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# Testimony on Oklahoma Civil Asset Forfeiture Reform

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**Interim Study on SB 838 Civil Asset Forfeiture  
September 1, 2015**

Before the Oklahoma Senate Judiciary Committee<sup>†</sup>

Testimony of Stephen E. Henderson  
Professor of Law  
The University of Oklahoma

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WRITTEN STATEMENT OF STEPHEN E. HENDERSON

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Chairman Sykes, Vice Chair Crain, and members of the judiciary committee, I am grateful for the opportunity to speak to you today about Senate Bill 838 and the reform of Oklahoma's civil asset forfeiture. I am a professor of law at the University of Oklahoma, where my teaching and research focus on criminal law and procedure.

I have experience achieving consensus solutions in contested areas of law, most notably in the six years I spent drafting a new set of ABA Criminal Justice Standards, and I know that change is rarely easy. No matter the topic and whatever the status quo, there is sure to be someone who feels it is in her best interest to preserve it. And when that someone is a participant in our system of criminal justice, a system in which every participant is critical for justice to have any chance to prevail, that voice is to be taken seriously. In this instance, the affected participants include innocent Oklahoma citizens and also our law enforcement officers. In particular, our civil asset forfeiture laws unnecessarily put our officers in the position of defending themselves against

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<sup>†</sup> This testimony was prepared for the Senate Bill's interim study. A bout of politicking caused it to instead be presented at a "panel discussion" chaired by Senator Loveless at the State Capitol while opponents concurrently gathered in Tulsa. See Clifton Adcock, *With Forfeiture Hearing Set at Police Venue, Lawmaker Plans His Own Forum*, CAPITOL WATCH, Aug. 28, 2015, <http://oklahomawatch.org/2015/08/28/with-hearing-on-forfeiture-laws-muted-lawmakers-plans-his-own-forum/>.

charges of impropriety because of the inherent conflict of interest that results when police seizure of private property directly benefits a local police department or municipality.

I can only hope, therefore, that you are willing, and that your Senate and House colleagues are willing, to consider not only the perverse incentives and inadequate safeguards of Oklahoma's current system of civil forfeiture—which are unworthy of Oklahoma's longstanding commitment to property and personal rights—but to also consider the very serious concerns of law enforcement regarding inadequate or at least uncertain means of funding. I humbly submit that we owe our law enforcement better, just as we owe better to the men and women who prosecute those who break our laws. Fortunately, Oklahoma can reform its system of civil forfeiture in largely revenue-neutral ways. In other words, a win-win should be possible: a win for the personal and property rights of Oklahomans, and a win for the men and woman who look to keep us safe.

I will speak to the following in a very brief and summary fashion: the history of civil forfeiture in the United States and its constitutional limitations, the abuses that have come to light in the past few years, and the resulting nationwide trends. I will then spend the bulk of my time reviewing each of the proposed changes to Oklahoma's law.

### **A Very Brief History of Civil Asset Forfeiture**

Arising out of the necessities of maritime law, in which the owner of a vessel may be unreachable by the personal jurisdiction of our courts, civil forfeiture has existed since our nation's founding. Indeed, when a vessel owned by John Hancock was seized and declared forfeit for smuggling, he hired John Adams to contest the forfeiture, and later our first Congress would pass federal forfeiture legislation. Such actions are said to be *in rem*, a Latin descriptor meaning the action is against the very thing itself—meaning against the property itself—rather than against the

owner of that property or against any other person. In this way, courts are empowered to decide the fate of property even if they could not decide the fate of any person. And this explains the rather odd case names, whether it be *United States v. One 1951 Ford Pick-Up 3/4 Ton Truck*, *United States v. Thirty-Seven Photographs*, or *State v. \$12,000 in U.S. Currency*.

This is not to say that owners of property are without rights when it comes to civil forfeiture. Both the United States and Oklahoma Constitutions guarantee that private property shall not be taken without due process of law, and protect against unreasonable searches and seizures thereof. Therefore, law enforcement officers typically cannot seize property without probable cause, and a forfeiture cannot proceed without notice to interested parties and providing them an opportunity to be heard. Current Oklahoma law provides these basic rights. However, as described below in relation to the particular changes being considered in this legislative session, Oklahoma courts have held that two existing practices violate the Oklahoma Constitution.

