

By: Anchia

H.C.R. No. 31

CONCURRENT RESOLUTION

1           WHEREAS, Civil asset forfeiture is a process by which a  
2 local, state, or federal law enforcement agency can seize or  
3 confiscate a person's property, under the guise that it constitutes  
4 proceeds of a crime or was instrumental in the commission of a  
5 crime, without having to convict the person of a crime as the  
6 process is considered a civil rather than a criminal action; and

7           WHEREAS, Since September 2001, state and local law  
8 enforcement authorities, under the auspices of the Equitable  
9 Sharing Program, have taken in over \$2.5 billion through more than  
10 62,000 cash seizures from people who were not charged with a crime;  
11 and

12           WHEREAS, Since 2007, the United States Drug Enforcement  
13 Agency has seized more than \$4 billion in cash from people suspected  
14 of involvement in drug activity, but 81 percent of those seizures,  
15 totaling approximately \$3.2 billion, were conducted  
16 administratively with no civil or criminal charges brought against  
17 the owners of the property, and no judicial review of the seizures  
18 ever occurred; and

19           WHEREAS, In the last 10 years, the U.S. Department of Justice  
20 Asset Forfeiture Fund, which collects proceeds from seized cash and  
21 other property, has ballooned to \$28 billion, and in 2016 alone,  
22 authorities seized \$2 billion, with nearly \$100 million of that  
23 deposited from the State of Texas; and

24           WHEREAS, In too many cases, current federal asset forfeiture

1 laws create a financial incentive for the pursuit of profit over the  
2 fair administration of justice, facilitate the circumvention of  
3 state laws intended to protect citizens from abuse, encourage the  
4 violation of due process and property rights of Americans, and  
5 disproportionately impact people of color and those with modest  
6 means; and

7         WHEREAS, Victims of civil asset forfeiture must prove their  
8 own innocence or the innocence of their property in order to get  
9 their property back, turning the presumption of innocence on its  
10 head; and

11         WHEREAS, Addressing civil asset forfeiture in its *Interim*  
12 *Report to the 85th Texas Legislature*, the Senate Committee on  
13 Criminal Justice found that "when abuse of forfeiture does occur,  
14 the average individual cannot readily defend their property in  
15 court; attorney costs, low evidentiary standards, and the  
16 difficulty of asserting the innocent owner defense together place  
17 an undue burden on individuals attempting to defend their  
18 property"; and

19         WHEREAS, The interim report goes on to state that "the taking  
20 of private property demands the utmost scrutiny. Divorced from all  
21 financial incentives, agencies possess a duty to provide a direct  
22 tie to criminal activity for each occurrence of forfeiture,  
23 requiring an accompanying increase in evidentiary standard to clear  
24 and convincing from preponderance of the evidence, a standard  
25 reserved for civil matters"; and

26         WHEREAS, Despite its use by law enforcement to attack the  
27 financial incentive for crime, the current process for civil

1 forfeitures leaves citizens without several vital protections  
2 afforded to them in criminal proceedings; and

3 WHEREAS, On July 19, 2017, United States Attorney General  
4 Jeff Sessions issued an order further authorizing Department of  
5 Justice components and agencies to forfeit assets seized by state  
6 or local law enforcement; now, therefore, be it

7 RESOLVED, That the 85th Legislature of the State of Texas,  
8 1st Called Session, hereby call for the reversal of the order issued  
9 on July 19, 2017, by the United States attorney general and for the  
10 repeal of the civil asset forfeiture program; and, be it further

11 RESOLVED, That the civil asset forfeiture program be replaced  
12 with a process of criminal asset forfeiture that requires:

13 (1) the conviction of a crime subject to forfeiture to  
14 be obtained prior to forfeiture of the property;

15 (2) an increase in the evidentiary standard to clear  
16 and convincing from preponderance of the evidence;

17 (3) the prohibition of the forfeiture of homestead  
18 properties, motor vehicles valued at less than \$10,000, and  
19 currency totaling less than \$200;

20 (4) the establishment of procedures for a  
21 proportionality hearing to determine whether the forfeiture is  
22 unconstitutionally excessive in proportion to the alleged crime;  
23 and

24 (5) the speedy return of property to its rightful  
25 owner when charges are dropped or the owner is acquitted, as well as  
26 when the court determines that an owner has a bona fide security  
27 interest; and, be it further

1           RESOLVED, That the U.S. Congress be urged to pass  
2 comprehensive and effective civil asset forfeiture reform; and, be  
3 it further

4           RESOLVED, That the Texas secretary of state forward official  
5 copies of this resolution to the president of the United States, to  
6 the president of the Senate and the speaker of the House of  
7 Representatives of the United States Congress, and to all the  
8 members of the Texas delegation to Congress with the request that  
9 this resolution be entered in the Congressional Record as a  
10 memorial to the Congress of the United States of America.