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The Honorable Loretta Lynch  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Dear Attorney General Lynch,

I continue to worry about conflicts of interest with federal forfeiture and the equitable sharing program. Forfeiture is a valuable law enforcement tool, but you don't have to be Adam Smith to recognize that allowing law enforcement to profit from seizing goods provides a strong incentive for them to seize private property.

This incentive, coupled with procedural protections best described as embarrassing for a constitutional democracy, have led to an outright assault on private property rights. My former colleague Henry Hyde described civil asset forfeiture as an "unrelenting government assault on property rights, fueled by a dangerous and emotional vigilante mentality that sanctions shredding the U.S. Constitution into meaningless confetti." I'll add that the equitable sharing program reads like a thoughtful and earnest attempt to institutionalize corruption. It is no wonder that the Cato Institute recently found that 84% of Americans are opposed to civil forfeiture.<sup>1</sup>

I agree that forfeiture, when utilized appropriately, can be a useful tool, and that its proponents are dedicated public servants fighting to protect Americans. I have fought my entire career to defend law enforcement and will continue to do so in the future. My efforts to reform forfeiture are not an attack on law enforcement, but rather an honest effort to square the forfeiture program with constitutionally guaranteed property rights and public expectations. A program opposed by 84% of Americans is not one that can survive long term and failure to reform it jeopardizes the forfeiture tool itself.

In the Department of Justice's Guide to Equitable Sharing, the Department expressly forbids the use of equitable sharing funds to pay the salaries of law enforcement personnel. According to the Department, the purpose of the rule is to "protect the integrity of the Asset Forfeiture and Equitable Sharing Programs

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<sup>1</sup> [https://www.cato.org/blog/84-americans-oppose-civil-asset-forfeiture?utm\\_content=bufferf7580&utm\\_medium=social&utm\\_source=facebook.com&utm\\_campaign=buffer](https://www.cato.org/blog/84-americans-oppose-civil-asset-forfeiture?utm_content=bufferf7580&utm_medium=social&utm_source=facebook.com&utm_campaign=buffer)

so that the prospect of receiving equitable sharing funds does not influence, or appear to influence, law enforcement decisions.”<sup>2</sup>

Clearly, the Department worries that if law enforcement salaries depended upon forfeiture, then the incentive to participate in forfeitures would negatively affect property rights. But if, as the Department acknowledges, using forfeiture funds to pay salaries would create an actual or apparent conflict of interest, then the fact that money is fungible ensures that it is in fact creating an actual or apparent conflict of interest.

Worse still, the Department appears to brief state and local law enforcement on ways to avoid the restriction on using forfeiture to pay law enforcement salaries. The attached PowerPoint presentation first describes the restrictions, but later spells out how to avoid them. The Department advises:

“Your agency has appropriated funds for fleet maintenance, but wishes to increase your salary payments. Because increasing salaries is not permitted but fleet maintenance is, you can increase salaries with appropriated funds and the[n] maintain the fleet with sharing funds, so long as your overall budget does not decrease.”

The questions this advice raises are obvious, but I would nonetheless appreciate a response before the end of the year.

1. Does the equitable sharing program create incentives to seize property that risk private property rights?
2. Are the Department’s guidelines and restrictions on the program sufficient to combat these incentives?
3. If using forfeiture funds to pay salaries creates problems, should the Department not only allow, but expressly encourage local and state law enforcement to eschew the restriction?

I appreciate your response by December 29, 2016.

Sincerely,



F. James Sensenbrenner  
Chairman Judiciary Subcommittee on Crime, Terrorism, Homeland Security, and Investigations  
House Judiciary Committee

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<sup>2</sup> Guide to Equitable Sharing for State and Local Law Enforcement Agencies, U.S. Dept. of Just., *available at* <https://www.justice.gov/criminal-afmls/file/794696/download>.