

ADDRESSING DUE PROCESS CONCERNS: EVALUATING
PROPOSALS FOR CIVIL ASSET FORFEITURE REFORM

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Abstract

Civil asset forfeiture compromises criminal due process protections for the sake of allowing the government to take property from citizens and pocket the profits. Within the last decade, several news outlets have reported instances where law enforcement agencies took property from citizens—without arresting or convicting them—and spent the proceeds from seized cash, homes, or vehicles on their own agencies. Because the government is often only required to prove that the property was associated with criminal activity by a preponderance of the evidence, many citizens are left without the resources or ability to defend their property, even when they are innocent. As a national movement builds toward challenging and reforming civil forfeiture laws, this Note evaluates existing reforms as implemented in some states and as proposed to state legislatures in others. This Note explores the viability of four major proposals for civil forfeiture reform. Without abolishing civil forfeiture altogether, these proposals could enhance due process protection for individuals fighting forfeitures. These proposals could also prevent the government from using civil forfeiture to make a profit rather than to achieve civil forfeiture’s original purpose: compensation.

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A. *Raising the Government’s Burden of Proof*1392

* J.D. candidate 2019, University of Florida Levin College of Law. I dedicate this Note to my mentor, Rob Griscti, who suggested this fascinating topic—and pressing national issue—for me to write on. Not only has he offered the inspirational guidance for this Note, he has also served as a formative mentor to me in my legal career. Additionally, I express my heartfelt gratitude to my parents, Sherri and Scott Milliron, for their limitless love, support, and relentless reassurance. Also, I’d like to thank several special people that I am lucky enough to have in my life: Nicholas May; and my dear friends and law school classmates Amy Maitner, Summer Goff, Savannah Clifton, and Gabriel Roberts. Finally, I am forever grateful to the editors and staff of the *Florida Law Review* for polishing this Note, along with many other articles, with tireless care and skill throughout the writing and publishing process.

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INTRODUCTION

At 3:20 a.m., a police officer stopped a vehicle for speeding and following another vehicle too closely.¹ During the stop, the driver consented to a search of his vehicle and the officer found a safe in the trunk.² The driver said the safe belonged to his mother and contained money, but the passenger offered a different explanation. Because of this discrepancy, the officer acquired a warrant.³ Upon opening the safe, the officer discovered \$201,000 and a bill of sale for a home in Pennsylvania.⁴ Suspecting that the driver obtained the money through drug sales, the officer confiscated the cash.⁵

The scenario above represents the facts from *\$201,100.00 United States Currency v. State*,⁶ where law enforcement successfully executed a civil forfeiture.⁷ The court in that case held that the government met its burden to show sufficient circumstantial evidence that the money constituted contraband.⁸ Additionally, the court held that the driver's mother, who asserted that she qualified as the innocent owner of the property, failed to demonstrate that she had a proprietary interest in the money before or during the act giving rise to the forfeiture.⁹ The driver's mother stated that she received the money when she sold her home several years prior and that she kept the money in a safe.¹⁰ Furthermore, she claimed her son transported the money back to Texas so she could purchase a home for him and his partner.¹¹ And yet, the driver's mother

1. \$201,100.00 U.S. Currency v. State, No. 09-14-00478-CV, 2015 WL 4312536 *1, *1 (Tex. App. July 16, 2016).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. No. 09-14-00478-CV, 2015 WL 4312536 (Tex. App. July 16, 2016).

7. *Id.* at *1.

8. *Id.* at *2.

9. *Id.* at *4.

10. *Id.*

11. *Id.* at *1.

still failed to prove she was an innocent owner of the property.¹² As a result, she lost over \$200,000 without ever being present.

This scenario provides a classic example of how a civil forfeiture proceeding begins. Civil forfeiture typically occurs when a law enforcement officer seizes an individual's property because she has probable cause to believe an individual has committed a crime, and as a result, she confiscates the property associated with the crime.¹³ A civil forfeiture action primarily rests on the legal fiction that the property itself is the offender.¹⁴ The government brings an action against the property and must prove by a preponderance of the evidence that the property was used to commit or facilitate a crime.¹⁵

In response, the owner of the property may assert an "innocent ownership" affirmative defense.¹⁶ This defense requires the owner to prove by a preponderance of the evidence: (1) that at the time the illegal conduct took place, the owner did not know of the conduct; or (2) that upon learning of the illegal conduct, the owner did all that could be reasonably expected under the circumstances to terminate such use of the property.¹⁷ If the owner is unable to meet this requirement, the government will keep the seized property.¹⁸ The government may also confiscate property through criminal forfeiture, which occurs when an individual is convicted of a crime and the government takes any property or "ill-gotten gains" tied to the criminal activity.¹⁹ Civil and criminal forfeiture proceedings may be brought in tandem in an attempt to ensure that the government successfully acquires a defendant's property even if the prosecutor fails to secure a conviction.²⁰

The driver's mother in *\$201,100.00* attempted to bring the case to the Supreme Court of the United States, but the Court denied certiorari because she failed to properly preserve her due process argument.²¹ However, in a statement regarding the denial, Justice Thomas questioned whether modern civil forfeiture practices remain justified by their historical roots.²² In his statement, Justice Thomas touched on some of

12. *Id.* at *4.

13. See Kenneth Kandaras, *Federal Property Forfeiture Statutes: The Need to Guarantee a Prompt Trial*, 33 U. FLA. L. REV. 195, 195–96 (1981); see also *Austin v. United States*, 509 U.S. 602, 604 (1993) (providing an example of the government confiscating property associated with the crime).

14. *Austin*, 509 U.S. at 611.

15. 18 U.S.C. § 983(c) (2012).

16. *Id.* § 983(d).

17. *Id.*

18. *Id.* § 983(a)(1)(F).

19. 21 U.S.C. § 853(a) (2012).

20. Janeice T. Martin, Note, *Final Jeopardy: Merging the Civil and Criminal Rounds in the Punishment Game*, 46 FLA. L. REV. 661, 661 (1994).

21. *Leonard v. Texas*, 137 S. Ct. 847, 847 (2017) (statement on the denial of certiorari).

22. *Id.*

the issues that have plagued the continually changing practice and reformation of civil forfeiture.²³ Specifically, Justice Thomas noted how civil forfeiture lacks certain procedural protections compared to criminal law, that civil forfeiture proceedings have become highly profitable for law enforcement agencies, and that civil forfeiture frequently targets the poor or other groups who are incapable of adequately defending their property.²⁴ Most crucially, Justice Thomas discussed how modern forfeiture laws have potentially expanded beyond the scope of their historical justifications and how it is questionable if the historical practices justify forfeiture actions proceeding civilly at all.²⁵

Part I of this Note will explore the complex and turbulent history of civil forfeiture law, which has led to concerns over the government's use of civil forfeiture as a powerful tool for profit. In Part II, this Note will examine legislative actions since 2000 that signal the potential for change in civil forfeiture law. Part III of this Note will then evaluate the major solutions that have been proposed to address the due process concerns stemming from civil forfeiture and analyze the arguments behind each solution.

I. A BRIEF HISTORY OF CIVIL FORFEITURE

The United States' civil forfeiture roots extend deep into English common law.²⁶ Historically, if property caused a person's death, the property could be forfeited to the Crown.²⁷ When a man died, the Crown brought suit against the object that caused his death. Because the object was to be given to God—and because the Crown stepped in on behalf of God—the object would be deposited with the Crown for the Crown's use.²⁸ The forfeited property would then be spent for the good of the King's soul.²⁹ Although many characteristics of forfeiture as it existed under English common law remain relics of the past, modern forfeiture

23. *Id.* at 848 (“This system—where police can seize property with limited judicial oversight and retain it for their own use—has led to egregious and well-chronicled abuses.”).

24. *Id.* at 847–48 (“Civil proceedings often lack certain procedural protections that accompany criminal proceedings, such as the right to a jury trial and a heightened standard of proof.”).

25. *Id.* at 849 (“[I]t is unclear whether courts historically permitted forfeiture actions to proceed civilly in all respects. Some of this Court's early cases suggested that forfeiture actions were in the nature of criminal proceedings.”).

26. See *Austin v. United States*, 509 U.S. 602, 611 (1993); *United States v. U.S. Coin & Currency*, 401 U.S. 715, 720–21 (1971); *United States v. One 1988 Ford Mustang*, 728 F. Supp. 495, 498 (N.D. Ill. 1989).

27. See *One 1988 Ford Mustang*, 728 F. Supp. at 498; OLIVER WENDELL HOLMES, *THE COMMON LAW* 27 (Paulo J. S. Pereira & Diego M. Beltran eds. 2011) (1881) (describing an example where a man fell from a ship, the ship's motion caused the man's death, and the ship was the guilty vehicle subject to forfeiture).

