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55 Criminal Justice Leaders Urge Appellate Court to Strike Down Indiana Law Allowing Elected Prosecutors to Outsource Civil Forfeiture Cases to Private Attorneys

Allowing private individuals to take advantage of quasi-criminal legal proceedings undermines the integrity of the justice system and threatens long-term public safety

Today, a group of 55 criminal justice leaders from around the nation filed an amicus brief calling on the U.S. Court of Appeals for the Seventh Circuit to strike down Indiana’s civil asset forfeiture system, which allows for the appointment of private attorneys to prosecute civil asset forfeiture cases for which they are paid on a contingency-fee basis. Under this structure, these attorneys make more money for themselves the more they confiscate from others – thus creating a serious conflict of interest underlying every decision they make. Notably, Indiana is the only state to adopt such a statutory scheme. The signatories to the brief – current and former elected prosecutors and law enforcement leaders; and former Attorneys General, U.S. Attorneys, and other U.S. Department of Justice officials – argue that this highly problematic delegation of authority undermines the fairness and integrity of the criminal legal system and directly threatens public safety.

“When we allow private individuals to pursue quasi-criminal forfeiture actions based on their own financial gain, we create an atmosphere that is ripe for widespread exploitation and the appearance of conflict. Indiana’s civil asset forfeiture laws – unique to that state alone – raise serious conflict of interest concerns and thereby erode trust in the legal system,” said Miriam Krinsky, Executive Director of Fair and Just Prosecution, the organizer of the brief, and a former federal prosecutor. “We should not outsource critical functions of our country’s justice system to unelected private individuals who are not accountable to their local community.”

The signatories to the brief explain how allowing private lawyers with personal financial motivations to participate in quasi-criminal legal proceedings with the backing of state government undermines trust in law enforcement and threatens their ability to protect public safety: “When people observe that a private prosecutor is allowed to take away a person’s home, car, or other means of support, and that the attorney benefits monetarily from the resulting forfeitures, the community will lose faith in the legal system. And when people lack faith in the justice system, they are less likely to call the police, serve as witnesses, or cooperate in what are often intimidating and trying legal proceedings.”

“Public trust is the essential currency that law enforcement authorities need to get buy-in and engagement from our communities. Indiana’s civil asset forfeiture structure erodes trust in the legitimacy of our state’s justice system and thereby threatens our ability to promote public safety.
and well-being for everyone,” said Marion County (Indianapolis) Prosecutor Ryan Mears, a signatory to the brief.

The brief further warns of the long-term risks to the integrity of the legal system and trust in government as a whole: “Allowing private individuals who have profit-seeking motives to conduct asset forfeiture investigations will undoubtedly result in reduced faith in the legal system and, thus, less cooperation and decreased public safety.... A system that allows private parties to take away property, and retain some portion of it—while also lacking the normal attendant protections associated with the criminal system, including the high burden of proof—will appear patently unfair to most and make a mockery of our system of justice.”

“We need every individual we serve to know that their local law enforcement officers and prosecutors are motivated solely by public safety and justice – not personal profit. Allowing private lawyers into this quasi-criminal process inevitably creates the appearance of impropriety that damages bonds of community trust essential to keeping our communities safe and pursuing justice,” said former Salt Lake City Police Chief Chris Burbank, another signatory to the brief.

In addition to a large number of current and former local elected prosecutors, other signatories to the brief include Sheriffs Jerry L. Clayton (Washtenaw County, Mich.) and Garry McFadden (Mecklenburg County, N.C.); former Police Chiefs RaShall Brackney, Brendan Cox, Abdul Pridgen and Norm Stamper; former Attorneys General John Farmer (New Jersey) and Scott Harshbarger (Massachusetts); and former U.S. Attorneys or Department of Justice officials Roy L. Austin, Jr., Shay Bilchik, Channing Phillips, Richard Pocker, Carter Stewart and Ronald Weich.

Amici are represented by Tyler D. Helmond, from the law firm of Voyles Vaiana Lukemeyer Baldwin and Webb in Indianapolis.

Read the brief here; see below for a list of amici.

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Fair and Just Prosecution is a national network of elected prosecutors working towards common-sense, compassionate criminal justice reforms. To learn more about FJP’s work, visit our website and follow us on Facebook, Twitter, LinkedIn, and Threads.
List of Amici

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