Over the past decades, the use of civil forfeiture has expanded dramatically in conjunction with the proclaimed “war on drugs.” State and federal laws were changed to allow police departments to retain the fruits of civil forfeitures, and the amounts of those forfeitures multiplied many times over. Unfortunately, in the past few years, we have learned of terrible abuses in these systems. It seems clear that some police departments have fallen prey to the temptation to “police for profit,” recognizing that they will benefit financially from any seizures, and placing that concern above the legitimate concerns of criminal justice. Publicity regarding these abuses has caused a loss of public confidence in police officers and departments generally, whether or not the individual officers or departments have engaged in wrongdoing. That loss of confidence is most pronounced when there are conflicts of interest like those existing in current civil asset forfeiture.

Hence, there has been a nationwide movement to reform the law. Laws have been enacted in some states, others have bills pending, and at the federal level we have the introduction of the Fifth Amendment Integrity Restoration Act of 2015 (“FAIR Act”).

Fortunately, while a few violations have been discovered, we are not aware of systemic abuses in Oklahoma. Some might ask, therefore, whether we should be considering reform, or whether we should await such reports before thinking of any change. There are many good reasons that now is the time to consider reform. First, despite its proud traditions, Oklahoma has too often been at the tail end of meaningful justice reform. Oklahoma was the last state—the fiftieth of fifty—to grant post-conviction DNA testing in order to learn of those wrongfully convicted of crime. Internet sites like that for the Innocence Project proclaim this pedigree for all to see, forever. Oklahoma lags in exoneree compensation, and it has no plans to reform eyewitness identification procedures despite their being the number one cause of wrongful convictions, nor to require the recording of police interrogations despite widespread recognition that such recording furthers the interests of justice. In short, we can do better, and being a part of the trending civil forfeiture reform, as opposed to the recalcitrant tail, would be a great start.

Second, while hopefully there are no systemic civil forfeiture abuses in Oklahoma, we would not know of them if there were. The system lacks the accounting and transparency mechanisms that would bring any such abuses to light.

Third, nationwide experience shows that even if our officers are a cut above, such that they have not succumbed to the temptations that others have, sooner or later, such abuses are likely to occur. And even one such abuse is one too many.

Fourth, our police officers themselves deserve better: they deserve a system in which their funding mechanisms are not imbued with conflicts of interest, fostering public suspicion and

disrespect. Imagine a system in which a judge was paid only if she issued a warrant, and not paid if she denied that warrant. Such a system is as unconstitutional as it is unwise, and while our police officers must be actively engaged in the competitive enterprise of ferreting out crime, we owe it to them not to add this unnecessary layer of conflict and suspicion of impropriety.

Fifth, and most importantly, to the extent that civil forfeiture law in Oklahoma does not adequately affirm and protect the rights of Oklahomans, that very system *is* the abuse, and it is our duty to reform it. Thankfully, as I will now describe, much of that reform is not at all difficult nor costly, and all of it is possible.

### **Reform Proposals**

I am working from the only text of Senate Bill 838—the Personal Asset Protection Act—that I believe has been made available, namely that introduced on May 6 of this year. It is my understanding that some specific changes are being considered, as of course is to be expected at this early stage. Moreover, another Senate Bill, number 621 and entitled the Asset Forfeiture Process and Private Property Protection Act, would more broadly reform Oklahoma civil forfeiture. Senate Bill 838 only concerns civil forfeiture relating to drug crime, whereas other provisions of Oklahoma law permit civil forfeiture in other situations. Therefore, while I will naturally focus my comments on the specific bill we are gathered to discuss, I will speak to each issue broadly enough that my thoughts should be relevant beyond any specific wording, and hopefully beyond any current proposal.

#### **1. Standard of Proof**

Oklahoma law currently permits forfeiture of personal property if the government demonstrates by a preponderance of the evidence that such property was, broadly speaking,

acquired by the proceeds of drug crime or was used in drug crime. A preponderance of the evidence can be pictured using the balance scales sometimes held by Lady Justice, where all that is necessary is the tiniest fraction of tipping one way. So, far from the beyond-a-reasonable-doubt standard we require for a criminal conviction—in which the government’s side of the balance must be weighted *much* lower with admissible evidence of guilt—the preponderance standard is merely fifty percent plus epsilon. Equally weighted plus the lightest feather.

