



Civil Asset Forfeiture in South Carolina

March 2022

South Carolina Advisory Committee

In December 2021, the South Carolina Advisory Committee to the U.S. Commission on Civil Rights (Commission) began its examination of civil asset forfeiture in the state. Due to the time-sensitive nature of this concern, the Committee has deemed it appropriate to issue an interim memo to the Commission. There is currently a bill in the South Carolina General Assembly to address this topic, and the legislative session is slated to end in May. The Committee would like to draw the Commission's attention to this concern before the Assembly adjourns. The Committee has held three virtual briefings on the topic, and may hear additional testimony before issuing its final report to the Commission.

Background:

The Committee decided to examine this topic after a series of news articles by Nathaniel Cary were published in the *Greenville News* titled "Taken." The reporting revealed that during a three-year period, South Carolina law enforcement agencies seized and kept more than \$17 million from citizens. Over half of the cash seizures were for less than \$1,000 and one-third were for less than \$500.¹ This means the seizures were not taken from drug kingpins, as the statutes are often intended, but instead from everyday citizens.² Furthermore, the evidence strongly suggests that Black residents are disproportionately targeted.³ The vast majority—71 percent— of forfeiture victims in South Carolina are Black, even though African Americans comprise only 27 percent of the overall population – moreover Black men comprise 65 percent of those targeted for civil asset forfeiture but are only 13 percent the population.⁴

¹ Nathaniel Cary, "Inside look: How SC cops swarm I-85 and I-26, looking for 'bad guys'," *Greenville News*, <https://www.greenvilleonline.com/in-depth/news/2019/02/03/operation-rolling-thunder-sc-civil-forfeiture-interstate-95-interstate-26/2458314002/>.

² Ibid.

³ Ibid.

⁴ Robert Frommer, testimony before the South Carolina Advisory Committee to the U.S. Commission on Civil Rights, hearing, Dec. 2, 2021, transcript, p. 5.

Alarming, forfeitures seem to be driven by profit incentives, both for law enforcement agencies and for individual employees.⁵ Seized funds primarily funnel into special accounts accessible only to the police and prosecutors who seized the property.⁶ Forfeiture activity increases during times of fiscal stress and decreased government funding, which suggests that agencies rely on property seizures from citizens to fill the gaps in their budgets.⁷ Reports revealed that South Carolina law enforcement agencies have organized large-scale events like “Operation Rolling Thunder,” where they give trophies to the officers who seize the most property.⁸ The Institute for Justice notes that:

Those agencies have spent forfeiture proceeds in questionable ways: One sheriff spent over \$11,000 to send himself, his chief deputies and their wives on an all-expenses paid trip to Reno, Nevada. Another officer decided he wanted to keep the Ford Raptor he seized as his official car, so he spent an additional \$20,000 in forfeiture funds to pay off its loan.⁹

In 2020, Judge Steven John of the Court of Common Pleas for the 15th Judicial Circuit ruled that civil asset forfeiture violated the Fifth, Eighth, and Fourteenth Amendments of the U.S. Constitution and sections 3 and 15 of the S.C. Constitution.¹⁰ The decision is only applicable to the 15th Circuit.¹¹ Arguments in the case, *Jimmy Richardson v. \$20,771*, were heard by the South Carolina Supreme Court in January 2021, but no decision has been issued, even though more than a year has now passed.¹²

In 2021, there was draft asset-forfeiture legislation in South Carolina that would reform the practice by (1) moving litigation involving seized assets from the civil-court system to criminal courts; (2) banning cash and property seizures in cases that do not result in a criminal conviction; (3) ending the practice of roadside asset seizures; and (4) setting minimum forfeiture thresholds

⁵ Frommer testimony, Dec. 2 Hearing Transcript, p. 3 and 16; Marian Williams testimony, Dec. 2 Hearing Transcript, p. 15; Allie Menegakis testimony, Feb. 3 Hearing Transcript, p. 8; Susan Dunn testimony, Feb. 3 Hearing Transcript, p. 10.

