

IN THE SUPREME COURT OF THE STATE OF OREGON

YAMHILL COUNTY, a political
subdivision of the State of Oregon and
forfeiting agency, on behalf of the Yamhill
County Interagency Narcotics Team
(YCINT) seizing agency,

Plaintiff-Petitioner on Review,

vs.

REAL PROPERTY COMMONLY
KNOWN AS: 11475 NW PIKE ROAD,
YAMHILL, OREGON, YAMHILL
COUNTY AND ANY RESIDENCE,
BUILDINGS, OR STORAGE
FACILITIES THEREON,

Defendant *in rem*,

and

SHERYL LYNN SUBLET,

Claimant-Respondent on Review.

Yamhill County Circuit Court
Case No. 18CV37372

CA A173574

SC S070217

**Brief of Oregon Resource Justice Center and National Police Accountability
Project As *Amici Curiae* in Support of Claimant-Appellant, Respondent On
Review**

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INTRODUCTION

Across the United States, local, state, and federal law enforcement have the ability to seize property they believe is associated with the commission of a crime, regardless of whether the owner of the property is actually charged or convicted, through civil asset forfeiture. For decades, law enforcement agencies in Oregon operated this same way (and most law enforcement agencies outside of Oregon still do). But in 2000, Oregonians sought to put an end to the immense harm suffered by individuals targeted by civil asset forfeiture and voted to make conviction a precondition of civil asset forfeiture, meaning that, for the most part, law enforcement agencies could not keep the property of individuals who were not ultimately convicted of a crime. If the relief sought by Petitioner is granted and the Court of Appeals is overturned, however, protections for Oregonians against civil asset forfeiture—which voters called for over 20 years ago—will once again be weakened, putting individuals at risk of harm. Civil asset forfeiture promotes a policing model in which law enforcement officers are incentivized by financial gain instead of public safety and crime reduction, disproportionately harming poor people and people of color who are already victims of other aggressive policing tactics. Further, civil asset forfeiture, which is ostensibly aimed at taking the profits out of complex criminal enterprises, is mostly used against low-level criminals and innocent people who are not involved in any organized crime. For the reasons set

forth below, *amici* respectfully urge this Court to honor the choice made by Oregon's voters in 2000 to protect individuals from civil asset forfeiture and uphold the decision of the Court of Appeals.

STATEMENTS OF INTEREST

The Oregon Justice Resource Center (OJRC) is a non-profit organization founded in 2011 to promote criminal legal system reform through advocacy, direct legal services, and public education. OJRC works to dismantle systemic discrimination in the administration of justice by promoting civil rights and enhancing the quality of legal representation for traditionally underserved communities. Public accountability is an essential tenet of OJRC's work and the organization is focused on redressing police and correctional officer violence across the state.

The National Police Accountability Project (NPAP) was founded in 1999 to address misconduct by law enforcement and detention facility officers. NPAP has approximately 550 attorney members throughout the United States. NPAP provides training and support for attorneys and other legal workers, public education and information, and resources for nonprofit organizations and community groups involved in helping victims of law enforcement and detention facility misconduct. NPAP also supports legislative efforts aimed at increasing accountability and appears as *amicus curiae* in cases of particular importance for its members' clients.

ARGUMENT

I. CIVIL ASSET FORFEITURE CAUSES IMMENSE HARM.

Civil asset forfeiture is easily—and routinely—abused. Its proponents argue it combats organized crime, denies individuals the financial benefits of their crimes, and facilitates victim restitution. But in truth, civil asset forfeiture in most parts of the country enables officers to seize large amounts of cash, vehicles, and even homes, based only on a suspicion that the property is linked to criminal activity—without ever even charging, let alone convicting, the owner with a crime. And because law enforcement agencies keep the property they seize, they have a perverse incentive to focus on policing run-of-the-mill, petty crimes that can easily generate cash rather than serious crimes that actually jeopardize public safety but may be harder to crack. Accordingly, the primary targets of civil asset forfeiture are not drug cartels or other criminal organizations amassing great wealth through criminal activity, but ordinary people, suspected of minor crimes or violations at best. Civil asset forfeiture has devastating financial consequences for these ordinary, often innocent, people in most parts of the country. And, as with other harms caused by over-policing, civil asset forfeiture exacerbates inequities by disproportionately impacting poor people and people of color.