28. HOLMES, *supra* note 27, at 25–26.

29. *Id.*

is still premised on the legal fiction that inanimate objects themselves can be guilty of wrongdoing.³⁰ In colonial America, forfeiture actions were commonly brought against ships—in response to criminal acts like piracy or in situations where a ship caused someone’s death—although it was impractical to seek out the foreign party who owned the offending vessel.³¹ Although the government intended to use forfeitures as a mechanism for compensation, especially as forfeitures continued throughout the 1800s, the government also sought, in part, to punish criminals by confiscating their property.³² However, with the exception of a brief spike in forfeitures during the Prohibition Era, civil forfeiture actions remained relatively dormant until the early 1970s when the economic and criminal landscapes of America changed.³³

The War on Drugs reignited government use of civil forfeitures.³⁴ When Congress passed the Comprehensive Drug Abuse Prevention and Controlled Substances Act of 1970,³⁵ the government gained the power to seize property used or intended to be used in the commission of a drug offense punishable by more than one year's imprisonment.³⁶ This Act helped launch the War on Drugs by targeting instrumentalities, proceeds, and other real property associated with drug crimes.³⁷ Additionally, in 1984, the Comprehensive Crime Control Act³⁸ established the Department of Justice Assets Forfeiture Fund to receive the proceeds of forfeitures and to pay the costs associated with forfeitures, including the managing and disposing of property, satisfying valid liens, mortgages, other innocent owner claims, and costs associated with accomplishing the

30. *U.S. Coin & Currency*, 401 U.S. at 720.

31. HOLMES, *supra* note 27, at 29.

32. *See* *The Palmyra*, 25 U.S. 1, 15 (1827) (“But the practice has been, and so this Court understand[s] the law to be, that the proceeding *in rem* stands independent of, and wholly unaffected by any criminal proceeding *in personam*.”); *United States v. The Cargo of the Brig Malek Adhel*, 43 U.S. 210, 210 (1844) (“[T]o protect the commerce of the United States and *punish the crime of piracy*, any armed vessel . . . may be condemned and sold, the proceeds whereof to be distributed between the United States and the captors, at the discretion of the court.” (emphasis added)).

33. *See* Walter J. Van Eck, Note, *The New Oregon Civil Forfeiture Law*, 26 WILLAMETTE L. REV. 449, 449 (1990).

34. Alan Nicgorski, *The Continuing Saga of Civil Forfeiture, the “War on Drugs,” and the Constitution: Determining the Constitutional Excessiveness of Civil Forfeitures*, 91 NW. U. L. REV. 374, 381–82 (1996) (describing how civil forfeiture was designed as a weapon to end the narcotics trade).

35. Pub. L. No. 91-513, § 511, 84 Stat. 1236, 1276 (1970) (codified as amended at 21 U.S.C. § 881 (2012)).

36. 21 U.S.C. § 881(a) (2012).

37. Nicgorski, *supra* note 34, at 376.

38. Pub. L. No. 98-473, 98 Stat. 1976 (1984) (codified as amended in scattered sections of 18 U.S.C.).

legal forfeiture of the property.³⁹ Furthermore, the 1984 Act empowered the Attorney General to use the funds to pay for any necessary operations associated with forfeiture proceedings, as well as general investigative expenses.⁴⁰

As a result, civil forfeiture exploded throughout the 1980s. Drug offense arrests increased drastically and law enforcement began seizing large amounts of property.⁴¹ As the amount of forfeited assets increased, law enforcement agencies pocketed more proceeds.⁴² Equitable sharing programs also increased in popularity—these programs allowed state law enforcement agencies to keep large shares of the profits from forfeited property if they participated in investigations or the turnover of forfeited property to the federal government.⁴³ As civil forfeiture rapidly became both more popular and more impactful,⁴⁴ the judiciary faced more questions about the legal ramifications of and the protections in civil forfeiture actions, particularly with regard to the Excessive Fines Clause of the Eighth Amendment.

*Austin v. United States*⁴⁵ became the first landmark case to hold that the Excessive Fines Clause applied to civil forfeiture actions.⁴⁶ In *Austin*, the defendant pleaded guilty to one count of cocaine possession with the intent to distribute, and the government subsequently brought an *in rem* action against the defendant's mobile home and body shop.⁴⁷ During the commission of the crime, the defendant left his body shop, went to his mobile home, and then returned to the body shop with cocaine, which he later sold to someone else.⁴⁸ While searching the body shop and the mobile home, law enforcement found drugs, drug paraphernalia, a gun, and cash.⁴⁹ In response to the *in rem* action, the defendant argued that the

39. *Asset Forfeiture Program*, DEP'T JUST., <https://www.justice.gov/afp/fund> [<https://perma.cc/95H5-GWLY>].

40. 28 U.S.C. § 524 (2012) (authorizing the enumeration of these powers and the use of assets).

41. Nigorski, *supra* note 34, at 376 (“With such strong support from the highest levels of authority, the value of the assets seized by the federal government in the war on drugs has skyrocketed since the Department of Justice established the National Assets Seizure and Forfeiture Fund in 1985.”).

42. *Developments in the Law—Policing*, 128 HARV. L. REV. 1706, 1732 (2015) (“Since 2001, local police have seized over \$2.5 billion through the federal statute, 81% of which came from people who were not charged with a crime. Police used this revenue to pay for everything from informants and weaponry to publicity efforts . . . and luxury vehicles.” (footnote omitted)).

43. DEP'T OF JUSTICE, ASSET FORFEITURE POLICY MANUAL 105 (2016), <https://www.justice.gov/criminal-afmls/file/839521/download> [<https://perma.cc/58Y5-L3W6>].

44. Adam Creppelle, *Probable Cause to Plunder: Civil Asset Forfeiture and the Problems It Creates*, 7 WAKE FOREST J.L. & POL'Y 315, 325–26 (2017).

45. 509 U.S. 602 (1993).

46. *Id.* at 604.

47. *Id.*

48. *Id.* at 605.

49. *Id.*

forfeiture of the mobile home and body shop violated the Eighth Amendment.⁵⁰ The Court agreed and held that the Excessive Fines Clause applied to statutory *in rem* forfeitures because the forfeiture, at least in part, served a punitive purpose.⁵¹

Although forfeiture can serve a remedial purpose by removing dangerous items or contraband from society, the *Austin* Court conceded that the defendant's mobile home and body shop were not criminal instruments of the drug trade, so the act of forfeiting them did not constitute compensation.⁵² This case opened the door for potential constitutional violations and resultant protection for individuals subject to civil proceedings. However, the Court refused to provide a specific standard for measuring when a civil forfeiture action violates the Excessive Fines Clause.⁵³ After *Austin*, without a concrete standard, the lower courts attempted to define the test for potential violations.⁵⁴ However, the Supreme Court of the United States did not reenter the conversation until *United States v. Bajakajian*.⁵⁵

Bajakajian marked the first time the Court struck down a forfeiture action or fine as unconstitutional under the Excessive Fines Clause.⁵⁶ *Bajakajian* involved a criminal forfeiture where a defendant attempted to leave the United States without reporting, as required by federal law, that he was transporting more than \$10,000 in currency.⁵⁷ The defendant pleaded guilty to the failure to report and sought a bench trial with regard to the forfeiture.⁵⁸ The lower court held that the \$357,144 the defendant carried was subject to forfeiture because the currency was "involved in" the offense.⁵⁹ On appeal, the defendant argued that the full forfeiture was grossly disproportionate to the gravity of his offense.⁶⁰ The Court agreed.⁶¹ The Court also engaged in a discussion regarding how the Excessive Fines Clause applied to civil *in rem* proceedings because "[a] forfeiture that reaches beyond this strict historical limitation is *ipso facto*

50. *Id.*

51. *Id.* at 618.

52. *Id.* at 621.

53. Charmin Bortz Shiely, Note, *United States v. Bajakajian: Will a New Standard for Applying the Excessive Fines Clause to Criminal Forfeitures Affect Civil Forfeiture Analysis?*, 77 N.C. L. REV. 1595, 1596–97 (1999).

54. Shiely, *supra* note 53, at 1597 ("[T]he lower courts have had to determine what analytical framework to use. Without guidance from the Supreme Court, inconsistent standards among the lower courts have been inevitable. Therefore, the extent to which the Excessive Fines Clause may provide relief from civil forfeiture remains untested." (footnotes omitted)).

55. 524 U.S. 321 (1998).

56. *Id.* at 334.

57. *Id.* at 324.

58. *Id.* at 325.

59. *Id.* at 325–26.

60. *Id.* at 324.

61. *Id.*

punitive and therefore subject to review under the Excessive Fines Clause.”⁶²

Some scholars questioned if this analysis, either intentionally or unintentionally, actually loosened the restraints on the government in civil forfeiture proceedings, because the *Bajakajian* Court seemingly allowed civil forfeiture to be used for the sole purpose of imposing punishment.⁶³ As such, the government could essentially bypass the fundamental procedural protections found in criminal forfeiture—such as the right to counsel and the beyond-a-reasonable-doubt standard—to impose a harsher, swifter punishment. And this punishment would be constitutional unless it was grossly disproportionate to the punishment that would have been imposed in a criminal proceeding.⁶⁴ The uncertain nature of the analysis in *Bajakajian* further kindled concerns about the uncertainty surrounding the implementation and enforcement of civil forfeiture actions.

By the close of the twentieth century, the Supreme Court of the United States had answered several crucial questions about the constitutional nature of civil forfeiture actions⁶⁵—specifically that civil forfeiture could serve a punitive purpose⁶⁶—but the Court left much for the lower courts and state legislatures to decipher. Before the lower courts began to substantially interpret the new holdings, the federal legislature swiftly stepped in to reform federal civil forfeiture law.⁶⁷ This reform directly affected all state law enforcement agencies, and the legislature intended for it to alleviate some of the concerns surrounding the lack of due process protection for property owners involved in forfeiture prosecutions.

II. LEGISLATIVE CHALLENGES AND CHANGES TO CIVIL FORFEITURE LAWS

In response to new precedent that redefined the reach and limitations of civil forfeiture,⁶⁸ Congress passed the Civil Forfeiture Reform Act of

62. *Id.* at 333 n.8.