This standard makes good sense in many civil disputes: one party must win, and so it should be the party favored by the evidence, no matter how small that favoring. But the preponderance standard is inappropriate when the government is permanently taking by force the private property of an Oklahoman. On the other hand, the taking of property—as significant as it is—pales in comparison to the stigma and loss of liberty and dignity inherent in a criminal conviction. Therefore, the bill’s proposal to require clear and convincing evidence, a standard between the civil-norm preponderance and the criminal-norm beyond a reasonable doubt, is just right.

## **2. Criminal Conviction Trigger**

Senate Bill 868 would, in a very real sense, do away with *civil* asset forfeiture, tying it not only to a required criminal trial, but ultimately to a successful criminal conviction.<sup>1</sup> Some commentators have argued for this change, there is traditional common law in its favor, and a few states have enacted it. Although I understand the arguments therefore, it is nonetheless a change that I do not recommend.

There is no doubt that a police officer could inappropriately link threats of criminal arrest to civil forfeiture. For example, an officer could make the following bargain: you will leave

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<sup>1</sup> Because civil forfeiture is not considered punishment, it is constitutional to separately pursue both civil forfeiture and a criminal conviction. *United States v. Ursery*, 518 U.S. 267, 270-71 (1996). *But see* *State ex rel. Dep’t of Pub. Safety v. 1985 GMC Pickup*, Serial No. 1GTBS14EOF2525894, OK Tag No. ZPE852, 898 P.2d 1280, 1283 (1995) (comparing Oklahoma civil forfeiture provision to federal criminal forfeiture provision).

without citation and without arrest, but only if you agree that you have no property interest in a certain sum of money found within your vehicle. This bargain—formal or informal—could be struck even if the officer had no real belief in the statement nor a real belief that the property was by law subject to forfeiture. A prosecutor could do much the same in plea negotiations, offering to drop charges in return for an uncontested civil seizure. A citizen has thereby purchased a “Get Out of Jail Free” card. And depending upon how these bargains are struck, no records may be maintained, such that they would never be subject to the disinfectant of transparency. This leads some to conclude that we should end civil asset forfeiture.

But a threat of civil forfeiture can also be a *legitimate* quiver in the law enforcement arsenal. First, there may be instances in which a criminal prosecution is impossible, because the perpetrator is deceased, deported, unknown, or otherwise unavailable. None of these seem like justifications for disallowing an appropriate civil forfeiture of the fruits and instrumentalities of that crime. Second, a police officer or prosecutor might decide that for a youthful first offender, or for some other situated offender, the civil forfeiture is a sufficient wake-up call and criminal prosecution is unnecessary. Removing the ability to conduct *civil* forfeiture—meaning forfeiture independent of any criminal prosecution—may therefore lead to unnecessary criminal convictions that carry lifetime stigmas and burdens.

Therefore, despite potential abuse, I do not recommend the bill’s changes that would end civil forfeiture.

### **3. Ending the Potential for Policing for Profit**

“Policing for profit” is an ugly term that can inappropriately besmirch the reputations of our law enforcement officers and prosecutors. But it cannot be denied that the current civil forfeiture law, which allows law enforcement agencies and district attorney’s offices to directly



benefit, dollar for dollar, from forfeitures they undertake—and to the tune of many millions of dollars—permits policing for profit. And thus it tarnishes the reputation of our law enforcement community even if they rise completely above this temptation. I submit that this is unacceptable, and strongly encourage you to adopt changes like that proposed in the bill. If forfeited property enriches not the police agencies and prosecutor’s offices themselves, but rather the general fund of the State of Oklahoma, there will be no policing for profit, actual or alleged.

In return, however—and this cannot be stressed enough—the legislature must commit itself to directly funding the needs of Oklahoma law enforcement. If, as some in Oklahoma law enforcement have vehemently argued, there is currently no abuse of civil forfeiture, then these changes are revenue neutral. Law enforcement is asserting that every historic taking of private property has not only been legally authorized, but it has been a wise and appropriate move according to the great discretion we afford our police and prosecutors. That would of course continue going forward, and so precisely the same amount of cash and other property will be flowing from private Oklahomans to our government. And we will rely upon our legislature—as we should—to spend and disperse those monies appropriately. Solutions other than placing the funds in the state general fund are possible, but they must entirely eliminate the potential of policing for profit: law enforcement budgets should not depend upon how much private property they seize.