⁶ Frommer testimony, Dec. 2 Hearing Transcript, p. 3.

⁷ Frommer testimony, Dec. 2 Hearing Transcript, p. 16.

⁸ Menegakis testimony, Feb. 3 Hearing Transcript, p. 8; J. Justin Wilson, “Institute for Justice asks S.C. Supreme Court to Strike Down Civil Forefeiture Laws,” <https://ij.org/press-release/institute-for-justice-asks-s-c-supreme-court-to-strike-down-civil-forfeiture-laws/>.

⁹ <https://ij.org/press-release/institute-for-justice-asks-s-c-supreme-court-to-strike-down-civil-forfeiture-laws/>.

¹⁰ *Green v. South Carolina*, 2017-CP-26-07411 (August 28, 2019), which is available here <https://publicindex.sccourts.org/Horry/PublicIndex/PIImageDisplay.aspx?ctagency=26002&doctype=D&docid=1567016063507-983&HKey=8410957535484798510610468981141081011121001091215674977285102761039711898834357679956547352996611785>.

¹¹ *Id.*

¹² Susan Dunn, testimony before the South Carolina Advisory Committee to the U.S. Commission on Civil Rights, hearing, Feb. 3, 2022, transcript, pg. 10.

of \$500 cash or \$2,500 for vehicles or other types of property.¹³ Although there was testimony in the House, there was no vote on the measure. While this bill and the Supreme Court ruling sit in limbo, South Carolinians—primarily Black, male South Carolinians—continue to be subjected to asset forfeiture.¹⁴

Preliminary Observations and Recommendations:

It is important to note that these areas of inquiry are preliminary in nature and may not be inclusive of all testimony received to date. The Committee intends to submit a more comprehensive report to the Commission, including formal findings and recommendations, at the conclusion of this examination in the spring/summer of 2022. However, due to the time-sensitive nature of this concern, and the lack of movement of the House bill and the Supreme Court case, the Committee wishes to issue preliminary recommendations on matters considered urgent and unacceptable.

The Committee recommends that the U.S. Commission on Civil Rights investigate the federal government's use of asset forfeiture. It is worth noting that the Congress's Oversight Subcommittee for the USCCR, the Subcommittee on the Constitution and Civil Rights and Civil Liberties, also held a hearing on the topic, "Forfeiting our Rights: The Urgent Need for Civil Asset Forfeiture Reform" in December 2021.¹⁵

The Committee recommends that the U.S. Commission on Civil Rights forward this memo to legislators in the South Carolina General Assembly. Based on preliminary testimony,¹⁶ the following protections are recommended:

1. The process should be fair and transparent.
2. Due process protections must be built in.
3. The burden of proof should be on the government, not citizens, and notice should be required.
4. Seizures should be limited to admissible evidence.
5. An innocent owner defense should be enacted.
6. Forfeitures should be limited by the excessive fines clause of the Eighth Amendment.
7. Reimbursement of attorney fees should be provided to the prevailing party.
8. The right to a jury trial and to suppress illegally seized evidence should be provided.

This memo was unanimously approved by the Committee at its March 3, 2022 meeting.

¹³ https://www.scstatehouse.gov/sess124_2021-2022/prever/3619_20210112.htm.

¹⁴ See generally Frommer testimony, Dec. 2 Hearing Transcript.

¹⁵ "Forfeiting our Rights: The Urgent Need for Civil Asset Forfeiture Reform," <https://oversight.house.gov/legislation/hearings/forfeiting-our-rights-the-urgent-need-for-civil-asset-forfeiture-reform>.

¹⁶ Frommer testimony, Dec. 2 Hearing Transcript, p. 7; Williams testimony, Dec. 2 Hearing Transcript, p. 9; Alesia Rico Flores testimony, pp. 2-3; Menegakis testimony, Feb. 3 Hearing Transcript, p. 5-9.

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