A. Civil Asset Forfeiture Encourages Law Enforcement to Police for Profit Instead of Public Safety.

Civil asset forfeiture is ripe for abuse because it offers law enforcement agencies a quick and easy method of generating a significant amount of money. In most jurisdictions throughout the United States, civil asset forfeiture laws allow officers to seize any property that they suspect is in some way connected to a crime. Lisa Knepper, et al., Institute for Justice, *Policing for Profit: The Abuse of Civil Asset Forfeiture* 5 (3d ed. 2020), <https://ij.org/wp-content/uploads/2020/12/policing-for-profit-3-web.pdf>. If no one files a claim to the property after the police have seized it, the property is automatically forfeited. *Id.* at 23. Even when an owner does file a claim and a hearing ensues, law enforcement is often able to retain the property thanks to the hearing's minimal procedural protections and the government agency's low burden of proof for connecting the property to a crime. *Id.* at 30. Critically, in states with less evolved protections than Oregon, civil asset forfeiture, unlike criminal asset forfeiture, does not require an underlying conviction, or even a criminal charge or arrest, to justify the government's permanent seizure of property. In fact, forfeiture proceedings in these states are often completed before any criminal trial takes place. Thus, law enforcement officers can, and routinely do, seize property from people who never committed any crime.

There are abundant cases of predatory civil asset forfeitures, but a few examples sufficiently illustrate the point. Ron Henderson, his girlfriend, and her two children were driving from Texas to Louisiana for a family vacation when Henderson shifted to the left lane to allow room for an oncoming patrol car. Sarah Stillman, *Taken*, THE NEW YORKER (Aug. 5, 2013), <https://www.newyorker.com/magazine/2013/08/12/taken>. The officer then pulled Henderson over for “driving in the left lane for more than half a mile without passing” and asked to search the car. *Id.* The search did not yield any drugs, but the officer did find a sizable stack of cash—money that the family had been saving to buy a new car in Louisiana. *Id.* Henderson and his girlfriend were given a “choice”: face felony charges for “money laundering” and “child endangerment” or sign the money over to the city and drive away with their children. *Id.* In Philadelphia, a SWAT team raided the home of an elderly couple, Mary and Leon Adams. *Id.* The officers seized the home, which the couple had owned for over fifty years, simply because the couple’s son “allegedly sold twenty dollars’ worth of marijuana to a confidential informant, on the front porch of his parent’s home” on three separate occasions. *Id.*

Drug Enforcement Administration (DEA) agents stopped Rebecca Brown in a Pennsylvania airport because a Transportation Security Administration (TSA) agent saw a large amount of cash in her bag. Institute for Justice, *DEA and TSA*

Airport Forfeitures, <https://ij.org/case/dea-tsa-forfeitures/>. The cash was her father's life savings, and Brown's father, a retired railroad engineer living in Pittsburgh, had asked Brown to take the money home with her to Boston, where she planned to deposit the savings into a new joint bank account. *Id.* The agents did not charge or arrest Brown, who had committed no crime. *Id.* They did, however, seize the cash. *Id.* Although Brown and her father eventually recovered the money, the DEA held onto it for six months before returning it. Andrew Wimer, *Major Class Action Lawsuit Against TSA and DEA Over Airport Seizures Achieves First Round Victory*, Institute for Justice (Mar. 31, 2021), <https://ij.org/press-release/major-class-action-lawsuit-against-tsa-and-dea-over-airport-seizures-achieves-first-round-victory/>.

