

January 18, 2003

**YOUR RIGHT TO OWN PROPERTY IN UTAH IS UNDER ATTACK BY U.S. ATTORNEY GENERAL, UTAH LEGISLATORS, UTAH ATTORNEY GENERAL, AND PRIVATE PROPERTY CONFISCATION LOBBY!**

**ACT NOW TO DEFEND YOUR RIGHTS!**

**Please forward this alert (intact) to your family, friends, associates, and receptive lists!**  
The alert is available in PDF at <http://www.xmission.com/~ajgaunt/forfeiture/Alert 1-18-03.pdf>.

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**Attack Summary**

On November 20, 2002, the Law Enforcement and Criminal Justice Interim Committee approved by a 12-1 vote a bill, **sponsored by Senator John Valentine**, that destroys fundamental property ownership protections now in law. These protections were enacted through Initiative B – by a 69% favorable vote of the Utah electorate! To this date, the bill gutting Initiative B has not been made available to the public via the Utah Legislature web site.

(See <http://www.le.state.ut.us/asp/interim/Commit.asp?Year=2002&Com=INTLAW> for Law Enforcement and Criminal Justice Interim Committee agenda and minutes.)

(See [http://www.governor.utah.gov/LT\\_Gover/Propositionresults2000.pdf](http://www.governor.utah.gov/LT_Gover/Propositionresults2000.pdf) for Initiative B results.)

**What Does the Bill Do to You?**

- Authorizes police and prosecutors to eliminate the protections of the Utah Constitution and Utah law by transferring seized property to federal government (lines 456-473, 483, 484, 487, 488)
- Authorizes police to profit from property they seize (lines 474-478, 489-497, 507-513, 534-536, 560-562, 570-573)
- Eliminates adverse consequences to police agencies that subvert Utah law to transfer seized property to federal government (lines 498-500)
- Eliminates the probability of legal representation for innocent property owners who are poor (repeal of 24-1-9)
- Prevents innocent owner from using his seized property to retain legal counsel that otherwise would be unavailable (lines 350, 351)
- Effectively eliminates the requirement that forfeiture be proportional to the misuse of the property, enabling disproportionate confiscation for trivial offenses (lines 442-445)
- Allows seized property to be sold prior to trial (lines 385-387)
- Eliminates prohibition on fees for holding seized property where prosecutor drops forfeiture case (lines 430-431)
- Prohibits hardship release of seized assets from legitimate business for legal defense (lines 382, 383)
- Allows property to be forfeited, notwithstanding the owner's acquittal on related criminal charges (repeal of 24-1-8)

The bill contains additional unacceptable provisions not listed here, and likely others not yet uncovered. It is now available for your review at <http://www.xmission.com/~ajgaunt/forfeiture/Bill.pdf>. (Unfortunately, some of the bill line numbers were lost during the scanning process.)

The repeal of the property ownership protections in Sen. Valentine's bill increases the likelihood for abuse and injustice. For examples of abuse and injustice in Utah that led to Initiative B, see <http://www.xmission.com/~ajgaunt/forfeiture/afabus.pdf>.

### **The Critical Role of the Federal Government in Undermining Your Utah Property Rights**

Through obscure mechanisms, the United States Department of Justice (USDOJ) has undermined local and state control of municipal police, state police, and county sheriffs, and encouraged the destruction of your right to own and enjoy property. The principal mechanisms are the related "**equitable sharing**" and **grant programs** administered by the Attorney General of the United States.

Equitable sharing encourages local police to transfer property they have seized to the USDOJ. The USDOJ then forfeits the property (transfers the title from the owner to the federal government). Once forfeited, up to 80% of the proceeds from the forfeiture are "equitably shared" with the seizing agency.

There are several incentives for your local police to use this approach.

- It allows them to subvert the protections of the Utah Constitution and laws that would otherwise be available to the property owner.
- It allows them to bypass state courts and avoid the cost and inconvenience of prosecution.
- Since the standards of justice are significantly diminished at the federal level, there is greater certainty that forfeiture will occur. For federal forfeitures it is not even necessary for a court to transfer the property title (the Attorney General or his delegate is able to do this administratively on his own initiative). Should the seizure be challenged in federal court, the Attorney General need prove his case only by a preponderance of the evidence (the lowest standard), which essentially requires the property owner to prove his or his property's innocence.
- Money acquired by local police through equitable sharing can be leveraged to obtain federal grants. Some grant programs operate on a 25%-75% basis, allowing each equitable share dollar received to obtain three grant dollars. The police are able to become independent of their governing bodies since they do not depend on them for this funding. The confiscation advocates claim they have 17 million dollars now waiting for them provided the forfeiture initiative is effectively repealed.

