

Institute for Justice Litigation Backgrounder

Fighting the Philadelphia Forfeiture Machine

*Philadelphia Deprives People of Their Rights
While Trying to Forfeit and Profit from Their Property*

The Issue in a Nutshell:

The most terrifying place in Philadelphia is Courtroom 478 in City Hall. This is where property owners enter Philadelphia's Civil Forfeiture Machine. Civil forfeiture is a little-known legal device that allows law enforcement officials to take your property, sell it and pocket the proceeds—even if you have done nothing wrong.

Philadelphia's automated, machine-like forfeiture scheme is unprecedented in size. From 2002 to 2012, Philadelphia took in over **\$64 million** in forfeiture funds—or almost **\$6 million** per year. In 2011 alone, the city's prosecutors filed 6,560 forfeiture petitions to take cash, cars, homes and other property. The Philadelphia District Attorney's office used **over \$25 million** of that \$64 million to **pay salaries**, including the salaries of the very prosecutors who brought the forfeiture actions. This is almost twice as much as what all other Pennsylvania counties spent on salaries combined.

This is how the city's forfeiture machine works: Property owners who have their cash, cars or homes seized must go to Courtroom 478. But Courtroom 478 isn't a courtroom at all: there is no judge or jury, just a scheduler and the prosecutors who run the show. Owners who ask for a lawyer are frequently told their case isn't complicated and a lawyer isn't necessary, but are then given a stack of complicated legal documents to fill out under oath. Time and time again, property owners must return to Courtroom 478—up to ten or more times in some cases. If they miss a single appearance, they can lose their property forever.

Philadelphia's forfeiture machine stacks the deck against property owners and leads city officials to police for profit instead of justice. To end these unconscionable and unconstitutional practices, the Institute for Justice and a group of property owners have brought a major, class-action lawsuit in federal court. The lawsuit will take the profit incentive out of civil forfeiture and protect innocent people who are caught in an upside-down legal process that treats them like cash machines while violating their constitutional rights.

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*The Institute for Justice is the national law firm for liberty.
Click [here](#) to learn more about the case and IJ's initiative to end civil forfeiture.*

Philadelphia's Forfeiture Machine Seizes Property and Violates the U.S. Constitution

Civil forfeiture is one of the greatest threats to property rights in the nation. Under civil forfeiture, the government can seize and sell your property without charging or convicting you of a crime. They also get to pocket the proceeds. That direct and powerful financial incentive has lured law enforcement away from the impartial pursuit of justice and caused forfeiture activity to explode across the nation, especially in Philadelphia.

Christos "Chris" Sourovelis is one of the thousands of people each year who get caught in Philadelphia's forfeiture machine. Chris lives with his family in a middle-class neighborhood in North Philadelphia. Out of the blue on May 8, 2014, the police showed up and seized the family home because their son had been caught selling \$40 worth of drugs outside of the house. As a result, the entire family was thrown out of the house for one week, even though Chris and his wife were never charged with or convicted of any wrongdoing. The family was allowed back in pending the outcome of their forfeiture proceeding, but only under the condition that they kick out their son and agree to waive their rights in any civil-forfeiture proceedings in the future. Since May, the Sourovelises have been living a nightmare, constantly fearing that they may lose their family home forever.

Although civil forfeiture exists across the country, Philadelphia's civil forfeiture program is enormous. Philadelphia's population is smaller than Brooklyn, New York and Los Angeles County, yet Philadelphia brings in more than twice as much in forfeiture funds as Brooklyn and Los Angeles combined.¹ From 2002 to 2012, Philadelphia seized and forfeited 1,172 real properties, 3,290 vehicles and over \$44 million in cash.² A sample of more than 100 cash-forfeiture cases from 2011 to 2012 showed that the median amount of cash that Philadelphia tried to seize was only \$178.³

In 2011 alone, Philadelphia prosecutors filed 6,560 petitions to take the cash or property of Philadelphia residents. By way of comparison, the next largest county in Pennsylvania—Allegheny County, where Pittsburgh is located—filed only about 200 civil-forfeiture petitions from 2008 to 2011.⁴

These staggering numbers reflect the automated way that Philadelphia seizes and forfeits its citizens' property. Whenever Philadelphia police officers seize someone's personal property, such as cash, clothing or even jumper cables, they write out a "property receipt" and give it to the person from whom they took the items. The Philadelphia District Attorney's Office then uses these receipts when its paralegals mechanically copy information from them onto a series of forfeiture petitions. These petitions allege that the property seized is subject to forfeiture and are rubber-stamped by an assistant district attorney who asserts "that the facts set forth in the foregoing petition are true."