As these cases demonstrate, it is far too easy for law enforcement agencies to generate revenue by conducting traffic stops for minor violations or arrests for low-level drug offenses. In this way, civil asset forfeiture encourages officers to aggressively police minor crimes as a pretext for seizing valuable property. *See, e.g.,* Jennifer McDonald and Dick M. Carpenter, II, Institute for Justice, *Frustrating, Corrupt, Unfair: Civil Forfeiture in the Words of its Victims* 16 (Oct. 2021), https://ij.org/wp-content/uploads/2021/09/Frustrating-Corrupt-Unfair_Civil-Forfeiture-in-the-Words-of-Its-Victims-2.pdf. Moreover, even when officers do encounter serious crime, such as cartel drug sales, they are incentivized to

prioritize revenue over public safety. According to one investigative report, “Police in Missouri, Tennessee and other states focus their interdiction on the westbound lanes of interstates where cash from drug sales is returning to the cartels. Far fewer stops occur on the eastbound lanes *where the drugs could be seized before they are sold to users.*” William Freivogel, *No Drugs, No Crime and Just Pennies for School: How Police Use Civil Asset Forfeiture*, Pulitzer Center (Feb. 18, 2019), <https://pulitzercenter.org/stories/no-drugs-no-crime-and-just-pennies-school-how-police-use-civil-asset-forfeiture> (emphasis added). Civil asset forfeiture does not improve public safety but rather distracts from, and even imperils, it, while destroying the livelihoods of low-level offenders and innocent people.

B. Civil Asset Forfeiture Disproportionately Impacts Poor People and People of Color, Exacerbating Existing Inequities.

As with other forms of predatory policing, law enforcement officers disproportionately target poor people and people of color for civil asset forfeiture. Ilya Somin, *America’s Weak Property Rights Are Harming Those Most in Need*, THE ATLANTIC (Mar. 24, 2020), <https://www.theatlantic.com/ideas/archive/2020/03/weak-property-rights/608476/>. In South Carolina, for example, “[s]even out of 10 people who have property taken are Black, and 65 percent of all money police seize is from Black males.” Nathaniel Cary and Mike Ellis, *65% of Cash Seized by SC Police Comes from*

Black Men. Experts Blame Racism, GREENVILLE NEWS (Jan. 27, 2019), <https://www.greenvilleonline.com/story/news/taken/2019/01/27/south-carolina-racism-blamed-civil-forfeiture-black-men-taken-exclusive-investigation/2459039002/>. Institute for Justice, a nonprofit organization, surveyed Philadelphians who had their property seized by law enforcement and found that “[c]ompared to Philadelphians overall, [survey] respondents were more often minority and lower income.” Jennifer McDonald and Dick M. Carpenter, II, *supra*, at 2. More precisely, “[t]wo-thirds of respondents were Black, 63% earned less than \$50,000 annually and 18% were unemployed.” *Id.*; *see also* Sarah Stillman, *supra* (“For real-estate forfeitures, it’s overwhelmingly African-Americans and Hispanics....It has a very disparate race and class impact.”). Since individuals with lower incomes are less likely to use a bank account and more likely to carry cash, they become easy targets for civil asset forfeiture. The Editorial Board, *Why are innocent people still losing cash, cars and even homes to police?*, USA TODAY (July 20, 2021), <https://www.usatoday.com/story/opinion/todaysdebate/2021/07/16/innocent-lose-cash-police-civil-asset-forfeiture/7903000002/>.

Because the people targeted for civil asset forfeiture are overwhelmingly poor and marginalized, they often lack the time and financial resources needed to navigate the complex process of reclaiming their property. Jennifer McDonald and