63. Shiely, *supra* note 53, at 1632.

64. *Id.*

65. *See generally Bajakajian*, 524 U.S. 321 (deciding when a punitive forfeiture violates the Excessive Fines Clause); *Austin v. United States*, 509 U.S. 602 (1993) (deciding that forfeiture is a monetary punishment and is subject to the limitations of the Excessive Fines Clause).

66. *Bajakajian*, 524 U.S. at 334.

67. Civil Forfeiture Reform Act of 2000 (CAFRA), Pub. L. No. 106–185, 114 Stat. 202 (2000) (codified as amended at 18 U.S.C. § 983 (2012)).

68. *United States v. \$80,180.00 in U.S. Currency*, 303 F.3d 1182, 1184 (9th Cir. 2002) (“In response to widespread criticism of this regime, Congress enacted CAFRA.” (citation omitted)). *See United States v. \$39,480.00 in U.S. Currency*, 190 F. Supp. 2d 929, 931–32 (W.D. Tex. 2002) (“However, the Court is well aware that, as a general rule, forfeitures are not favored by the law and statutes providing for forfeitures are strictly construed.”).

2000 (CAFRA).⁶⁹ To alleviate due process concerns, CAFRA significantly modified federal civil forfeiture procedures.⁷⁰ CAFRA heightened the government's burden of proof from a probable cause standard to a preponderance of the evidence standard,⁷¹ making it more difficult for the government to establish the criminality of property. CAFRA imposed another restriction on the government by requiring it to serve notice of a forfeiture action within sixty days.⁷² And CAFRA made several remedial reforms on the behalf of property owners, including a comprehensive innocent-owner-defense, whereas prior to CAFRA, courts did not consider the owner's possible innocence.⁷³ The innocent-owner-defense allowed an owner to assert her innocent ownership over the property in question if she could prove, by a preponderance of the evidence, that she either did not know of the conduct giving rise to the forfeiture, or that upon learning of conduct giving rise to the forfeiture, she did all that could reasonably be expected to terminate criminal use of her property.⁷⁴ CAFRA thus altered the burden-shifting model so that both the government and the property owner needed to prove their cases by a preponderance of the evidence, as opposed to only the innocent owner having the higher burden of proof.⁷⁵ CAFRA also allowed for indigent defendants to receive court appointed counsel, but only so long as the property at issue was real property used as a primary residence by the owner.⁷⁶

These changes seemed to significantly enhance due process protection for property owners. However, concerns surrounding the potential abuse of civil forfeiture persisted because the government's burden of proof remained relatively low while the cost for a plaintiff to defend her property remained relatively high,⁷⁷ excluding the narrow exception for

69. Pub. L. No. 106-185, 114 Stat. 202 (2000) (codified as amended at 18 U.S.C. § 983 (2012)).

70. Todd Barnet, *Legal Fiction and Forfeiture: An Historical Analysis of the Civil Asset Forfeiture Reform Act*, 40 DUQ. L. REV. 77, 104-05 (2001) (listing the "substantial improvements" CAFRA made in addressing the due process protections of individuals).

71. *\$80,180.00 in U.S. Currency*, 303 F.3d at 1184 ("Prior to the enactment of CAFRA . . . [t]he government bore the minimal burden of demonstrating probable cause for instituting the forfeiture proceeding.").

72. 18 U.S.C. § 983(a)(1)(A)(i).

73. *See \$80,180.00 in U.S. Currency*, 303 F.3d at 1184.

74. 18 U.S.C. § 983(d).

75. Prior to CAFRA, the government needed to demonstrate that the property was subject to civil forfeiture by a probable cause standard, and then the burden shifted to the property owner, who had to show that the property was not subject to forfeiture by a preponderance of the evidence, a noticeably higher burden than the government's. *United States v. \$174,206.00 in U.S. Currency*, 320 F.3d 658, 661-62 (6th Cir. 2003).

76. 18 U.S.C. § 983(b)(2)(A).

77. Specifically, the burden shifting model, in forcing the defendant to prove the "innocence" of the legally fictitious guilty property, still eliminates the usual presumption of innocence afforded in criminal forfeitures and criminal proceedings. Although CAFRA imposed

court-appointed counsel in the case of real property. Although Congress enacted CAFRA to lessen the government's reach and enhance procedural protection for defendants, the government appeared to still wield an unbalanced power over individuals (particularly third parties) attempting to defend the confiscation of their property.⁷⁸ CAFRA also allowed law enforcement agencies (specifically state law enforcement agencies) to keep up to 100% of the proceeds obtained through forfeiture, thus constructively incentivizing them to pursue the seizure of property.⁷⁹

Many states responded to these concerns surrounding civil forfeiture by enacting reformative legislation. These states have either heightened the burdens imposed on the government or substantially altered forfeiture procedures post-CAFRA. Since 2014, eleven states—New Mexico,⁸⁰ Nebraska,⁸¹ Maryland,⁸² Florida,⁸³ Minnesota,⁸⁴ Montana,⁸⁵ Michigan,⁸⁶

substantial reforms, it also placed great hardships on individuals in defending their property. Barnet, *supra* note 70, at 107 (“The claimant is left with the often insurmountable burden of proving innocence . . . because, as the fiction prescribes, it is the property itself and not the owner who is on trial. Because there is no criminal trial following the preponderance determination, the government enjoys a considerable advantage.”).

78. *Id.* (signaling that the personification of the “guilty property” that still exists in CAFRA conceals certain process protections for defendants by shifting the burden).

79. Crepelle, *supra* note 44, at 327.

80. H.B. 560, 52nd Leg., 1st Sess. (N.M. 2015) (effectively abolishing civil forfeiture altogether and only allowing forfeiture of property upon criminal conviction).

81. L.B. 1106, 104th Leg., 2d Sess. (Neb. 2016) (constructively eliminating most civil forfeiture proceedings by requiring a criminal conviction associated with certain crimes and enhancing prosecutorial reporting requirements regarding forfeitures).

82. H.B. 336, 2016 Leg., Reg. Sess. (Md. 2016) (raising the government's burden of proof from a preponderance of the evidence to a clear and convincing evidence).

83. S.B. 1044, 2016 Leg., Reg. Sess. (Fla. 2016) (raising the evidentiary standard in contraband forfeiture actions to beyond a reasonable doubt, although a criminal conviction is still not required).

84. S.B. 874, 88th Leg., Reg. Sess. (Minn. 2014) (raising the state's burden of proof to clear and convincing evidence).

85. H.B. 463, 64th Leg., Reg. Sess. (Mont. 2015) (stating that the defendant must be convicted of a criminal offense giving rise to the forfeiture and that the state must prove the crime was connected to the property by clear and convincing evidence).

86. MICH. ADVISORY COMM., U.S. COMM'N ON CIVIL RIGHTS, CIVIL RIGHTS AND CIVIL ASSET FORFEITURE IN MICHIGAN (2016) (raising the burden of proof to clear and convincing evidence and also instituting new reporting requirements for law enforcement to more effectively track forfeiture demographics).

New Hampshire,⁸⁷ Georgia,⁸⁸ Virginia,⁸⁹ and Mississippi⁹⁰—and Washington D.C.⁹¹ have passed some form of civil forfeiture reform. Notably, all of these pieces of legislation passed within the last four years.⁹² Additionally, during January 2017, a bill was introduced in the Indiana Senate proposing reforms including treating seized property where a person has asserted an ownership interest differently from seized property that was abandoned or unclaimed.⁹³ The bill permitted seized property that was not abandoned or unclaimed to be forfeited to the state only if the person who owned or used the property has been convicted of a criminal offense, and repealed a provision permitting the state to turn over seized property to the federal government.⁹⁴

Although the bill's progress halted in March 2017, the Indiana bill and the reforms enacted in eleven other states and Washington D.C. revealed a trend toward civil forfeiture reform. Summarily, states have attempted or are attempting to reform civil forfeiture by either raising the government's burden of proof, altering the burden-shifting model to protect the defendant and place the burden solely on the government, or removing incentives from law enforcement by placing proceeds in

87. S.B. 522, 2016 Leg., Reg. Sess. (N.H. 2016) (requiring a criminal conviction in most cases and requiring law enforcement to return all assets seized to a general fund, thereby preventing law enforcement from keeping the proceeds). However, New Hampshire Public Radio later reported in 2018 that state law enforcement agencies were able to circumvent the criminal conviction requirement by calling federal law enforcements agencies to conduct the same seizure of property. *See* Todd Bookman, 'Loophole' Helps N.H. Law Enforcement Net Millions Through Civil Asset Forfeiture, N.H. PUB. RADIO, (Mar. 5, 2018), <http://www.nhpr.org/post/loophole-helps-nh-law-enforcement-net-millions-through-civil-asset-forfeiture#stream/0> [<https://perma.cc/BW73-4D55>].

88. H.B. 233, 2015 Leg., Reg. Sess. (Ga. 2015) (creating a standardized reporting system for disclosing forfeiture actions by law enforcement, among other modifications to civil forfeiture).

89. S.B. 457, 2016 Leg., Reg. Sess. (Va. 2016) (raising the burden to clear and convincing evidence).

90. H.B. 1410, 2016 Leg., Reg. Sess. (Miss. 2016) (creating a designated task force to review forfeiture cases and recommend legislative reforms).