#### **4. Ending the Equitable Sharing Loophole**

In states that have reformed their civil forfeiture laws, there is a problem: local and state police can turn seized property over to the federal government, have it seized federally, and receive funds in return. The aforementioned federal bill, the FAIR Act, would eliminate this loophole,

and the current Oklahoma bill should proactively do the same. Any proceeds of civil forfeiture obtained by state law enforcement should go into the general fund, no matter how obtained.

### **5. Retaining the Current Innocent Owner Defense**

Imagine your friend's car breaks down and is in need of some lengthy repair, and so you kindly lend her your own vehicle. Unbeknownst to you, she is involved in the drug trade, and is pulled over in your car carrying the goods and fruits of her illegal labors. Your car is thus an instrumentality in drug crime, and is thus subject to civil forfeiture. But certainly justice demands that your good deed should not lead to the dispossession of your property, and Oklahoma law so recognizes. The bill under consideration does not alter this, including that you—the innocent owner—bear the burden of proving by a preponderance your innocence. In other words, you bear the burden of proving that you had no idea she would use your vehicle for the distribution of illegal drugs.

Some strongly object to this placement of the burden on an alleged innocent owner, seeing as it is impossible to prove that knowledge did not exist. Just as nobody can prove that God does not exist, in some real sense you cannot prove that you did not know. However, it is also very difficult for the State to prove what you did know, the State has proven—ideally by clear and convincing evidence—that the vehicle was used to distribute drugs, and the fact is that when misfortune strikes we do sometimes lose despite no personal fault of our own. Therefore, I am not against retaining this burden of proof structure.

The bill should, however, make a correction that it currently does not. For a common carrier—a taxi or bus company—the sole burden upon an innocent owner is that just described. But for you or me, who lent our car to a friend in need, we are currently out of luck. We can only win if we further prove that the vehicle was *unlawfully* in the possession of the friend, meaning

the friend must have stolen our car. Frankly, this makes no sense, and the courts in Oklahoma have twisted themselves in knots trying to avoid this odd and unjust result, including declaring it unconstitutional. The bill should eliminate this strange provision, making it a true innocent owner defense.

## **6. Removing the Proximity Presumption**

Under current law, money found in close proximity to illegal drugs is presumed to be forfeit. In other words, whereas the government must typically prove that property *is* forfeit, for “close proximity” money the tables are flipped, and the private citizen must prove the money is not tainted and therefore not forfeit. The bill would eliminate this presumption.

This is not as important a change as others that are proposed, but I favor it. As demonstrated by a federal prosecution in which the government sought to seize over \$48,000 in currency from a man relocating to another state based upon the presence of a small amount of marijuana in his vehicle, mere physical proximity does not connote connection, and there is no need for such a presumption. If a large amount of money is found in close proximity to illegal drugs, the logical inference of connection can and will be argued by the State; no presumption is necessary.

## **7. Adding Trial by Jury**

The bill provides that a citizen may demand trial by jury in civil forfeiture. I am personally agnostic about the wisdom of this, because the proceedings are not criminal in nature and I believe a fair civil process can be established without the added expense of a jury.<sup>2</sup> However, the Oklahoma Supreme Court has held that the Oklahoma Constitution requires such a jury right in civil forfeiture of non-contraband property, and therefore the change should be made.

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<sup>2</sup> The Seventh Amendment to the United States Constitution will typically require a jury trial in federal proceedings, but does not apply in state proceedings. *See, e.g., The Sarah*, 21 U.S. 391 (1823).

## **8. Costs and Attorney's Fees**

Current law does not seem to require that a citizen who prevails—meaning one for whom it is ultimately determined that her property is *not* subject to seizure—should be reimbursed for the necessary expenses incurred in maintaining that property. This is a serious impediment. Imagine law enforcement seizes \$500 in cash found on your person during what is otherwise a routine traffic stop. If the government moves to permanently seize that property, and it would cost you \$1,000 to hire the least competent of attorneys to argue your side, then you are either forced to argue yourself—which the average citizen is hardly equipped to do—or to forgo argument altogether and concede the seizure. Because if you hire the attorney, you lose when you win, netting a loss of \$500!

