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Our Constitution Matters, and Not Just on the 4th of July

BY KATHY MITCHELL AND KELLI KLEIN--It might come as a surprise, but our nation's birth came about in part because we resisted asset forfeiture. British troops intent on punishing smugglers or tax evaders would take assets from the early colonists without the kind of protections granted by our Bill of Rights.

And yet, the Texas Supreme Court in June said government can take your stuff under Texas' civil "asset forfeiture" law, even if government officials have no constitutional basis to search your home or car in the first place.

In the wake of this decision, which appears to further strip away 4th Amendment protections, the Texas Criminal Justice Coalition released new findings about the use of asset forfeiture in Texas, and specifically in Travis County.

We found that, indeed, law enforcement takes people's cash and sometimes their cars. This can happen at a roadside traffic stop, or as a result of a larger criminal investigation. When people get an attorney, or even represent themselves, the likelihood of getting some or all of their stuff back increases dramatically. But in a civil case like this, you don't have a right to an attorney if you can't afford one, so many people lose their assets by default.

The 4th of July is a good time to remember what our Founders were fighting for. They inscribed our Fourth Amendment right to be free of unreasonable searches and seizures after enduring "writs of assistance" – a general search warrant designed to allow England to search colonists' homes looking for smuggled goods even if they had no specific evidence they would find any.

The civil asset forfeiture process is a troubling deviation from our 4th Amendment rights and there are thousands of such forfeitures each year in Texas. Texas agencies seized \$53 million in 2015. In Travis County alone during our study period law enforcement took nearly \$2 million in cash along with several vehicles.

Everyone knows that "innocent until proven guilty" is one of our core freedoms we enjoy as Americans, but asset forfeiture turns this on its head. Government can take your stuff if an officer merely suspects it has been used in a crime, and long before they have to prove anything.

The typical civil forfeiture concludes long before a person has been convicted of a crime (if they are ever convicted.) Getting a lawyer can cost more than your stuff is worth, so many cases we reviewed close with a default judgment giving the property to the government.

The only assurance we've had that this process was tightly connected to a criminal case was the statutory requirement of "lawful search." The Texas Supreme Court has now removed even that limitation, so we have no protection at all.

The 85th Texas Legislature can fix this by requiring, as Nebraska and New Mexico now do, that assets can only be forfeited after a criminal conviction. This 4th of July, let's celebrate our Bill of Rights, and then in 2017 let's make sure we have the rights our Founders gave us 225 years ago.

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Kathy Mitchell is the primary author of a new study by the Texas Criminal Justice Coalition (TCJC) on asset forfeitures in Travis County. Kelli Klein is a contributing researcher and writer on the project. The study can be found on TCJC's website here: <http://publicpolicycenter.texascjc.org/download/reform-asset-forfeiture>