91. B. 20-0048, 2013 Leg., Reg. Sess. (D.C. 2013) (eliminating burden shifting model of proof in favor of placing the burden on the government instead of requiring the owner to prove her innocence).

92. The sudden increase in state legislation within the past five years may be attributable to the recent increase in news coverage detailing the victimization of individuals who attempted to fight civil forfeiture proceedings but failed due to a lack of adequate resources and support. *See, e.g.,* Sarah Stillman, *Taken*, NEW YORKER (Aug. 12, 2013), <https://www.newyorker.com/magazine/2013/08/12/taken> [<https://perma.cc/Z58Z-5ATE>]. Narrative stories describing the severe effects on people's lives when private property has been taken away from them can offer a "powerful catalyst for legislative change." Louis S. Rulli, *On the Road to Civil Gideon: Five Lessons from the Enactment of a Right to Counsel for Indigent Homeowners in Federal Civil Forfeiture Proceedings*, 19 J.L. & POL'Y 683, 714 (2011).

93. S.B. 8, 2017 Leg., Reg. Sess. (Ind. 2017).

94. *Id.*

general funds or disengaging from equitable sharing programs with the federal government.

This turbulent history of civil forfeiture set the stage for a significant change brought on by the judiciary, as potentially foreshadowed by Justice Thomas in *Leonard v. Texas*.⁹⁵ Forfeiture actions originated during the reign of the English Crown, where the religious rule conflated legality and assets were forfeited to atone for the wrongdoer's actions and save the King's soul.⁹⁶ As English roots extended into the colonial legal system, forfeiture developed into a tool to seize property to both compensate the government and condemn the wrongdoer.⁹⁷ Civil forfeiture remained mostly dormant for the following century until there was a drastic increase in anti-drug enforcement laws seeking to obtain the ill-gotten gains from drug transactions.⁹⁸ As forfeitures increased through the 1980s, the courts clashed in defining the limits of civil forfeiture as exhibited in *Austin* and *Bajakajian*.⁹⁹ Although Congress attempted to assuage civil forfeiture abuses in passing CAFRA,¹⁰⁰ backlash over the government's low burden of proof and the plaintiff's seemingly impossible task of proving innocence continued. Post-CAFRA, various changes in state legislation indicated unrest surrounding forfeiture procedures, leading up to the *Leonard* statement that re-opened the door looking into the historical justifications for modern forfeiture.¹⁰¹ Moreover, greater media coverage of civil forfeiture abuses in recent years has also captured the attention of lawmakers.¹⁰² Notably, in Justice Thomas's statement in *Leonard*, he specifically cites a lengthy feature in the *New Yorker* that chronicled extensive abuses by law enforcement in

95. *Leonard v. Texas*, 137 S. Ct. 847, 850 (2017). Justice Thomas concluded the statement with, "Whether this Court's treatment of the broad modern forfeiture practice can be justified by the narrow historical one is certainly worthy of consideration in greater detail." *Id.*

96. HOLMES, *supra* note 27, at 25 ("The same thing has remained true in England until well into this century, with regard even to inanimate objects. . . . It was to be given to God, that is to say to the Church, for the king, to be expended for the good of his soul.").

97. *See* *The Cargo of the Brig Malek Adhel*, 43 U.S. 210, 210 (1844); *The Palmyra*, 25 U.S. 1, 15 (1827).

98. Nicgorski, *supra* note 34, at 381.

99. *See* *United States v. Bajakajian*, 524 U.S. 321, 327 (1998); *Austin v. United States*, 509 U.S. 602, 604 (1992).

100. *See* Annemarie Bridy, *Carpe Omnia: Civil Forfeiture in the War on Drugs and the War on Piracy*, 46 ARIZ. ST. L.J. 683, 706 (2014).

101. *Leonard v. Texas*, 137 S. Ct. 847, 850 (2017).

102. *See* Matt Ford, *The Bipartisan Opposition to Sessions's New Civil-Forfeiture Rules*, ATLANTIC (July 19, 2017), <https://www.theatlantic.com/politics/archive/2017/07/sessions-forfeiture-justice-department-civil/534168/> [<https://perma.cc/J8M4-C62X>]; Michael Sallah et al., *Stop and Seize*, WASH. POST (Sept. 6, 2014), https://www.washingtonpost.com/sf/investigative/2014/09/06/stop-and-seize/?utm_term=.78c17543fbf0 [<https://perma.cc/A6V7-J7WS>]; Nick Wing, *Florida Just Made It Harder for Police to Take People's Stuff*, HUFFINGTON POST (Apr. 1, 2016), https://www.huffingtonpost.com/entry/florida-civil-asset-forfeiture_us_56fe9d7ce4b0a06d5805896d [<https://perma.cc/7WGR-3XXU>].

taking property from poor and working class citizens.¹⁰³ The breadth of coverage reporting on civil asset forfeiture abuses reflects a poignant historical moment where extensive and zealous journalism challenged the law to change.

This unsettled history and the growing trend toward reformation signals that either the judiciary or legislature may seek to enact larger changes in forfeiture law in the near future. The Supreme Court of the United States granted certiorari on June 18, 2018, in *Timbs v. Indiana*,¹⁰⁴ looking at whether the Excessive Fines Clause applies to state and local authorities.¹⁰⁵ Some media outlets have predicted that *Timbs* is the Supreme Court's opportunity to end civil asset forfeiture;¹⁰⁶ however, regardless of the *Timbs* outcome, the case will extend the *Austin* and *Bajakaijan* dialogue. Therefore, *Austin* and *Bajakaijan* will continue to have a significant impact on the standard that state law enforcement agencies must abide by when implementing potentially devastating proprietary punishments like civil asset forfeitures. Media attention focusing on abuse through civil forfeiture and celebrating the passage of reformation also suggests a strengthening push for reform.¹⁰⁷ Legal scholars have thus proposed various solutions to mitigate due process concerns and the problematic pace of forfeiture proceedings.

III. POTENTIAL PROPOSALS FOR CIVIL FORFEITURE REFORM AND THEIR VIABILITY

Over the last twenty years, many legal scholars have proposed different solutions to address the multi-faceted concerns arising out of civil forfeiture. Part III of this Note will look at the most significant solutions that have been proposed and analyze the major arguments behind them to determine their potential viability.

103. Stillman, *supra*, note 92.

104. 138 S. Ct. 2650 (2018).

105. *See* State v. Timbs, 84 N.E.3d 1179, 1180–81 (Ind. 2017), *cert. granted*, Timbs v. Indiana, 138 S. Ct. 2650 (2018).

106. *See* Ibran Khan, *Property Rights Get Their Day in Court*, NAT'L REV. (July 18, 2018), <https://www.nationalreview.com/2018/07/civil-asset-forfeiture-timbs-indiana-could-end/> [<https://perma.cc/F7GE-LE2A>].

107. *See* Wing, *supra* note 102; Nick Sibilla, *Washington, D.C. Council Votes to Reform City's Civil Forfeiture Laws, Ban Policing for Profit*, FORBES MAG. (Dec. 3, 2014), <https://www.forbes.com/sites/instituteforjustice/2014/12/03/washington-d-c-council-votes-to-reform-citys-civil-forfeiture-laws-ban-policing-for-profit/#2a7b6c2630101> [<https://perma.cc/JVM8-S89N>]; Jason Snead, *How a New Hampshire Law Will Protect Private Property from Government Seizure*, DAILY SIGNAL (June 3, 2016), <http://dailysignal.com/2016/06/03/how-a-new-hampshire-law-will-protect-private-property-from-government-seizure/> [<https://perma.cc/BJ2U-UFCL>].

A. Raising the Government's Burden of Proof

As exhibited by many of the states that have enacted civil forfeiture reform,¹⁰⁸ raising the government's burden of proof provides a relatively easy way for the legislature to restrain the excessive and expedient nature of forfeiture actions. By raising the evidentiary standard from a preponderance of the evidence to clear and convincing evidence or evidence beyond a reasonable doubt, the legislature would effectively require the government to conduct further investigation and expend additional resources in proving property's "guilt."

By raising the evidentiary standard to beyond a reasonable doubt, the legislature would constructively abolish civil forfeiture because the prosecution would have to meet the highest legal standard—one traditionally associated with criminal law—simply to confiscate property. The prosecution would no longer benefit from bringing civil and criminal forfeiture actions simultaneously, because both burdens would be high and the facts needed to prove the property's criminality would significantly overlap with those required to prove the defendant's guilt.¹⁰⁹ Procedurally, a criminal and a civil forfeiture action regarding the same property would ultimately be costly and inefficient. This change in the legal standard would eliminate the procedural expediency of civil forfeiture, which currently allows for the acquisition of "guilty property" without proving the guilt of the person. Because criminal forfeiture actions are embedded with significantly more due process safeguards for the property and property owner than are civil forfeiture actions,¹¹⁰ the effects of raising the government's burden to beyond a reasonable doubt would ultimately reduce many due process concerns by pushing forfeiture actions into the realm of criminal law.

108. New Mexico, Nebraska, Maryland, Florida, Minnesota, Montana, Michigan, New Hampshire, and Washington D.C. have enacted civil forfeiture reform either raising the burden of proof to clear and convincing evidence or to beyond a reasonable doubt. In raising the government's burden to beyond a reasonable doubt, those states have constructively or actually eliminated civil forfeiture altogether in favor of criminal forfeiture, which includes the significantly greater due process protections applied to criminal prosecutions.