For this reason, attorney's fees are commonly awarded to prevailing parties in civil rights and other actions pitting the citizen against what is ultimately determined to be the erroneously applied might of the government. The bill does not consider this issue, but Senate Bill 621 does, and I strongly support payment of costs and attorney's fees to a prevailing Oklahoman. When the government—representing all of us—wrongly concentrates its powers against a single citizen, and that citizen manages to prevail, we collectively owe something to make that citizen whole.

## **9. Appointed Counsel for Indigents**

Similarly, the bill does not require appointment of counsel for indigents, but Senate Bill 621 would.<sup>3</sup> Although justice would certainly be best served by inclusion of such a provision, frankly Oklahoma struggles in the funding of the even more vital criminal defense. And if costs and attorney's fees are recoverable by a prevailing citizen, as just discussed, then attorneys are

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<sup>3</sup> Federal law currently provides for appointed counsel only when the subject property is one's principal residence. See 18 U.S.C. § 983(b)(2).

more likely to take on such cases even where little money can be fronted. Therefore, I take no position in this regard.

## **10. Public Reporting**

The bill does not address the current dearth of information regarding civil forfeiture within the State of Oklahoma. We do not know such basic facts as how much of it takes place and where. Better reporting would dramatically increase transparency and, with it, accountability. Therefore, each law enforcement agency should be required to track and report all civil forfeitures in a manner that makes the information publicly available without requiring any freedom of information act requests.

## **Conclusion**

I have heard it said that law enforcement is “100% against change and 1000% against progress.” I do not believe that to be the case. However, I can understand that such a perception might arise in this sense: law enforcement is given a very difficult job, and collectively they do their very best to do everything we ask of them, even in circumstances that are artificially more trying than they must necessarily be. Once they have collectively struggled, and figured out the best they can do, it must be frustrating—and at times even frightening—to hear of any change. “If it isn’t broken, don’t fix it,” some may understandably say.

Only I hope my testimony has demonstrated that civil asset forfeiture is broken, in the sense that it does not live up to the ideals of justice and fair play that we have set for ourselves as Americans and as Oklahomans. Fortunately, the most important changes—raising the burden of proof and preventing seized funds from enriching the very departments engaged in the seizure—should not be frightening so long as they are accompanied by an honest commitment to

appropriately fund law enforcement. And I hope that is something to which all Oklahomans are committed. Thank you.

### **Appendix: Sources by Page Number**

2 Arising out of the necessities: *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 683 (1974) (“[L]ong before the adoption of the Constitution the common law courts in the Colonies—and later in the states during the period of Confederation—were exercising jurisdiction in rem in the enforcement of English and local forfeiture statutes, which provided for the forfeiture of commodities and vessels used in violations of customs and revenue laws.”) (internal quotation marks and citation omitted); *Austin v. United States*, 509 U.S. 602, 611-613 (1993) (discussing the English roots of forfeiture laws and their transition through the constitutional era) (citing *inter alia* O. Holmes, *The Common Law*, c. 1 (1881); 1 W. Blackstone, *Commentaries*, Chapter the Eight: Of the King’s Revenue (1765-69)). See also Marian R. Williams et al., *Policing for Profit: The Abuse of Civil Asset Forfeiture* 10 (March 2010), available at [http://www.ij.org/images/pdf\\_folder/other\\_pubs/assetforfeituretoemail.pdf](http://www.ij.org/images/pdf_folder/other_pubs/assetforfeituretoemail.pdf) (hereinafter *Policing for Profit*); *United States v. Ursery*, 518 U.S. 267, 274 (1996); *The Palmyra*, 25 U.S. 1 (1827).

2 Indeed, when a vessel: *The Liberty Affair*, <http://www.john-hancock-heritage.com/the-liberty-affair/>.

2 and later our first Congress: Act of July 31, 1789, §§ 12, 36, 1 Stat. 29, 39, 47, available at [http://www.constitution.org/uslaw/sal/001\\_statutes\\_at\\_large.pdf](http://www.constitution.org/uslaw/sal/001_statutes_at_large.pdf).

