues which continue to plague Arizona's forfeiture laws, these new reforms are a significant step in the right directions.

I would like to extend a giant "shout out" to my colleagues and friends from the Arizona Attorneys for Criminal Justice ("AACJ"), who worked tirelessly with a coalition of organizations from the ACLU, the Goldwater Institute, the Institute for Justice to the Tenth Amendment Center, the Free Enterprise Club, and Los Avocados. All of these fine organizations, whose interests are oftentimes not aligned, have helped make civil forfeiture reform in Arizona a reality. Keep up the great work.

## Crush's Corner



Where did the saying April Showers Bring May Flowers come from? There are varying accounts, but most trace back to a collection of writings from 1557 called *A Hundred Good Points of Husbandry* by gentleman by the name of Thomas Tusser from England. In the April Husbandry section he wrote:

*Sweet April showers  
Do spring May flowers*

Mr. Tusser reminds us that even the most unpleasant of things, in this case the heavy rains of April, can bring about very enjoyable things indeed - in this case, an abundance of flowers in May.

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