109. Logically, in proving beyond a reasonable doubt that the property was used in or derived from a criminal act, the prosecutor would have to prove to the highest legal standard that a criminal act occurred, which by extension would involve proving the criminal acts of the defendant. Because the facts would be the same, it would no longer be procedurally efficient to bring two separate actions. *But see* Susan R. Klein, *Civil In Rem Forfeiture and Double Jeopardy*, 82 IOWA L. REV. 183, 226 (1996) (citing several "mundane" reasons prosecutors bring parallel proceedings, such as a lack of knowledge between the civil and criminal attorneys about which actions the other is bringing in regards to the case).

110. Historically, the term "parallel proceedings" refers to prosecuting both civil and criminal forfeiture actions simultaneously, and the potential for merging these two proceedings has been considered by scholars since the contentious judicial changes in *Austin*. *See* Martin, *supra* note 20, at 682–85.

Under the umbrella of raising the burden of proof in court proceedings, some legal scholars have also suggested other requirements, such as needing a warrant to seize property.¹¹¹ This requirement attempts to eliminate law enforcement's ability to seize property without an accompanying arrest. A warrant requirement would effectively nudge civil forfeiture law closer to criminal forfeiture law by requiring a simultaneous criminal case instead of allowing a civil forfeiture action to stand alone. The legislature could impose this requirement; however, no states have passed any legislation to this effect.

Although the Fourth Amendment attaches certain protections to homes and curtilages in an effort to respect an individual's right to privacy, the Fourth Amendment does not traditionally protect the privacy of property itself.¹¹² In theory, implementing a warrant requirement would strengthen the "substantial connection" of property to illegal criminal acts¹¹³ and therefore limit law enforcement's ability to seize some property.¹¹⁴ However, many forfeitable items, such as contraband and other items that constitute evidence of criminal activity, can be seized without a warrant because their presence constitutes exigent circumstances.¹¹⁵ Because property can function as exigent circumstances during a lawful warrantless search, it is unlikely that a warrant requirement would be effective in offering greater protection to defendants and property owners. Given this well-established precedent and the lack of legislative action proposing a warrant requirement in civil forfeitures, it seems unlikely that this proposal will succeed.

Additionally, other legal scholars have proposed a differentiating-burden-approach—imposing different burdens of proof depending on the category of property. One scholar proposed three classifications for property subject to forfeiture: contraband, proceeds, and facilitating

111. Crepelle, *supra* note 44, at 357 ("If law enforcement cannot obtain a warrant, an arrest should have to be made in conjunction with the seizure. After all, when law enforcement seizes cash or property and lets the owner go, either a criminal is let loose or an innocent person has her property confiscated.").

112. See *Oliver v. United States*, 466 U.S. 170, 177 (1984) (noting that the touchstone of the Fourth Amendment is whether a person has a reasonable expectation of privacy); *Katz v. United States*, 389 U.S. 347, 351 (1967) ("For the Fourth Amendment protects people, not places.").

113. 18 U.S.C. § 983(c)(3) (2012).

114. U.S. CONST. amend. IV ("The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause" (emphasis added)).

115. *United States v. Chadwick*, 433 U.S. 1, 14 (1977) (holding that the Constitution allows warrantless searches of property if law enforcement has probable cause to believe that the property contains contraband or evidence of a crime).

property.¹¹⁶ Forfeitures of contraband¹¹⁷ would necessitate a low burden of proof, even as low as probable cause, given the inherent illegality of contraband;¹¹⁸ proceeds would be evaluated by the preponderance of the evidence standard or higher;¹¹⁹ forfeitures against facilitating property—commonly known as the instrumentalities of crime, such as cash—would be abolished, because these types of forfeitures tend to lead to the most flagrant abuses and injustices.¹²⁰ Another scholar who acknowledged the differentiating-burden-approach¹²¹ further recognized that the divide between the government’s burden of proof in civil and criminal forfeiture cases is a continuing source of injustice.¹²² The strategy behind the differentiating-burden-approach works toward eliminating due process concerns. For example, if civil forfeitures over properties like cash were altogether abolished, law enforcement would no longer have the heightened incentive to confiscate property and take advantage of individuals who are incapable of defending their property against forfeiture actions. However, as expressed previously, given the lack of communication between civil and criminal prosecutors and the existing confusion surrounding the arcane laws of forfeiture,¹²³ an approach involving three different burdens may only add to the confusion in pursuing civil forfeitures cases. As such, raising the burden of proof uniformly for all property subject to forfeiture may be the more procedurally efficient way to safeguard against abuses, particularly as reflected by the actions in state legislatures.¹²⁴

When CAFRA raised the burden of proof from probable cause to a preponderance of the evidence, it implicitly acknowledged that the burden on the government is one of the problematic aspects of forfeiture cases. Although altering the probable cause warrant requirement does not appear to be a viable option for change, legislative action to raise the burden of proof could be an easy way to add an institutional safeguard in forfeiture proceedings.

116. David Pimentel, *Forfeitures Revisited: Bringing Principle to Practice in Federal Court*, 13 NEV. L.J. 1, 55 (2012).

117. An item qualifies as contraband when its incriminating nature is immediately apparent. See *Texas v. Brown*, 460 U.S. 730, 743 (1983).

118. Pimentel, *supra* note 116, at 55–56.

119. *Id.* at 56.

120. *Id.* at 57. Professor Pimentel also points out that even with raising the burden, particularly in the forfeiture of proceeds, forfeiture abuses will likely continue, given the incentive for law enforcement to seize property because they directly benefit from the forfeitures.

121. Bridy, *supra* note 100.

122. *Id.* at 707.

123. Klein, *supra* note 109.

124. See *supra* note 108 (listing all of the possible states).

B. *A Right to Counsel in All Civil Forfeiture Proceedings*

CAFRA opened the door for a more expansive right to court-appointed counsel when it allowed some indigent claimants to receive counsel if the forfeited property was real property used as a primary residence.¹²⁵ Additionally, CAFRA allowed a person to use her court-appointed counsel that had previously been assigned in a related criminal proceeding.¹²⁶ When contemplating extending of the Sixth Amendment right to counsel to individuals contesting civil forfeiture actions, the House directly acknowledged that civil forfeiture actions “are so punitive in nature that appointed counsel should be made available for those who are indigent, or made indigent by a seizure, in appropriate circumstances.”¹²⁷ The House also recognized that many individuals probably chose to refrain from challenging forfeiture actions, not because they were guilty, but because without the assistance of counsel the costs associated with legal action were too expensive for individuals to afford.¹²⁸ Although Congress chose to extend the right to assistance of counsel only to those individuals with a related criminal case and cases involving the forfeiture of a primary residence, this compromise shows the partial extension of constitutional protection to individuals contesting civil forfeitures. The House’s reasoning reflects civil forfeiture’s confusing and hybrid nature—civil forfeiture is deeply intertwined with criminal punishments that have devastating consequences on people’s lives. However, because there is no possibility of prison time,¹²⁹ forfeiture actions remained bound to the looser procedural demands of civil law. As a result, CAFRA embodied many half-measures, like the partial right to counsel that compromised constitutional protections.¹³⁰ This allowed civil forfeiture actions to continue as civil actions without accompanying criminal cases despite the integral component of illegality to civil forfeiture cases.

If state legislatures or Congress extended the right to court-appointed counsel to all indigent individuals contesting civil forfeiture proceedings, civil forfeiture actions would be pushed closer toward criminal law.¹³¹

125. 18 U.S.C. § 983(b)(2)(A) (2012).

126. *Id.* § 983(b)(1)(A); *see also* Barnet, *supra* note 70, at 105 (noting that these changes in court-appointed counsel served as a large step in enhancing due process protections but that the legislation still left many indigent claimants without a right to counsel).

127. H.R. REP. NO. 106-192, at 14 (1999).

128. *Id.*

129. *Id.* (suggesting that the House cannot extend the Sixth Amendment right to counsel to all civil forfeiture cases because the parties are not threatened with imprisonment).

130. Civil Forfeiture Reform Act of 2000 (CAFRA), Pub. L. No. 106-185, 114 Stat. 202 (2000) (codified as amended at 18 U.S.C. § 983 (2012)).

131. Louis S. Rulli, *Access to Justice and Civil Forfeiture Reform: Providing Lawyers for the Poor and Recapturing Forfeited Assets for Impoverished Communities*, 17 YALE L. & POL’Y REV. 507, 513-14 (1998) (describing how civil forfeiture proceedings share a strong resemblance

This would give the most vulnerable populations an enhanced constitutional protection, as they would have the means to challenge forfeiture actions brought against them.¹³² However, this remedy only extends to a limited population, and it fails to address situations where law enforcement confiscates valuable property from an individual who would incur great expense contesting the forfeiture.¹³³ Extending the right to counsel would protect one of the most vulnerable populations in civil forfeiture proceedings,¹³⁴ but it is likely that the vast majority of forfeiture cases will still go unchallenged because of the financial burden and risk of contesting it.

Although the Court acknowledged that civil forfeitures are “quasi-criminal proceedings” that can function punitively¹³⁵ and the House acknowledged their harsh punitive nature,¹³⁶ the Sixth Amendment right to counsel is historically bound to criminal cases.¹³⁷ Because state legislatures have yet to extend the right to counsel in civil forfeiture cases,¹³⁸ and given the House’s direct rejection of extending the right to counsel in CAFRA,¹³⁹ this reform proposal seems unlikely to sway legislatures. It would also be less effective in addressing due process concerns because many forfeitures would likely remain unchallenged.

