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Ending “Prosecution for Profit” in Utah: Citizens Demand Prosecutors Follow State’s Civil Forfeiture Law

Washington, D.C.—Prosecutors in three of Utah’s largest counties are flagrantly violating the state’s forfeiture reform law by keeping money and property confiscated from individuals—a direct violation of a nationally recognized voter initiative that required such funds go into a state education account. Today Utah citizens, represented by the Washington, D.C.-based Institute for Justice, will take matters into their own hands and file papers with the state’s attorney general, demanding that law enforcement officials follow the initiative and the U.S. Constitution.

“A bedrock principle of our system of government is that police and prosecutors follow constitutional laws passed by the legislature or the people—even if they might personally disagree with them,” stated Scott Bullock, an Institute for Justice senior attorney. Bullock was the lead attorney in an IJ case that recently struck down New Jersey’s civil forfeiture law, which had allowed police and prosecutors to keep forfeited resources for their own use. “We filed our action today to hold public officials accountable to the people they serve.”

Prior to Initiative B’s passage in 2000 with 69 percent of the vote, law enforcement agencies were permitted to keep money and property confiscated from individuals through the state’s forfeiture law, thus giving them a direct financial stake in the outcome of forfeiture procedures. Initiative B required that forfeiture proceeds be deposited into the state Uniform School Trust Fund, to be used for education, and to compensate victims of crime.

“Police and prosecutors must make decisions on the basis of justice, not on the potential for profit,” said Bullock, “Initiative B thankfully ended a perverse incentive system.”

Despite the clear mandate of Initiative B, prosecutors from Weber, Salt Lake and Davis counties, using a completely illegitimate justification, have thus far diverted nearly a quarter of a million dollars of forfeited proceeds into their own accounts rather than to the education fund, as required under the initiative.

Represented by the Washington, D.C.-based Institute for Justice, Utahans for Property Protection along with a group of Utah citizens today filed a “notice of claim” with Utah Attorney General Mark Shurtleff, demanding that he take immediate action against the district attorneys to end their unlawful behavior and to secure the return of the funds that should have gone to public education and to the victims of crime. If the attorney general does not act, Utah citizens will go to court to hold public officials accountable for their illegal actions.

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“We intend to expose the legal chicanery of these district attorneys and law enforcement officials, to hold them fully accountable for blatantly ignoring the will of Utah citizens and to slam shut any remaining incentive to forfeit property for profit,” said Andy Stavros, one of the primary drafters of Initiative B and co-counsel of Utahns for Property Protection, the advocacy group that sponsored the initiative and that joins in this action.

“General Shurtleff’s response to the district attorneys’ unlawful behavior has been timid and toothless, which is not surprising considering that he is the leading opponent of Initiative B,” said Bullock. Bullock noted that General Shurtleff adamantly opposed Initiative B during his campaign and then led a legislative campaign beginning in 2002 to undo Initiative B. Senator John Valentine originally sponsored legislation to again direct forfeited proceeds to law enforcement agencies. But Valentine was forced to withdraw his sponsorship after an angry constituent uprising in his district and county. Shurtleff has pledged to continue his effort to alter Initiative B in the legislature during its next session.

In January 2003, Utah State Auditor Auston G. Johnson found that law enforcement agencies in Weber, Salt Lake and Davis counties withheld at least \$237,000 in forfeited revenue for their own use rather than depositing the funds in the Uniform School Trust Fund as required by the initiative. As the auditor bluntly stated, “It’s the law [referring to Initiative B], and they are disregarding it.”

In the wake of the auditor’s report and the district attorneys’ flagrant disregard of the law, General Shurtleff wrote a letter stating that he, too, believed the prosecutors were wrong in their interpretation of the law. He had little choice to do otherwise as the prosecutors’ argument border on the frivolous. Shurtleff also filed papers in three current forfeiture cases stating it was the position of his office that Initiative B should be followed in those particular cases. However, he has taken no steps to demand that the previously diverted forfeiture proceeds be turned over to the education fund or to enjoin the district attorneys from any further diversions of forfeiture funds to their own accounts beyond those three cases. This gives rise to the need for citizen action.

“Initiative B was sponsored by citizens, and now citizens must come to its defense against public officials who refuse to abide by it,” said Bullock. “This litigation by Utah citizens will ensure that all law enforcement officials in the state follow the initiative overwhelmingly passed by the voters,” Bullock concluded.

Maxwell A. Miller of Parsons Behle & Latimer in Salt Lake City serves as the Institute local counsel for this case.

Through strategic litigation, communications, training and outreach, the Institute for Justice advances a rule of law under which individuals can control their own destinies as free and responsible members of society. We litigate to secure economic liberty, school choice, private property rights, freedom of speech and other vital individual liberties, and to restore constitutional limits on the power of government. Through these activities we challenge the ideology of the welfare state and illustrate and extend the benefits of freedom to those whose full enjoyment of liberty is denied by government. The Institute was founded in 1991 by William H. Mellor and Clint Bolick.

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[NOTE: **To arrange interviews** on this subject, journalists may call John Kramer, the Institute for Justice’s vice president for communications, or Melinda Ammann, the Institute’s communications coordinator, at (202) 955-1300. **For an on-line media kit** offering one-stop shopping on this subject, please visit www.ij.org and then go to our Media Center.]