Dick M. Carpenter, II, *supra*, at 20-23; Lisa Knepper, et al., *supra*, at 20-21; The Editorial Board, *supra*. Take, for example, Nelly Moreira. In March 2012, D.C. police officers stopped a driver for a minor traffic violation and, after discovering he had a handgun, arrested him and seized the car he was driving. Sarah Stillman, *supra*. The car belonged to his mother, Nelly Moreira, an immigrant from El Salvador who relied on her car to travel to and from her two jobs. *Id.* Moreira was required to pay a \$1,020 bond to simply *initiate* a proceeding to reclaim her car. *Id.* The proceeding lasted months, forcing Moreira to forego meals as she struggled to pay her car loan payments, public transportation costs, and the costs of the forfeiture proceeding. *Id.* Moreira was able to challenge her forfeiture only because she found a way to scrape together the \$1,020 needed for the bond and later connected with pro bono counsel. But far too many victims of civil asset forfeiture are not as fortunate as Moreira and the heavy cost of fighting the forfeiture is not outweighed by the slim chance of regaining their property. Dan Alban and Daryl James, *Police are Abusing Civil Forfeiture Laws to Seize Cash for Themselves*, TRUTHOUT (Apr. 16, 2023), https://truthout.org/articles/police-are-abusing-civil-forfeiture-laws-to-seize-cash-for-themselves/?utm_campaign; Jennifer McDonald and Dick M. Carpenter, II, *supra*, at 20-24.

These are some of the harms that Oregonians chose to prevent when they voted to make conviction a precondition of civil asset forfeiture. This Court should honor that choice and uphold the decision of the Court of Appeals.

II. POLICING FOR PROFIT HARMS THE GOVERNMENT, WHILE ADVANCING NO LEGITIMATE AIMS.

Civil asset forfeiture not only undermines public confidence in law enforcement, but all government institutions that support the practice. Individuals who have had their assets seized by law enforcement view the searches as humiliating, with one victim expressing a feeling of helplessness and another a loss of dignity. Sarah Stillman, *supra*. It is not surprising that they lose trust in the government and want to “fight back” against their property being taken. *See* The Editorial Board, *supra* (“Forfeiture is one more reason many law-abiding citizens fear and distrust law enforcement.”); Anthony Zurcher, *The growing outcry over police confiscation*, BBC (Sept. 17, 2014), <https://www.bbc.com/news/blogs-echochambers-29228851> (characterizing victims of civil asset forfeiture as “frustrated citizens who were battling the government for return of the property and money”); Sarah Stillman, *supra*.

Law enforcement agencies have created a false narrative that civil asset forfeiture is necessary to separate dangerous criminal enterprises from the money and instrumentalities they use to perpetrate their crimes and harm the public. *See*,

e.g., Petitioner Br. at 11 (arguing civil asset forfeiture is a “critical tool” for “disrupting the most serious criminal threats”); *see also* Sarah Stillman, *supra* (“Forfeiture in its modern form began with federal statutes enacted in the nineteen-seventies and aimed...at organized-crime bosses and drug lords.”); Michael Sallah, et al., *Stop and seize*, THE WASHINGTON POST (Sept. 6, 2014), <https://www.washingtonpost.com/sf/investigative/2014/09/06/stop-and-seize/?hpid=z3> (“After Sept. 11, 2001, civil forfeiture and the war on drugs became entwined with efforts to improve homeland security.”). But civil asset forfeiture is not—nor has it ever been—used solely against “serious” criminals. In reality, most targets of civil asset forfeiture in the United States are never charged or convicted of *any* crime. Radley Balko, *Study: Civil asset forfeiture doesn’t discourage drug use or help police solve crimes*, THE WASHINGTON POST (June 11, 2019), <https://www.washingtonpost.com/opinions/2019/06/11/study-civil-asset-forfeiture-doesnt-discourage-drug-use-or-help-police-solve-crimes/> (“In most cases, the owner is never charged with a crime, much less convicted, yet the police agency gets to keep some or all of any cash seized, and some or all of whatever a house, car or other item earns at auction.”); Michael Sallah, *supra* (“Local officers, county deputies and state troopers were encouraged to act more aggressively in searching for suspicious people, drugs and other contraband....The effort succeeded, but it had an impact that has been largely hidden from public view: the spread of an

aggressive brand of policing that has spurred the seizure of hundreds of millions of dollars in cash from motorists and others not charged with crimes.”). Civil asset forfeiture, for the most part, serves only to separate individuals from money and property needed for their survival and their livelihoods, including their homes, businesses, cars, and cash savings. *See* Section I(A), *supra*. The hardest hit by these searches and seizures are disproportionately people of color and low-income individuals. *See* Section I(B), *supra*.