C. Significant Changes in Drug Laws and Drug Enforcement Oversight

Forfeiture actions reignited during the 1970s and 1980s when the government sharpened its focus on drug enforcement.¹⁴⁰ The Controlled

to criminal proceedings, and yet the lack of counsel creates substantial confusion for indigent homeowners going through the legal process alone).

132. One author requested information from the Legal Services Corporation (LSC), the entity that provides counsel to individuals under CAFRA, for the number of court-appointed attorneys assigned to homeowners in civil forfeiture actions from 2000–2007. *See* Rulli, *supra* note 92, at 745. LSC reported that it only appointed counsel twenty-eight times in the seven-year period. *Id.* Roughly applying the broad statistic that eighty percent of civil forfeitures are uncontested, the author estimated that roughly twenty-four of the twenty-eight cases would have gone uncontested if the homeowners had not received court-appointed counsel. *Id.* As such, the nature of court-appointed counsel significantly expands a person’s right to challenge the forfeiture of personal property without incurring great and unfair expense.

133. *See* Stillman, *supra* note 92 (detailing extensive accounts of individuals who were unable to defend their property).

134. In *Leonard*, Justice Thomas recognized the poor as one of the most vulnerable populations. *Leonard v. Texas*, 137 S. Ct. 847, 848 (2017).

135. *Austin v. United States*, 509 U.S. 602, 618 (1993).

136. H.R. REP. NO. 106-192, at 14 (1999).

137. *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963).

138. *See supra* note 108.

139. H.R. REP. NO. 106-192, at 14.

140. Eric Blumenson & Eva Nilsen, *Policing for Profit: The Drug War’s Hidden Economic Agenda*, 65 U. CHI. L. REV. 35, 55 (1998) (“What forfeiture *does* do well is raise money. Police

Substances Act¹⁴¹ triggered an increase in forfeitures, primarily those connected to drug crimes.¹⁴² Although there are no formal or fully comprehensive statistics about the number of forfeitures directly connected to drug crimes,¹⁴³ because the Controlled Substances Act specifically allowed the use of civil forfeitures, it is clear that many forfeitures are intimately tied to drug crimes. Additionally, the Drug Enforcement Administration (DEA) functions as one of the primary branches of the Department of Justice (DOJ) in using civil forfeitures to ferret out drug activity.¹⁴⁴ This modern practice of enforcing drug laws by using forfeitures statutorily—primarily by using organizations like the DEA—shows how forfeitures are still intertwined with the changing attitudes and efforts toward low-level drug enforcement.

Currently, there is a national movement toward ameliorating the harsh consequences of the War on Drugs, particularly on low-level drug offenders.¹⁴⁵ The Obama Administration began shifting drug enforcement efforts away from incarceration and toward rehabilitation and treatment by reducing the sentences of hundreds of federal prisoners and spending more money on drug treatment.¹⁴⁶ In addition to the federal government's relaxed enforcement of drug laws, many states also relaxed

and prosecutors argue that 21 USC § 881 enables them to carry out ordinary law enforcement business and raise money at the same time—to do well by doing good.” (footnote omitted)).

141. Pub. L. No. 91-513, § 511, 84 Stat. 1276 (1970) (codified as amended at 21 U.S.C. § 881 (2012)).

142. *See generally* United States v. \$63,530.00 in U.S. Currency, 781 F.3d 949, 952 (8th Cir. 2015) (affirming the forfeiture of cash acquired during a traffic stop where the defendant consented to the use of a drug-sniffing dog, even though no drugs were found); United States v. 427 & 429 Hall Street, 74 F.3d 1165, 1172 (11th Cir. 1996) (affirming the forfeiture of a grocery store because defendant's charge was premised on intent to distribute even though he was only convicted of a misdemeanor possession charge); United States v. \$21,055.00 in U.S. Currency, 778 F. Supp. 2d 1099, 1102 (D. Kan. 2011) (affirming the forfeiture of cash found in a driver's truck bed because it was associated with a drug transaction, even though no drug transaction was proven).

143. *See generally* OFFICE OF THE INSPECTOR GEN., REVIEW OF THE DEPARTMENT'S OVERSIGHT OF CASH SEIZURE AND FORFEITURE ACTIVITIES (2017) (recommending the DEA develop a more comprehensive system for tracking data on forfeitures to more accurately determine if civil liberty abuses are occurring).

144. *DEA Asset Forfeiture*, U.S. DRUG ENFORCEMENT ADMIN., <https://www.dea.gov/ops/af.shtml> [<https://perma.cc/BZT2-SHJJ>].

145. In 2014, the DOJ announced a clemency initiative where it encouraged federal prisoners to seek a pardon from the President, if they were nonviolent low-level offenders who did not have significant ties to larger drug organizations.

146. *See* German Lopez, *How Obama Quietly Reshaped America's War on Drugs*, VOX (Jan. 19, 2018), <https://www.vox.com/identities/2016/12/19/13903532/obama-war-on-drugs-legacy> [<https://perma.cc/U4Q5-JRXW>]; German Lopez, *Obama's Drug Czar: "We can't arrest and incarcerate addiction out of people,"* VOX (Dec. 14, 2015), <https://www.vox.com/policy-and-politics/2015/12/14/10106372/drug-czar-michael-botticelli> [<https://perma.cc/AF23-KMVT>] (using figures from the Office of National Drug Control Policy to illustrate increased spending on treatment and prevention from 2003 to 2015).

sentencing laws for low-level drug offenses or decriminalized the possession of marijuana.¹⁴⁷ The DOJ and individual states have also begun to move away from mandatory-minimum sentencing structures (which arose from the War on Drugs during the 1980s) to more efficiently sentence and punish repeat offenders and to prevent nonviolent drug offenders from serving lengthy, expensive prison sentences.¹⁴⁸ American attitudes about low-level drugs like marijuana have also changed: Approximately 64% of Americans supported the legalization of marijuana use in October 2017.¹⁴⁹ In light of this national trend over the past ten years—a trend in favor of legalizing marijuana use and reducing mandatory-minimum sentences¹⁵⁰—the use of civil asset forfeitures could also decrease. Although there is minimal data tracking the number of forfeitures generally,¹⁵¹ let alone the number of forfeitures connected to drug encounters, low-level drug offenses provide one of the greatest opportunities for law enforcement to use civil forfeiture to confiscate cash and property from vulnerable communities.¹⁵² If state and federal law enforcement no longer prioritized prosecuting these offenses, civil forfeitures would likely decrease given their close connection to low-level drug offenses.

If the country's cultural focus shifts from the War on Drugs initiative—which caused the prison population to increase over 500% by the 1990s¹⁵³—toward more treatment-based approaches to drug crimes, civil forfeitures are likely to decrease since they commonly occur in

147. As of January 2018, nine states have legalized marijuana, fourteen states have removed jail time for possessing small amounts of marijuana (not counting the previous nine), and twelve states allow medical marijuana (still not counting the previous nine states where marijuana is legal). *State Policy*, MARIJUANA POL'Y PROJECT, <https://www.mpp.org/states/> [<https://perma.cc/PYW3-6AQF>].

148. Press Release, Dep't of Justice, In Milestone for Sentencing Reform, Attorney General Holder Announces Record Reduction in Mandatory Minimums Against Nonviolent Drug Offenders (Feb. 17, 2015), <https://www.justice.gov/opa/pr/milestone-sentencing-reform-attorney-general-holder-announces-record-reduction-mandatory> [<https://perma.cc/39DV-2M26>].

149. Justin McCarthy, *Record High Support for Legalizing Marijuana Use in U.S.*, GALLUP (Oct. 25, 2017), <https://news.gallup.com/poll/221018/record-high-support-legalizing-marijuana.aspx> [<https://perma.cc/6PCJ-6LYB>] (interpreting the 2017 Gallup Poll which showed increasing support for marijuana legalization from 34% in 2002 to 64% in 2017).

150. See generally OFFICE OF THE INSPECTOR GEN., REVIEW OF THE DEPARTMENT'S IMPLEMENTATION OF PROSECUTION AND SENTENCING REFORM PRINCIPLES UNDER THE SMART ON CRIME INITIATIVE (2017) (reviewing how the *Smart on Crime* initiative by former Attorney General Eric Holder functioned in releasing low-level offenders from federal prison).

151. See *infra* note 161 and accompanying text.

152. Timothy Williams, *Marijuana Arrests Outnumber Those for Violent Crimes, Study Finds*, N.Y. TIMES (Oct. 12, 2016), <https://www.nytimes.com/2016/10/13/us/marijuana-arrests.html> [<https://perma.cc/DM5L-SDBD>] (exploring how the prosecution of low-level drug offenses disproportionately targets poor, African Americans).

153. MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS 6 (2012).

tandem with these offenses.¹⁵⁴ A reduction in civil forfeitures corresponding to the de-emphasis on incarcerating individuals for low-level offenses would alleviate the burden on the most vulnerable populations—particularly poor or minority communities—to contest forfeitures of property and assert innocent ownership. Poor and minority communities are disproportionately affected by civil forfeitures because the process of contesting a forfeiture or asserting innocence requires spending time and money that likely outweighs the value of the forfeited thing itself.¹⁵⁵ The executive branch and state legislatures have made significant moves towards decriminalizing low-level offenses like the possession of marijuana. Given that civil forfeitures arose alongside the persecution of low-level drug offenders, it follows that forfeitures are likely to fall with the decriminalization and de-emphasis on prosecuting those same crimes.