2 Such actions are said to be *in rem*: *Waterloo Distilling Corp. v. United States*, 282 U.S. 577, 581 (1931); *State ex rel. Campbell v. Eighteen Thousand & Two Hundred Thirty-Five Dollars in U.S. Currency* (\$18,235.00), 184 P.3d 1078, 1081 (Okla. 2008).

**3** Both the United States and Oklahoma Constitutions guarantee: U.S. Const. amend. IV, V, XIV; Okla. Const. art. II, §§ 7, 30.

**3** Therefore, law enforcement officers typically cannot: *One 1958 Plymouth Sedan v. Pennsylvania*, 380 U.S. 693, 696 (1965) (explaining the applicability of the Fourth Amendment and therefore of probable cause); *United States v. James Daniel Good Real Property*, 510 U.S. 43, 62 (1993) (explaining the applicability of the Due Process Clauses and therefore the requirements of notice and an opportunity to be heard).

**3** Current Oklahoma law provides: Okla. Stat. Ann. tit. 63, § 2-506.

**3** Over the past decades: Alice W. Dery, *Overview of Asset Forfeiture*, Business L. Today, June 2012, available at [http://www.americanbar.org/publications/blt/2012/06/02\\_dery.html](http://www.americanbar.org/publications/blt/2012/06/02_dery.html).

**3** State and federal laws were changed: *Policing for Profit* 10-11.

**3** Unfortunately, in the past few years: Conor Friedersdorf, *Federal Agents Seize \$16,000 From a Young Man on a Train*, TheAtlantic.com, May 12, 2015, <http://www.theatlantic.com/politics/archive/2015/05/the-glaring-injustice-of-civil-asset-forfeiture/392999/> (gathering sources); Sarah Stillman, *Taken*, New Yorker, Aug. 12, 2013, available at <http://www.newyorker.com/magazine/2013/08/12/taken> (chronicling abuses); Michael Sallah et al., *Stop And Seize: Aggressive Police Take Hundreds of Millions of Dollars from Motorists Not Charged With Crimes*, Wash. Post, Sept. 6, 2014, available at <http://www.washingtonpost.com/sf/investigative/2014/09/06/stop-and-seize/> (same in six parts) (hereinafter *Stop and Seize*).

**4** Laws have been enacted: *E.g.*, Casey Harper, *Civil Forfeiture Reform Bills Gain Steam Across The Country*, Daily Caller, June 4, 2015, <http://dailycaller.com/2015/06/04/civil-forfeiture-reform-bills-gain-steam-across-the-country/>; Shaila Dewan, *New Mexico: Governor Signs Bill on Civil Forfeiture*, N.Y. Times, April 10, 2015, available at <http://www.nytimes.com/2015/04/11/>

us/new-mexico-governor-signs-bill-on-civil-forfeiture.html; Nick Wing, *Montana Governor Signs Law To Protect Innocent People From Having Their Property Seized By Police*, Huffington Post, May 6, 2015, [http://www.huffingtonpost.com/2015/05/06/montana-civil-asset-forfeiture\\_n\\_7222258.html](http://www.huffingtonpost.com/2015/05/06/montana-civil-asset-forfeiture_n_7222258.html); Nick Sibilla, *Minnesota Now Requires A Criminal Conviction Before People Can Lose Their Property To Forfeiture*, Forbes.com, May 7, 2014, <http://www.forbes.com/sites/instituteforjustice/2014/05/07/minnesota-forfeiture-reform/>.

4 at the federal level: S. 2644, 113th Cong. (2014).

4 Fortunately, while a few violations have been discovered: Clifton Adcock, *Law Enforcement Seizures Misspent, Missing*, Oklahoma Watch, July 15, 2015, <http://oklahomawatch.org/2015/07/15/law-enforcement-seizures-misspent-missing/> (among them were using seized money to pay a prosecutor's student loans and another prosecutor living in a seized home rent-free).

4 Internet sites like that for the Innocence Project: Oklahoma, Innocence Project, <http://www.innocenceproject.org/how-is-your-state-doing/OK> (visited Aug. 30, 2015); *Oklahoma Becomes 50th State to Guarantee Wrongly Convicted Access to DNA Testing to Prove Innocence*, Innocence Project, May 28, 2013, <http://www.innocenceproject.org/news-events-exonerations/press-releases/oklahoma-becomes-50th-state-to-guarantee-wrongly-convicted-access-to-dna-testing-to-prove-innocence>.