Although law enforcement agencies and local governments continue to insist that they use asset forfeiture to take property from individuals involved in serious crime and complex schemes, such as human traffickers, drug cartels, terrorist cells, and cyber criminals, *see* Petitioner Br. at 11, the numbers indicate that most targets of civil asset forfeiture across the country are not engaged in lucrative criminal enterprises. Lisa Knepper, et al., *supra* (“forfeiture often does not target drug kingpins or big-time financial fraudsters”); Sarah Stillman, *supra* (“only a small portion of state and local forfeiture cases target powerful entities”). The median value of forfeitures in Oregon was only \$2,128 from 2015 to 2018, meaning that about half of all forfeitures in the state during this time were valued at less than \$2,000. Lisa Knepper, et al., Institute for Justice, *Forfeiture Law Grades, Oregon, Policing for Profit: The Abuse of Civil Asset Forfeiture* (3d ed. 2020), <https://ij.org/report/policing-for-profit-3/?state=OR>. As such, it is unsurprising that

60% of the asset forfeitures in Oregon are not even worth the cost of hiring an attorney to get the seized property returned. *Id.* This hardly paints the picture of law enforcement agencies taking down highly-profitable drug trafficking rings, money laundering terrorist cells, or scheming cyber criminals. For this reason, the concerns raised by amici in support of Petitioner that consolidating criminal cases and civil asset forfeiture proceedings would be too complex because criminal cases involving criminal drug organizations are already very complicated to prosecute does not carry any water. *See* Cities and Counties Amici Br. at 19-20. These so-called “complicated” cases are in the minority of civil asset forfeiture proceedings.

Across the United States, state and local governments overemphasize organized crime to support seizing property belonging to individuals who have not committed any crime or have only been convicted of low-level crimes that are unrelated to any criminal enterprise, even though organized crime constitutes a very small portion of criminal prosecutions. Balko, *supra* (“[T]he typical person targeted in an equitable sharing forfeiture case isn’t the criminal kingpin so often conjured to justify the policy. ‘If you were to make a graph of the distribution of the amounts in these cases, it would weigh heavily to the left’...meaning that most equitable sharing cases involve smaller amounts of money and less valuable property. ‘If you take out the top 1 percent of forfeitures, the average amount seized falls below \$2,000.’”). These claims serve only to perpetuate a false

narrative and prey on existing fears of criminal “others” (i.e., foreign drug dealers and terrorists). The public only thinks civil asset forfeiture is in their best interest because they have been told it protects them from serious criminals, but it is only harming their neighbors who either have not committed any crime or committed only low-level crimes. Oregonians saw beyond this false narrative and acknowledged the harms being suffered by ordinary people in 2000 when they voted make conviction a precondition of civil asset forfeiture.

III. IF OREGON’S CIVIL ASSET FORFEITURE LAW IS RETURNED TO PRE-2000 STANDARDS, LAW ENFORCEMENT AGENCIES WILL RESUME POLICING FOR PROFIT.

Before Oregon residents passed the Property Protection Act in 2000 (“PPA”), Oregon law enforcement agencies had a huge financial incentive to make stops and arrests—regardless of whether the person would actually be convicted of a crime—due to the easy revenue they could get from property forfeitures. Further, Oregon police could initiate forfeitures of property that had a tenuous connection to the alleged crime and were guaranteed to reap the financial benefits of the forfeiture. Oregon’s old law enabled textbook “policing for profit”—a legal framework that “encourages the pursuit of property instead of the pursuit of justice.” Dick M. Carpenter, II, et al., Institute for Justice, *Policing for Profit: The Abuse of Civil Asset Forfeiture* 8 (2d ed. 2015), <https://ij.org/wp->

content/uploads/2015/11/policing-for-profit-2nd-edition.pdf. Reversing the Court of Appeals will erode the protections voters overwhelmingly supported and incentivize extractive policing practices.