However, this movement in reforming low-level drugs laws may pause during the Trump Administration. Upon entering office, Attorney General Jeff Sessions increased two major criminal justice initiatives that run counter to these national trends.¹⁵⁶ First, Sessions announced that he intended to increase the enforcement of laws dealing with low-level drug crimes involving marijuana, and further that he intended to research the connection between violent crime and marijuana.¹⁵⁷ Additionally, Sessions announced his intent to increase civil forfeiture actions.¹⁵⁸ The resurgence of these initiatives potentially opens the door for an increase in forfeiture actions as an easy procedural substitute for prosecuting low-level drug crimes that typically involve cash.¹⁵⁹ This potential increase could incentivize law enforcement officers to seek out more low-level offenders and confiscate more property, property that is hard to defend and hard to prove innocent ownership over.¹⁶⁰ Although Sessions's initiatives reflect the attitudes that motivated the War on Drugs, the DOJ and other federal agencies may still enact progressive changes to safeguard against civil forfeiture abuse by increasing internal oversight that will ensure fair law enforcement practices.

154. David Pimentel, *Forfeitures and the Eighth Amendment: A Practical Approach to the Excessive Fines Clause as a Check on Government Seizures*, 11 HARV. L. & POL'Y REV. 541, 542 (2017) (noting how the war on drugs directly caused the massive increase in civil forfeitures).

155. Louis S. Rulli, *Seizing Family Homes from the Innocent: Can the Eighth Amendment Protect Minorities and the Poor from Excessive Punishment in Civil Forfeiture?*, 19 U. PA. J. CONST. L. 1111, 1157 (2017) (noting that even when identical conduct occurs, poor families are far more likely to lose their homes compared to wealthier families).

156. Sarah Stillman, *Jeff Sessions and the Resurgence of Civil-Asset Forfeiture*, NEW YORKER (Aug. 15, 2017), <https://www.newyorker.com/news/news-desk/jeff-sessions-and-the-resurgence-of-civil-asset-forfeiture> [https://perma.cc/9J33-Q8A4].

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.*

For example, the Office of the Inspector General periodically investigates and audits the use of civil asset forfeitures by the federal government,¹⁶¹ particularly in response to concerns about lack of judicial and governmental oversight.¹⁶² The Inspector General's 2017 Report specifically referenced concerns about the use of forfeiture, especially as a tool "to seize and forfeit cash or property without independent judicial oversight and without charging the owner or possessor of the cash or property with a crime."¹⁶³ Additionally, the report acknowledged that federal equitable sharing programs have enabled state law enforcement agencies to circumvent their own state laws in an effort to receive a greater share of the forfeiture proceedings.¹⁶⁴ The report also found that the DEA did not measure how its forfeitures advanced criminal investigations,¹⁶⁵ that the DEA may have posed substantial risks to civil liberties by seizing cash that may not have been related to criminal investigations,¹⁶⁶ and that there were no standard requirements for state and local task force officers to receive training in civil forfeitures.¹⁶⁷

This timely acknowledgment of these concerns reflects the bipartisan political tension that exists surrounding forfeiture regulations. The Inspector General's almost exclusive focus on the DEA also supports the undeniable link between ferreting out drug crimes and civil forfeiture as a prominent tool in law enforcement's arsenal. Although legislative

161. *See generally* OFFICE OF THE INSPECTOR GEN., AUDIT OF THE ASSETS FORFEITURE FUND AND SEIZED ASSET DEPOSIT FUND ANNUAL FINANCIAL STATEMENTS FISCAL YEAR 2015 (2016) (providing a forfeiture audit report for 2015); OFFICE OF THE INSPECTOR GEN., AUDIT OF THE ASSETS FORFEITURE FUND AND SEIZED ASSET DEPOSIT FUND ANNUAL FINANCIAL STATEMENTS FISCAL YEAR 2016 (2016) (providing a forfeiture audit report for 2016).

162. *See generally* OFFICE OF THE INSPECTOR GEN., *supra* note 143 (stating that concerns have been raised about the use of asset forfeiture).

163. *Id.* at i.

164. *Id.*

165. The DOJ has consistently expressed concerns about a lack of consistent reporting and record-keeping within the DEA. In collecting data about the DEA's use of asset forfeiture in connection with criminal matters, the data may reveal whether the DEA is using asset forfeiture to deter and punish criminal behavior or for other purposes that could potentially raise civil liberties concerns. *Id.* at iii.

166. The DOJ recommended collecting data on the relationship between asset seizures and criminal investigations to create a clearer picture, including details like the circumstances under which forfeitures occurred and the benefits law enforcement derived from the seizures. *Id.* at 63. In evaluating such specific details about the civil tool of criminal law enforcement, the DOJ is clearly working to enhance its oversight and regulation of civil forfeiture practices. This potential for greater oversight could lead to more internal regulation and self-policing of civil forfeitures, which may be a more realistic resolution to the challenges impeding forfeiture reform.

167. The DOJ recommended that the DEA review its seizure practices to determine if more training or specific policies were needed for law enforcement to enforce procedures consistently. *Id.* at 64. The DOJ focused on consistency as a means of garnering public trust because "[h]andling similar matters consistently in seizure operations is necessary to avoid the risk of creating the appearance that decisions in these sensitive operations are arbitrary." *Id.*

action to change drug laws would likely be one of the most significant ways to remove law enforcement's incentive to abuse civil forfeiture actions, the prospect of these changes is uncertain.¹⁶⁸ Thus, executive agency enactment of greater oversight, like that instituted by the Inspector General, or greater pressure on federal agencies and state and local law enforcement to carefully regulate their own activities, is a more realistic potential outcome. Political pressure on the DOJ appears to have increased oversight of forfeiture actions within the last several years,¹⁶⁹ and continued political pressure on these agencies may spur them into more careful regulations and record keeping.

The undeniable link between drug laws and civil forfeiture suggests potential civil forfeiture reform by reforming drug laws themselves. The national movement appears to push towards decriminalizing marijuana use and ameliorating overly stringent drug laws, particularly those related to low-level offenses. However, given the resurgence of increased penalties for drug laws and asset forfeitures under the current administration, progress may have to occur independently within law enforcement agencies in the meantime. If law enforcement agencies, both federally and state-wide, establish clearer record keeping practices related to the number and characteristics of asset forfeitures, while more carefully monitoring how these actions impact the civil liberties of defendants, civil forfeitures may decrease; vigilance about the procedural fairness of forfeitures may increase simultaneously.

D. *Reallocating Forfeited Assets to a General Restitution Fund*

One of the most problematic aspects of civil forfeitures involves law enforcement agencies' abilities to pocket the assets forfeited.¹⁷⁰ Equitable sharing programs, where states may retain a certain percentage of the

168. On January 4, 2018, Attorney General Jeff Sessions issued a memorandum rescinding previous guidance relaxing marijuana enforcement nationwide. Memorandum from Jefferson B. Sessions, Office of the Attorney Gen., Dep't of Justice, on Marijuana Enforcement (Jan. 4, 2018). Sessions specifically cited 21 U.S.C. § 801, the Controlled Substances Act, which ignited the civil forfeiture enforcement, and advised that this Act should serve as a basis for prosecuting marijuana use and other crimes. *Id.* Sessions's memorandum, among numerous other statements, appears to halt the national movement towards legalizing marijuana.

169. In response to the 2014 report, several prominent news sources began to focus on the large amount of money the government obtained from individuals without due process. *See generally* Christopher Ingraham, *Law Enforcement Took More Stuff from People than Burglars Did Last Year*, WASH. POST (Nov. 23, 2015), https://www.washingtonpost.com/news/wonk/wp/2015/11/23/cops-took-more-stuff-from-people-than-burglars-did-last-year/?utm_term=.55a8967586d1 [<https://perma.cc/DD7X-NSY5>] (discussing how the Treasury and Justice Department deposited more than \$5 billion into their asset forfeiture funds).

170. DEP'T OF JUSTICE ASSET FORFEITURE & MONEY LAUNDERING SECTION, ASSET FORFEITURE POLICY MANUAL (2016) (the equitable sharing program enables this profit sharing system between the federal government and states to occur), <https://www.justice.gov/criminal-afmls/file/839521/download> [<https://perma.cc/DH3V-MUDH>].

forfeited assets while providing some of the assets to the federal government, create a rare system where federal and state law enforcement agencies derive benefits from the smallest of crimes.¹⁷¹ Although many law enforcement agencies use a portion of the funds to improve their local offices by spending money on valuable items, such as training and improved equipment,¹⁷² numerous news outlets have reported that some officers have pocketed the proceeds directly or spent the assets on lavish, unnecessary items for the agencies.¹⁷³

The issue with this profit-sharing system is that it—intentionally or unintentionally—motivates law enforcement to seek out opportunities to take property, even when there is little suspicion of criminal activity. Because there is a direct and tangible benefit from apprehending a person, and because the person’s cash *could* be associated with crime, officers can confiscate property when there is no reason or practical motivation for such a forfeiture.¹⁷⁴ As such, equitable sharing programs incentivize law enforcement to seek out more opportunities to confiscate property, leaving greater potential for due process abuses and the inability of people to defend their property. Regardless of whether an officer actually confiscated property based on wrongful motive, the simple fact that an officer could have profit-seeking motives fosters public distrust of law enforcement.¹⁷⁵ Law enforcement functions as a public service to aid society and remove criminals—not to profit off of the citizens it protects.¹⁷⁶

171. Blumenson & Nilsen, *supra* note 140, at 51 (describing how states may receive 80% of the assets forfeited to the federal government, creating a system in which both entities profit).