The weak protections Philadelphia's civil-forfeiture program gives owners makes it even easier for prosecutors to separate people from their property. The city compels property owners who simply want to get their property back to attend a "hearing" in Courtroom 478. But despite its name, the room has no judge or jury, just a scheduler and the prosecutors who run the show. Again and again, owners must come to Courtroom 478, answer the prosecutors' questions and obey their commands. If an owner misses a single "hearing," prosecutors can ask that his or her property be immediately forfeited. And because Pennsylvania law doesn't require Philadelphia to give owners a prompt post-seizure hearing, these sorts of games can occur for months, even years. It is therefore no surprise that many owners, ground down and fearful of losing everything, give up in exchange for part of the property's value.

The owner's loss is the city's gain, and Philadelphia relies on the funds its civil-forfeiture program brings in. Between 2002 and 2012, the \$64 million in forfeiture proceeds taken in by Philadelphia equaled almost 20 percent of the District Attorney's Office's general budget. The city used \$25 million of that money on law-enforcement salaries, including the salaries of the very prosecutors who bring the forfeiture

actions in Courtroom 478. Because their jobs rely ever more on civil-forfeiture proceeds, Philadelphia's prosecutors have an incredibly strong incentive to forfeit as much property as possible, regardless of whether the forfeiture is fair or just.

Philadelphia is the birthplace of the U.S. Constitution, yet its forfeiture program fails to honor the guarantees of that most fundamental document. To right this wrong, and to protect the constitutional rights of all Americans, several local property owners, including the Surovelis family, have joined forces with the Institute for Justice to shut down Philadelphia's forfeiture machine.

Civil Forfeiture: Bad Incentives Lead to Bad Behavior

Unlike *criminal* forfeiture, where the government takes someone's property only after he or she has been convicted of a crime, police and prosecutors can use civil forfeiture to take the cash, cars and homes of people without ever having to convict or even charge the owner with any wrongdoing. This is because civil-forfeiture cases technically are filed against the property rather than its owner, leading to unusual names such as *Commonwealth of Pennsylvania v. 542 Ontario Street*.

Civil forfeiture leads to more than just odd case names. Because civil-forfeiture proceedings are technically civil actions against the property,⁵ owners don't get many of the basic legal protections that criminal defendants enjoy:

- **Burden of Proof:** In a criminal trial, the government must prove that someone is guilty beyond a reasonable doubt. But under Pennsylvania law, the government can take someone's cash, car or home merely by showing that it is more likely than not that the property was connected to a crime—a much lower burden of proof.⁶ Indeed, the government will often try to take property using civil forfeiture even if the owner has never been charged with a crime.⁷
- **Innocent Owners:** In a criminal proceeding, the government must prove that you are guilty. But in the upside-down world of civil forfeiture, once the government has shown some connection between the property and criminal activity, it is up to the property owner to prove his or her innocence by intervening in the proceeding and demonstrating that they did not know about the criminal activity or that they took reasonable steps to stop it.⁸
- **Legal Help:** Anyone who has watched a crime drama knows that the government must provide criminal defendants an attorney if they cannot afford one.⁹ But civil-forfeiture victims must either pay for a lawyer—which in many cases costs more than their property is worth—or go it alone.

But these weak procedural protections are made infinitely worse by the perverse financial incentives civil forfeiture instills in police and prosecutors. The overriding goal for law enforcement should be the fair and impartial administration of justice. But Pennsylvania's civil-forfeiture law lets police and prosecutors keep all of the money and property that they seize and forfeit.¹⁰ That means that the more property government officials take, the more they can spend on better equipment, nicer offices and trips to conferences in exotic locations.

In Philadelphia, these rules have caused the city's police and prosecutors to build a civil-forfeiture machine that is almost unprecedented in size and scope.