4 Oklahoma lags: *Id.*

5 Such a system is as unconstitutional: *Lo-Ji Sales, Inc. v. New York*, 442 U.S. 319 (1979) (requiring neutral and detached magistrate); *Connally v. Georgia*, 429 U.S. 245 (1977) (rejecting pay-for-issuing magistrate).

5 I am working from the only text: Available at [http://webserver1.lsb.state.ok.us/cf\\_pdf/2015-16%20INT/SB/SB838%20INT.PDF](http://webserver1.lsb.state.ok.us/cf_pdf/2015-16%20INT/SB/SB838%20INT.PDF).



5 Moreover, another Senate Bill: Available at [http://webserver1.lsb.state.ok.us/cf\\_pdf/2015-16%20INT/SB/SB621%20INT.PDF](http://webserver1.lsb.state.ok.us/cf_pdf/2015-16%20INT/SB/SB621%20INT.PDF).

5 whereas other provisions of Oklahoma law: *E.g.*, Okla. Stat. Ann. tit. 21, § 1738. *See* 2B Vernon's Okla. Forms 2d, Crim. Prac. & Proc. § 31.2.

5 Oklahoma law currently permits: Okla. Stat. Ann. tit. 63, §§ 2-503(B) to 2-503(C).

6 there is traditional common law: *United States v. Ursery*, 518 U.S. 267, 275 (1996) (recognizing that common law forfeiture often required criminal conviction but also that statutory civil forfeiture typically does not).

6 a few states have enacted it: *See supra* note "Laws have been enacted."

7 But it cannot be denied: Since 2001, Oklahoma agencies have taken in almost \$30 million from federal equitable sharing alone. *Stop and Seize*. Between fiscal years 2000 and 2007, Oklahoma agencies took in \$45,132,750 from civil forfeiture, an average of \$5,641,594 per year. *Policing for Profit* 84.

8 If, as some in Oklahoma law enforcement: Adam Bates, *Outrage over Forfeiture Reform Is Unjustified*, *Oklahoman*, July 24, 2015, available at <http://www.cato.org/publications/commentary/outrage-over-forfeiture-reform-unjustified>; Tim Farley, *Sheriffs Criticize State Senator's Proposal to Change Asset Forfeiture Law*, *Red Dirt Report*, May 8, 2015, <http://www.reddirtreport.com/red-dirt-news/sheriffs-criticize-state-senators-proposal-change-asset-forfeiture-law>.

8 In states that have reformed: *Policing for Profit* 23-27.

8 The aforementioned bill: Available at <http://walberg.house.gov/uploadedfiles/fairacthouse.pdf>.

9 Oklahoma law so recognizes: Okla. Stat. Ann. tit. 63, §§ 2-503(A)(4)(a) to 2-503(A)(4)(b).

9 For a common carrier: Okla. St. Ann. tit. 63, § 2-503(A)(4)(a).

**9** We can only win: Okla. St. Ann. tit. 63, § 2-503(A)(4)(b).

**10** including declaring it unconstitutional: *State ex rel. Moss v. Seven Hundred and Fifteen Dollars*, 833 P.2d 1263 (Okla. Civ. App. 1992) (creatively interpreting the text to avoid the constitutional question); *State ex rel. Dept. of Public Safety v. 1988 Chevrolet Pickup*, 852 P.2d 786 (Okla. Civ. App. 1993) (otherwise creatively interpreting “unlawful”); *State ex rel. Wood v. Gold/Blue 1988 Chevrolet Blazer*, 924 P.2d 792 (Okla. Civ. App. 1996) (holding the provision unconstitutional).

**10** Under current law: Okla. Stat. Ann. tit. 63, § 2-503A(7).

**10** As demonstrated by a federal prosecution: *United States v. \$48,100.00 in U.S. Currency*, 756 F.3d 650 (8th Cir. 2014).

**10** However, the Oklahoma Supreme Court has held: *Keeter v. State*, 198 P. 866 (Okla. 1921). *See also* *State ex rel. Duggar v. Twelve Thousand Dollars (\$12,000) Cash*, 155 P.3d 858 (Okla. Civ. App. 2007) (applying *Keeter* to the law Senate Bill 838 would amend).

**11** attorney’s fees are commonly awarded: 42 U.S.C. § 1988.