172. Robert O’Harrow, Jr. et al., *Asset Seizure Fuel Police Spending*, WASH. POST (Oct. 11, 2014), https://www.washingtonpost.com/sf/investigative/2014/10/11/asset-seizures-fuel-police-spending/?utm_term=.71f469bff1bb [<https://perma.cc/Y2AU-SZN3>] (describing use of assets for overtime pay, file cabinets, fitness gear, weapons, and surveillance systems).

173. See also Erin Fuchs, *Here Are the Ridiculous Things Cops Bought with Cash ‘Seized’ From Americans*, BUS. INSIDER (Oct. 14, 2014), <http://www.businessinsider.com/heres-what-police-bought-with-civil-forfeiture-2014-10> [<https://perma.cc/WR9A-LV4P>] (describing purchases, such as a \$5 million dollar helicopter for the Los Angeles Police, a \$1 million dollar command bus for a small department in Georgia, an expensive coffee maker, and a clown).

174. In Arizona, a federal judge recently allowed a case challenging the constitutionality of the profit motive in civil asset forfeiture laws to move forward. Order at 16–17, *Cox v. Voyles*, No. CV-15-01386-PHX-DJH (D. Ariz. 2017).

175. Rulli, *supra* note 155, at 1120 (“The very authorities entrusted with discretion over when to use civil forfeiture laws now had a direct financial stake in the outcome of the cases they filed. . . . The explosion of civil forfeiture cases has brought with it persistent allegations of abuse.”).

176. 5 U.S.C. § 3331 details the specific oath of office for entering the civil service arena must swear to the following: “[T]hat I will support and defend the Constitution of the United States . . . that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and *faithfully discharge the duties of the office* on which I am about to enter.” (emphasis added).

Removing the profit incentive would likely strengthen public trust in law enforcement and help avoid potential cases of forfeiture abuse infringing on the due process rights of citizens. Several states have shifted away from equitable sharing programs and instead funnel the assets acquired into other funds.¹⁷⁷ For example, Maine diverts most property to a “General Fund,” which is the primary operating fund of the Maine State Government, as opposed to funneling civil asset proceeds to the local law enforcement agency that acquired the property.¹⁷⁸ Louisiana established a compromise system. In Louisiana, 60% of the forfeiture assets go to the law enforcement agency that seized the property, 20% goes to the district attorney’s office that handled the forfeiture action, and 20% goes to a criminal court fund.¹⁷⁹ Although this arrangement may still encourage law enforcement and prosecutors to pursue forfeiture cases, the fact that some of the funds go to criminal court alleviates some pressure on the agencies.

Additionally, Maryland requires that state law enforcement agencies dispose of the property, keep it for official use, and pay any proceeds from the sale of forfeited property to the state’s general fund.¹⁸⁰ Maryland places limits on how much a seizing or prosecuting authority may directly or indirectly transfer to a federal law enforcement agency.¹⁸¹ It also requires the Governor to devote 20% of the proceeds deposited in the state’s General Fund for the purpose of funding drug treatment and education programs.¹⁸² Maryland offers a comprehensive model for removing profit-motivated policing. Although it leaves some room for law enforcement, particularly local agencies, to retain some of the funds, it successfully uses forfeited proceeds for the benefit of all citizens and even uses the proceeds for preventative programs like drug treatment.

If these assets are diverted into general restitution funds to address the financial needs of crime victims, profit incentives would be reduced and

177. See the following examples: Maine, Louisiana, Maryland, and New Mexico.

178. ME. STAT. tit. 15, § 5824 (2018) (stating that any forfeited asset must either go to the General Fund of the state or, if approved by the proper entity, the forfeited property may be equitably transferred).

179. LA. STAT. ANN. § 40:2616 (2018) (detailing this breakdown of funds).

180. MD. CODE ANN., Crim. Proc. § 12-403 (West 2018).

181. MD. CODE ANN., Crim. Proc. § 12-212 (West 2018) (“A seizing authority or prosecuting authority may not directly or indirectly transfer seized property to a federal law enforcement authority or agency unless: (1) a criminal case related to the seizure is prosecuted in the federal court system under federal law; (2) the owner of the property consents to the forfeiture; (3) the property is cash of at least \$50,000; or (4) the seizing authority transfers the property to a federal authority under a federal seizure warrant issued to take custody of assets originally seized under State law.”).

182. MD. CODE ANN., Crim. Proc. § 12-405 (West 2018).

those directly affected by crimes would receive a greater chance to heal and move forward.¹⁸³

For example, in New Mexico, the state legislature reformed civil forfeiture laws in 2015 by requiring a criminal conviction before law enforcement can seize the property. This established a clear and convincing evidence standard by shifting the innocent-owner burden onto government and sent 100% of the proceeds to the state's general fund.¹⁸⁴ Although New Mexico has struggled with some local agencies refusing to turn over forfeited assets,¹⁸⁵ this legislative reform exemplifies how states can reject the federal government's equitable sharing program and remove police incentive to pursue lucrative but often less important cases.¹⁸⁶

The funds could also funnel into drug treatment and rehabilitation programs, particularly given the recent opioid crisis plaguing the United States.¹⁸⁷ The federal government ignited the War on Drugs in a public effort to prevent the spread of rampant addiction primarily among youths.¹⁸⁸ However, if the government and state agencies truly seek to alleviate drug use, these entities should continue the Obama Administration's efforts to treat drug addiction medicinally rather than criminally.¹⁸⁹ In doing so, the government could use the funds obtained from asset forfeiture programs to financially support programs that actually help citizens break free from addiction and continue on to lead healthier, more productive lives.

There is no single "right answer" to the question of where funds derived from forfeitures should go, but any of these options could help eliminate the profit-sharing system that currently exists. By removing the incentive of profit from law enforcement, there is a greater chance that

183. This could occur either through a general restitution fund, which could fund state crime victim compensation programs, or it could be used to pay restitution costs directly to a victim in a criminal case.

184. H.B. 560, 52d Leg., 1st Sess. (N.M. 2015).

185. Martin Kaste, *New Mexico Ended Civil Asset Forfeiture. Why Then Is It Still Happening?*, NPR (June 7, 2016), <https://www.npr.org/2016/06/07/481058641/new-mexico-ended-civil-asset-forfeiture-why-then-is-it-still-happening> [<https://perma.cc/MZF8-TTKC>] (describing an incident in which a woman's car was still confiscated by the police without a conviction).

186. Pimentel, *supra* note 154, at 554.

187. Haeyoun Park & Matthew Bloch, *How the Epidemic of Drug Overdose Deaths Rippled Across America*, N.Y. TIMES (Jan. 19, 2016), <https://www.nytimes.com/interactive/2016/01/07/us/drug-overdose-deaths-in-the-us.html> [<https://perma.cc/CVZ6-ZY2N>] (graphically tracking the sharp increase in deaths due to opioid overdoses since 1999).

188. In *The New Jim Crow*, Alexander argued that the rhetoric surrounding the War on Drugs was actually a racial conversation further marginalizing black and brown people. ALEXANDER, *supra* note 153, at 58. This Note does not discount this valid proposition. Rather, this Note seeks to use the federal government's rhetoric against it, primarily in an effort to actually work towards more effective drug interdiction.

189. See OFFICE OF THE INSPECTOR GEN., *supra* note 150, at 1.

public trust in officers would increase, while there would also be a lower risk of officers using forfeiture to circumvent the due process rights of citizens—either intentionally or unintentionally—to bring home a few extra dollars.

CONCLUSION

Civil asset forfeiture is an unnatural amalgamation of criminal and civil law. Although civil forfeiture can be used to punish individuals for criminal acts,¹⁹⁰ the high standard of due process protection does not extend to individuals who attempt to contest civil forfeitures. Additionally, law enforcement officers are incentivized to use this hybrid prosecutorial tool to acquire assets because the officers benefit directly from the assets. Thus, many individuals are unable to defend their property or assert their innocent ownership over their property. Because property can be an intimate and valuable extension of one's self and ability to survive,¹⁹¹ the impact of civil forfeiture can lead to devastating consequences.

Justice Thomas has seemingly opened the door for further conversation about the future of civil forfeiture and whether it can survive under modern standards of practice.¹⁹² There are varied proposals for ameliorating the harsh effects and injustices precipitated by civil forfeitures. The only guaranteed solution to these problems is abolishing civil forfeiture altogether; this would be possible by using only criminal forfeiture, since the criminal context triggers the highest standards of procedural due process. But other proposals may also have lasting effects that could provide at least some due process protection for communities most affected by forfeitures. Although a statutory change to raise the burden of proof on the government offers the simplest solution, other changes—especially when combined—like altering drug laws, appointing counsel, and disincentivizing law enforcement can all have a potentially lasting impact in protecting the due process rights of citizens.

190. *Austin v. United States*, 509 U.S. 602, 621 (1993).

191. 2 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND *2 (1765) (“There is nothing which so generally strikes the imagination, and engages the affections of mankind, as the right of property; or that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe.”).

192. *Leonard v. Texas*, 137 S. Ct. 847, 847 (2017).

