

1889 INSTITUTE

FOR IMMEDIATE RELEASE

MEDIA CONTACT: Byron Schlomach
(405) 646-3272
bschlomach@1889institute.org

ABOLISH CIVIL ASSET FORFEITURE SAYS INSTITUTE

Or at least change the incentives officials face

OKLAHOMA CITY, OK (March 6, 2019) – The United States Supreme Court recently held that the protection against excessive fines, enshrined in the Eighth Amendment to the U.S. Constitution, applies to state governments, not only to the federal government. It also notes that the practice of Civil Asset Forfeiture can run afoul of this vital constitutional protection. In a new legal analysis, the 1889 Institute gives a brief summary of the decision and an analysis of what comes next.

The piece recommends that Oklahoma, which will be bound by the court’s decision, ban the abusive practice of Civil Asset Forfeiture, and realign incentives to avoid corrupt revenue measures like fines and fees that help to fund the agencies charged with enforcing them.

Civil Asset Forfeiture allows police departments to seize property belonging to citizens based on a suspicion that the property was used in or was the proceeds of a crime. However, basic due process rules do not apply, such as the right to an attorney, trial by jury, and presumption of innocence. Hearings often go unopposed because the cost of hiring an attorney to dispute the accusations is more than the value of the property. Often, criminal charges are never filed against the property owner.

“There is no accusation of wrongdoing on the part of current officials, but the incentives current law gives them are badly misaligned,” said Michael R. Davis, the author of the report. “Anyone involved in writing tickets, anyone involved in enforcing fines or fees of any kind should be completely separated from the fiscal impacts of those fees and fines. A foundational principle of the rule of law is that no one may judge their own case. But when your department is funded through fees and fines, that’s exactly what happens.”

The paper recommends that all fines and fees received from any state or local government agency be placed into the state general fund. This ensures that financial penalties are doled out when they are deserved, not when the relevant agency needs a cash infusion. “Even the most honest officials change their behavior when an agency gets funding from fines,” said Davis.

Says Davis, “Civil Asset Forfeiture is the most widely abused of these money grabs. But unless Oklahoma puts an end to them all at once, we can expect law enforcement agencies to turn from forfeiture to increased ticketing when their expenditures outrun their budgets.”

###

About the 1889 Institute

The 1889 Institute is an Oklahoma think tank committed to independent, principled state policy fostering limited and responsible government, free enterprise and a robust civil society. The publication, “Well Begun is (Only) Half Done: The Supreme Court’s Excessive Fines Decision; Need for Further Reform” and other reports on licensing can be found on the nonprofit’s website at <http://www.1889institute.org/govt-profiteering>.