



Contact: Frank Knaack
Executive Director
843.720.1428
fknaack@aclusc.org

Support S.590/H.3968 – End Civil Asset Forfeiture

S.590/H.3968 would:

- Require the forfeiture process to occur within the criminal case. This legislation would ensure the government proves that the individual whose property was taken was actually convicted of a crime, and that the property seized was the product of, or that it facilitated, that crime.
- Protect innocent property owners. This legislation would create a process for property owners to challenge a seizure and assert that they did not know or consent to the use of their property in an alleged crime.
- Bring transparency to the forfeiture process. This legislation would require annual reporting of all seizures and forfeitures and what law enforcement agencies spend forfeiture proceeds on.
- Restrict the ability to abuse the federal forfeiture programs. This legislation would limit South Carolina law enforcement's ability to receive proceeds from federal forfeiture actions, which also lack due process protections.

Civil asset forfeiture allows the government to take and keep your property without even charging you with a crime. Imagine that you're driving down the road to buy a used car when you are pulled over by law enforcement. The officer discovers the \$1,500 in cash you're carrying, alleges it is the product of a crime, and takes it. You, however, are not charged with a crime, and if you want your money back, you'll have to go to court and prove that it didn't come from illegal activity. If you don't, law enforcement can keep your money. It's a practice called civil asset forfeiture that's allowed under federal and South Carolina law.ⁱ

Civil asset forfeiture turns the presumption of innocence on its head. A cornerstone of the American justice system is the principle that one is innocent until proven guilty. Yet under South Carolina law, your property is guilty until you prove its innocence. Currently, law enforcement agencies can seize and confiscate cash, vehicles, boats, houses, and other private property on the mere suspicion that it was either involved in a crime or derived from criminal activity. Forfeiture to the government occurs when a civil court determines the government can keep the property. In these court proceedings, while the initial burden falls on the solicitor, the low standard of proof means that the property owner carries the burden of proving that their property is "innocent" of the alleged crime. Between 2014 – 2016, The Greenville News found in 19 percent of the forfeiture cases the person whose property was taken was never even charged with a crime.ⁱⁱ And, in a roughly equal percentage of cases, the person was charged, but not convicted of a crime.ⁱⁱⁱ It's time to place the burden where it belongs - on the state.

Civil asset forfeiture incentivizes the pursuit of profit over the fair administration of justice. Under South Carolina law, law enforcement keeps 95 percent of the proceeds from forfeited property.^{iv} Thus, law enforcement agencies have an incentive to seize as much property as possible, knowing that they need only meet the lowest burden of proof to keep it. Under South Carolina's civil forfeiture program, more than \$17 million was awarded to local law enforcement between 2014 – 2016 alone.^v Under the federal program, where South Carolina law enforcement can keep up to 80 percent of the proceeds, between 2000 and 2013 South Carolina law enforcement agencies received over \$74 million from the federal forfeiture programs, and none of those seizures required a warrant or indictment, much less a criminal conviction.^{vi} Some South Carolina law enforcement agencies have even admitted to policing for profit. Clemson Police Chief Jimmy Dixon told The Greenville News that losing the forfeiture money could result in the loss of his department's K-9 unit.^{vii} Law enforcement should not be put in a position where they appear to value funding their budget over the protection of individual rights.

Civil asset forfeiture has strayed far from its alleged purpose. Civil asset forfeiture was sold to the public as a tool for taking the ill-gotten gains of drug kingpins. In practice, drug kingpins are rarely the target: The Greenville News found that in more than 55 percent of the cases, the amount of cash seized was less than \$1,000.^{viii} One thousand dollars is often less than the typical cost of hiring an attorney to challenge the seizure in court,

which could explain why over 70 percent of the disposed cases, the property owner did not contest the seizure in court.^{ix} The original justification for civil asset forfeiture is further undermined by the fact that in 19 percent of the cases the individual whose property was seized was never charged with a crime and in a roughly equal percentage of cases, the person was charged, but not convicted of a crime.^x In practice civil asset forfeiture in South Carolina has not targeted drug kingpins, but instead innocent South Carolinians.