The Clients and the Legal Challenge

Philadelphia's mechanized forfeiture program is the inevitable result of the perverse profit incentive that comes from letting the city's law-enforcement officers pad their budgets by treating citizens like ATMs.

This not only deprives innocent people of the property they worked hard to earn—it makes the city’s police and prosecutors look like little more than highway robbers. In fact, one Pennsylvania judge declared that civil forfeiture is nothing more than “state-sanctioned theft.”¹¹

Thankfully, a lawsuit brought by the Institute for Justice on behalf of the city’s property owners seeks to end “policing for profit” in the City of Brotherly Love. The Institute has brought its lawsuit as a class action on behalf of all Philadelphians whose property is being threatened with civil forfeiture. This means that a victory will benefit everyone who finds themselves caught in Philadelphia’s forfeiture machine.

Heading up the Institute’s class-action lawsuit are three individuals who are desperately fighting to save their family homes. As described above, Chris Sourovelis’ home is being threatened with forfeiture because, unbeknownst to him, his son sold a small amount of drugs. Joining the Sourovelis family is Doila Welch, who lives in a modest row-house in South Philadelphia that she and her siblings inherited from her parents years before. Although Doila, her children and many members of her extended family view the home as their haven, the city is trying to forfeit it because of illegal activity that her estranged husband committed without her knowledge or consent. Lastly, Norys Hernandez co-owns a home in North Philadelphia with her sister, who resides there. Norys has never been in trouble with the law. Her home was seized after her sister’s son was caught selling a small amount of drugs outside the home. Now Norys cannot even enter the house after the city sealed it without giving her any advance warning.

The class-action lawsuit challenges several aspects of Philadelphia’s forfeiture scheme. First, Philadelphia routinely seeks orders authorizing its officials to “seize and seal” homes and other real properties—which they accomplish by throwing people, like Chris Sourovelis and their families, out onto the streets. But the city does not provide the families with any notice when it seeks such an order, and the homeowners never get a chance to argue why they should not be evicted before they are thrown out. The U.S. Supreme Court has ruled that using these kinds of one-sided proceedings to seize peoples’ homes violates the U.S. Constitution, since they create a grave risk that innocent people will be deprived of their homes for weeks or even months.¹² But despite that clear command, Philadelphia routinely takes peoples’ homes while depriving them of the notice to which they are constitutionally entitled.

Second, homeowners who find themselves unlucky enough to be thrown out of their homes due to a “seize and seal” order often face an unpalatable choice: either remain homeless or give up their rights. In order to “unseal” a home, Philadelphia typically requires homeowners to agree to give up their right to raise any statutory or constitutional defenses in future civil-forfeiture proceedings. Moreover, Philadelphia often will force owners to kick family members who the city has accused of wrongdoing out of the home. This means that often the people who need the most help, like Chris Sourovelis’ son, are forced to either stay with friends and family or become homeless.

Third, property owners who find themselves caught in Philadelphia’s forfeiture machine can often spend months, even years, without ever seeing an actual judge. Many innocent owners give up, not because they did anything wrong, but because it is simply too hard and too expensive to keep fighting. This occurs for two reasons. One reason is that Pennsylvania does not provide owners a prompt post-seizure hearing at which they can ask a judge to return their property.¹³ The second is that Philadelphia “relists” civil-forfeiture cases over and over again, which forces property owners to return to Courtroom 478 up to ten or more times over the course of months or even years. These sorts of procedural pitfalls, which are little more than traps for the unwary, the exhausted and the impoverished, serve no good purpose and violate the U.S. Constitution.¹⁴

Fourth, the U.S. Constitution requires that when the government tries to take someone’s property, it should pursue justice rather than material gain. The U.S. Supreme Court has noted that “[a] scheme injecting a personal interest, financial or otherwise, into the enforcement process may bring irrelevant or

impermissible factors into the prosecutorial decision and in some contexts raise serious constitutional questions.”¹⁵ Philadelphia’s civil-forfeiture program is a virtual recipe for biased and self-interested decision-making: Under Pennsylvania law, Philadelphia’s police and prosecutors get to keep *all* of the cash, cars and homes that they seize and forfeit. And the huge amount of civil-forfeiture proceeds Philadelphia takes in equals almost 20 percent of the Philadelphia District Attorney’s general budget. This must end; those who enforce the law should not financially benefit from confiscating private property.