The state legislature enacted a civil asset forfeiture statute in 1989 that made it significantly easier for police to self-fund and finance their departments through property seizures. First, it codified the ability to seize property without a conviction. Chapter 791, Oregon Laws 1989, (Sec. 4(2)); Sec. 10(c); Sec. 11 (4)). It also authorized law enforcement agencies to initiate forfeiture proceedings on property that was neither acquired in, or used to perpetrate, a suspected crime so long as it belonged to the suspect. *Id.*; *see also, Clackamas Co. v. 102 Marijuana Plants*, 323 Ore. 680 (Ore. 1996) (finding civil asset forfeiture law did not limit the definition of “prohibited conduct” to sales or other conduct that provides financial gain, nor require that the seized property be derived from the criminal conduct nor that it be acquired with unlawful gains or proceeds of that conduct). Finally, the law mandated that law enforcement agencies retain the proceeds of their forfeiture actions. Chapter 791, Oregon Laws 1989, (sec. 4(2)); Sec. 10(c); Sec. 11 (4)). The PPA undid the features of the 1989 law that facilitated policing for profit. Namely, the PPA now requires there be a conviction before property can be forfeited absent special circumstances. Ore. Const. Art. XV §10 (3). It also created a clear and convincing evidence standard requiring prosecutors to prove the property was used

to commit a crime, or was the proceeds of the crime for which the owner was convicted, and mandated that proceeds from forfeitures be used for drug treatment or other purposes approved for by law. *Id.* at (2)(d).

Studies of forfeiture schemes similar to Oregon's 1989 law reveal that permitting police to make money off of arresting people meant: (1) they made more arrests; and (2) they made a lot of money. Researchers have documented a positive correlation between police contacts and states with lax asset forfeiture laws where police departments stand to benefit from civil asset forfeitures. *See, e.g.,* Beth A. Colgan, *Revenue, Race, and the Potential Unintended Consequences of Traffic Enforcement Reform*, 101 N.C. L. REV. 889, 923, 931-933 (2023) (existing studies tend to support the contention that forfeiture revenue influences law enforcement behavior); Stephen A. Bishopp & John L. Worrall, *Do State Asset Forfeiture Laws Explain the Upward Trend in Drug Arrests?*, 32 J. CRIME & JUST. 117, 119 (2009). While the 1989 law was in place, the Oregon Criminal Justice Commission reported that police had earned \$1.2 million per year in forfeiture revenue in 1988 (notably, this amount would be much higher at today's rates). Drug Reform Coordination Network, *Oregon Police Pull Out the Stops to Save Asset Forfeiture Gravy Train*, DRUG WAR CHRONICLE (Apr. 20, 2001), <https://stopthedrugwar.org/chronicle-old/182/oregonforfeiture.shtml>. Today, with the PPA's reforms, police in Oregon net less than \$670,000 in forfeiture revenue.

Asset Forfeiture (2021) Report: Report from the Asset Forfeiture Oversight

Advisory Committee (Apr. 19, 2022) at 4,

[https://www.oregon.gov/cjc/CJC%20Document%20Library/2021_AFOAC_Report](https://www.oregon.gov/cjc/CJC%20Document%20Library/2021_AFOAC_Report.pdf)
.pdf. If there are fewer restrictions on civil asset forfeitures, Oregon law enforcement agencies will again have a financial incentive to arrest. If Petitioner's arguments are adopted, the PPA's protections will be undone and law enforcement agencies will have a renewed incentive to initiate law enforcement contacts in order to generate forfeiture revenue.

CONCLUSION

Amici Curiae respectfully asks this Court to affirm the decision of the Court of Appeals.

Dated: October 24, 2023

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CERTIFICATE OF SERVICE

I hereby certify that I filed the foregoing document on October 24, 2023
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CERTIFICATE OF COMPLIANCE

I certify that this brief contains 3,637 words, excluding the parts of the document exempted by the rules, and has been prepared in a proportionally-spaced typeface using Microsoft Word in 14-point Times New Roman font.

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