Civil asset forfeiture laws lack transparency. South Carolinians are often in the dark about what law enforcement have taken from the public or how they spend the proceeds from the property they've taken. The Greenville News reported that at least two judicial circuits have hidden their police seizure records and more judicial circuits may be doing the same.^{xi} Transparency is a cornerstone of good government. It's time for South Carolina to bring sunlight to its forfeiture programs by having reporting requirements.

Civil asset forfeiture leaves South Carolina's most vulnerable with little recourse. Victims of forfeiture abuse have no right to an attorney because it is a civil process. Thus, those who seek to have their property returned not only bear the burden of proving their property was lawfully obtained, but also the financial burden of hiring an attorney. As The Greenville News found, in more than 55 percent of the cases, the amount of cash seized was less than \$1,000.^{xii} That means in the majority of cases, the amount taken was less than the typical cost of hiring an attorney to challenge the seizure in court, which could explain why in more than 70 percent of the disposed cases, the property owner did not contest the seizure in court.^{xiii} While no South Carolinian should bear the cost of having their lawfully obtained property returned, the most vulnerable who cannot afford an attorney are often left without any true recourse at all.

Low-income South Carolinians are particularly hard hit by civil asset forfeiture. People with low-income are more likely to be disconnected from the financial mainstream, leaving them more likely to carry cash. And, South Carolinians are more likely to be disconnected. A 2017 survey by the FDIC showed that South Carolinians are more likely than average to be “unbanked” and “underbanked.”^{xiv} Because unbanked and underbanked individuals are often forced to carry relatively large sums of cash—such as a full month's rent payment or wages from an entire pay period—they can be especially vulnerable to cash seizures through civil asset forfeiture. South Carolina must better protect the property rights of its low-income residents.

Civil asset forfeiture disproportionately impacts people of color. We know people of color are disproportionately caught up in our criminal justice system. For example, while black and white people use marijuana at roughly equal rates, in 2010 African Americans were 2.8 times more likely to be arrested for marijuana possession in South Carolina.^{xv} As The Greenville News found, there are racial disparities at work in the use of civil asset forfeiture too. The paper found that 65 percent of the cases impacted black people, even though black people comprise only 13 percent of South Carolina's population.^{xvi} Civil asset forfeiture, like South Carolina's criminal justice system more generally, disproportionately targets people of color.

S.590/H.3968 would strengthen the fair administration of justice and better protect South Carolina's most vulnerable.

ⁱ See S.C. Code Ann. §§ 44-53-520, 44-53-530, 44-53-540.

ⁱⁱ Anna Lee, et al., *Taken: How Police Departments Make Millions by Seizing Property*, The Greenville News, Jan. 17, 2020.

ⁱⁱⁱ Anna Lee, et al., *Taken: How Police Departments Make Millions by Seizing Property*, The Greenville News, Jan. 17, 2020.

^{iv} S.C. Code Ann. § 44-53-530(e). (75 percent goes to law enforcement and 20 percent goes to prosecutors. The remaining 5 percent goes to the state General Fund).

^v Nathaniel Cary, *Civil Asset Forfeiture in South Carolina is Unconstitutional, Circuit Court Judge Rules*, The Greenville News, Oct. 15, 2019.

^{vi} Institute for Justice, *Policing for Profit – South Carolina*, available at <https://ij.org/pfp-state-pages/pfp-south-carolina/>.

^{vii} Anna Lee, et al., *Taken: How Police Departments Make Millions by Seizing Property*, The Greenville News, Jan. 17, 2020.

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^{ix} Nathaniel Cary, *Exclusive: How Civil Forfeiture Errors, Delays Enrich SC Police, Hurt People*, The Greenville News, Jan. 17, 2020.

^x Anna Lee, et al., *Taken: How Police Departments Make Millions by Seizing Property*, The Greenville News, Jan. 17, 2020.

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^{xiii} Nathaniel Cary, *Exclusive: How Civil Forfeiture Errors, Delays Enrich SC Police, Hurt People*, The Greenville News, Jan. 17, 2020.

^{xiv} Federal Deposit Insurance Corporation, 2017 FDIC National Survey of Unbanked and Underbanked Households (Oct. 2018).

^{xv} *The War On Marijuana In Black And White*, American Civil Liberties Union, p. 175 (June 2013).

^{xvi} Anna Lee, et al., *Taken: How Police Departments Make Millions by Seizing Property*, The Greenville News, Jan. 17, 2020.