Lastly, having Philadelphia’s prosecutors run the civil-forfeiture “hearings” in Courtroom 478 with virtually no judicial oversight violates owners’ rights to an impartial and neutral arbiter. The Constitution flatly prohibits someone who runs a judicial proceeding from having a financial interest in its outcome.¹⁶ Yet the prosecutors in Courtroom 478 effectively act as judges not only by forcing owners to appear, but by deciding that a property owner is in default for failing to show up. Giving Philadelphia’s law-enforcement officers the power to enrich themselves and their office by extinguishing someone else’s legal rights is unconstitutional.

The Institute for Justice: A History of Protecting Private Property

The Institute for Justice litigates in support of constitutionally protected individual rights, including the right to own private property free from unconstitutional governmental interference. The Institute for Justice has come to the defense of Americans nationwide to fight civil forfeiture, including the owners of the [Motel Caswell in Massachusetts](#), the owners of [Schott’s Market in Michigan](#), and the owner of [a truck seized in Texas](#). In 2010, IJ published the landmark report on civil forfeiture, [Policing for Profit](#).

The Litigation Team

The challenge to Philadelphia’s civil-forfeiture program is led by Institute for Justice Attorney Darpana Sheth, who works on IJ’s Civil Forfeiture Initiative and who litigates property rights and economic liberty cases nationwide. Working alongside Ms. Sheth is Institute for Justice Senior Attorney Scott Bullock, who leads the Institute’s Civil Forfeiture Initiative, and Institute Attorney Robert Frommer. David Rudovsky, a founding partner of the Philadelphia law firm Kairys, Rudovsky, Messing & Feinberg, will ably serve as local counsel.

The Institute for Justice

The Institute for Justice is the national law firm for liberty. IJ is a public-interest law firm that advances a rule of law under which individuals can control their destinies as free and responsible members of society. Through litigation, communication, outreach and strategic research, IJ secures protection for individual liberty and extends the benefits of freedom to those whose full enjoyment is denied by the government.

The Institute for Justice is based in Arlington, Va., and has offices in Arizona, Washington, Minnesota, Florida and Texas, as well as a Clinic on Entrepreneurship at the University of Chicago Law School.

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¹ See Isaiah Thompson, “The Cash Machine,” *Philadelphia City Paper*, Nov. 28, 2012, <http://citypaper.net/article.php?The-Cash-Machine-19189>.

² Figures derived from Right-to-Know Law requests to the Pennsylvania Office of Attorney General by the Institute for Justice.

³ *Id.*

⁴ Thompson, *supra* note 1.

⁵ 42 Pa. Cons. Stat. Ann. § 6802(a).

⁶ *Id.* § 6802(j).

⁷ In one analysis of federal civil forfeiture cases, 80 percent of persons whose property the federal government seized for forfeiture were never even charged with a crime. See Henry Hyde, *Forfeiting Our Property Rights: Is Your Property Safe From Seizure?* 6 (1995).

⁸ *Id.*

⁹ See *Gideon v. Wainwright*, 372 U.S. 335 (1963) (establishing right to counsel in state felony prosecutions).

¹⁰ 42 Pa. Cons. Stat. Ann. § 6801(f).

¹¹ Opinion of President Judge James E. Rowley in *Commonwealth v. Younge*, 446 Pa. Super. 541, 557 (1995).

¹² *United States v. James Daniel Good Real Prop.*, 510 U.S. 43 (1993) (holding that the government may not seize homes or other real property without first providing homeowner with notice and an opportunity for a hearing).

¹³ Pennsylvania’s forfeiture statute does not require that civil-forfeiture proceedings commence within any specific period of time, only that they should begin “forthwith.” 42 Pa. Cons. Stat. § 6801(c).

¹⁴ See, e.g., *Krimstock v. Kelly*, 306 F.3d 40 (2d Cir. 2002) (holding that due process requires the government to provide a prompt post-seizure hearing at which an owner can press for the return of his or her property).

¹⁵ *Marshall v. Jerrico*, 446 U.S. 238, 249-50 (1980).

¹⁶ See *Tumey v. Ohio*, 273 U.S. 510 (1927) (overturning fine where the mayor also sat as a judge and personally received a share of the proceeds).