



ELECTRONIC FRONTIER FOUNDATION

Protecting Rights and Promoting Freedom on the Electronic Frontier

June 13, 2016

VIA EMAIL

Senator Holly Mitchell
Capitol Office
State Capitol Room 5080
Sacramento, CA 95814

Re: Support for S.B. 443

Dear Sen. Mitchell,

The Electronic Frontier Foundation (EFF) is a non-profit member-supported civil liberties organization based in San Francisco, California, that works to protect rights in the digital world. EFF has more than 24,000 members and donors across the country.

I am writing today to express our support for S.B. 443, a bill that would create much needed reforms regarding how law enforcement may obtain forfeiture of assets seized during investigations.

Recent reports highlight the myriad opportunities for abuse of the current civil asset forfeiture system, ranging from John Oliver's comprehensive report on Last Week Tonight¹ to the ACLU's recent report on how asset forfeiture disproportionately affects disadvantaged populations.²

In addition, an EFF investigation found a troubling correlation between electronic surveillance and asset forfeiture: the more law enforcement obtained forfeiture of seized assets, the more electronic surveillance they were able to conduct, leading to more surveillance, leading to more seizures, and so forth.³ Although millions in property was seized, few arrests and convictions resulted from the investigations.

We would like to also highlight how California law enforcement agencies have misused asset forfeiture authority, particularly when it comes to surveillance. Too often, seized assets serve as a slush fund for law enforcement agencies. In Calexico, police officers used asset forfeiture funds to purchase sophisticated spy equipment, which they then allegedly used for surveillance of their political opponents and to

¹ Last Week Tonight: Civil Forfeiture. October 5, 2014. Available at: <https://www.youtube.com/watch?v=3kEpZWGgJks>

² McDonald, Jeff. San Diego Union-Tribune. "ACLU: Asset seizures hit minority communities harder." Available at <http://www.sandiegouniontribune.com/news/2016/may/19/aclu-asset-seizure/>

³ Maass, Dave. Electronic Frontier Foundation. "Asset Forfeiture and the Cycle of Electronic Surveillance Funding." January 16, 2015. Available at: <https://www.eff.org/deeplinks/2015/01/asset-forfeiture-and-cycle-electronic-surveillance-funding>

815 Eddy Street • San Francisco, CA 94109 USA

voice +1 415 436 9333

fax +1 415 436 9993

web www.eff.org

email information@eff.org

engage in extortion.⁴ The Riverside County District Attorney's office authorized hundreds of allegedly illegal wiretap applications. The D.A. at the time, Paul Zellerbach, told *USA Today* that one of his office's primary motivations was asset forfeiture: "We liked it because in these difficult economic times, my budget was being cut, and that was a way to somewhat supplement funding for my office."⁵

S.B. 443 would significantly reform the asset forfeiture process by balancing due process with the goals of law enforcement. Among the key provisions:

1) Current law allows forfeiture of cash in excess of \$25,000 if police can prove guilt by "clear and convincing evidence." The bill would raise this burden of proof to "beyond a reasonable doubt."

2) Current law provides that if police seize or destroy controlled substances, they may sometimes recover the expense of doing so. Today, police may seek this recovery from a person who is not facing prosecution. The bill would end such recovery against a person who is not facing prosecution.

3) California today has tighter limits on asset forfeiture than the federal government, but state and local police evade these limits by working through the federal system. The bill would reduce this. First, the bill would bar state and local police from transferring seized property to the federal government. Second, the bill would bar state and local police from receiving seized property from the federal government, unless a defendant is convicted (or flees or dies).

4) The bill would expand public reporting about asset forfeiture.

EFF thanks you for your commitment to reforming the asset forfeiture process, and we hope to continue supporting this legislation as it moves forward. If you have further questions, I can be reached at dm@eff.org or by phone at 415-436-9333 x151.

Sincerely,

Dave Maass
Investigative Researcher

⁴ Replogle, Jill. KPBS. "Calexico Police Department Under Fire And Under Investigation." January 6, 2015. Available at: <http://www.kpbs.org/news/2015/jan/06/calexico-police-department-under-fire-alleged-crim/>

⁵ Heath, Brad and Brett Kelman, USA Today. "Justice officials fear nation's biggest wiretap operation may not be legal." November 11, 2015. Available at: <http://www.usatoday.com/story/news/2015/11/11/dea-wiretap-operation-riverside-california/75484076/>