The critical danger of the **equitable sharing** and **grant programs** is that they are operated on a *discretionary* basis by a single person, who is the U.S. Attorney General or his delegate. That is, for a local police agency to acquire funds from either of these sources, it must comply with the demands of the person administering the program. Lack of "cooperation" on the part of the local police results in discretionary termination of forfeiture kickbacks to them. He who controls the gold makes the rules.

(See <http://www.access.gpo.gov/uscode/uscmmain.html>, Title 18, Part I, Chapter 46, Section 981(e) for the federal law that provides the U.S. Attorney General with the aforementioned *discretionary* (i.e. despotic) authority over equitable sharing. (This link may not work with the Microsoft Internet Explorer browser.))

The proposed gutting of Initiative B provides evidence of the control exercised by the U.S. Attorney General over Utah's prosecutors, police, and laws. The proponents of the initiative rewrite stated that federal equitable sharing has been prohibited by Initiative B (see <http://www.xmission.com/~ajgaunt/forfeiture/Harms.pdf> for their committee handout). In effect this is true, since the USDOJ is holding back equitable share and grant funds to Utah on a discretionary basis.

The initiative requires that equitable share revenues be transferred to the state Treasurer rather than be retained by the police as was the previous practice. Obviously if the police are no longer able to directly profit from their relationship with the USDOJ, their incentive to cooperate with harmful federal requests is

likely reduced. This potential for lack of cooperation is probably viewed unfavorably by the federal government.

In summary, the federal-state relationship reduces to this: The USDOJ has told the state of Utah that either you get a citizen's initiative passed by about 70% of the electorate and again infringe on the right to own property, or you can forever relinquish millions of dollars. Isn't this extortion?

### **Are Police and Prosecutors Above the Law?**

Attorney Janet Jenson, who was the principal drafter of the forfeiture reform initiative B, has exposed an apparent irregularity between Utah law and forfeiture practices (see <http://www.xmission.com/~ajgaunt/forfeiture/Jenson.pdf>). The law requires, in Utah Code 24-1-16, that whenever property is civilly or criminally forfeited under a finding of a court, it shall be sold by the state treasurer.

Annually the state treasurer is required to produce an accounting of the properties forfeited, and the proceeds therefrom. The state auditor is required to audit the proceeds and provide the results to the treasurer and legislature. All accounting and audit records are open to the public.

Despite the law, a letter from the state auditor to Senate President Al Mansell and House Speaker Marty Stephens (see <http://www.xmission.com/~ajgaunt/forfeiture/Auditor.pdf>) states that for FY 2002 no audit was performed, because no forfeited property had been transferred to the treasurer. However, according to court records there were 154 forfeiture cases decided in 2002 (see [http://courtlink.utcourts.gov/stats/FY02/dist/fy2002\\_9.htm](http://courtlink.utcourts.gov/stats/FY02/dist/fy2002_9.htm)). Why is there no public accounting for this property, and on what authority? *Where has the forfeited property gone?*

### **Will Republican Officeholders Uphold the Republican Platform?**

The Republican Party Platform, in the section entitled **Private Property**, states "*We strongly oppose the forfeiture of private property from innocent owners*" (see <http://www.utgop.org/page8.html>). The proposed rewrite of Initiative B makes it much more likely that innocent owners will be deprived of their property. We must insist that Republican officeholders uphold the platform of the Republican Party.

### **Utah Attorney General Mark Shurtleff's Role in Attacking Your Right to Own Property**

Salt Lake County prosecutor Clark Harms was joined at the Committee witness table by Kirk Torgenson, Chief Deputy Attorney General for the state of Utah, in urging an effective repeal of Initiative B. General Shurtleff was present for the Committee hearing, so it is unlikely that support of his office is based on a rogue employee. Torgenson is a holdover from the Jan Graham administration, where he also advocated legislation to expand police power and undermine the right to own property.

During his campaign for the Republican nomination for Attorney General in 2000, General Shurtleff stated his opposition to civil forfeiture (see <http://www.xmission.com/~ajgaunt/forfeiture/AGS.jpg> for one of his campaign mailings). This opposition was possibly in response to the effective candidacy of his opponent Frank Mylar, who supported reform of abusive forfeiture practices. At convention, Mylar gained over 50% of the delegate vote, but lost the primary election. Was Shurtleff's prior written opposition to civil forfeiture only a desperate ploy to gain votes?

### **Action You Must Take Now to Protect Your Rights**

- Contact your state representative and state senator (see <http://www.le.state.ut.us/house/members2003/membertable1.asp> and <http://beta.utahsenate.org/perl/sperl/roster2003.pl>). A personal visit or phone call is the most effective. I have found a fax to be preferable to e-mail when I'm unable to make personal contact. Express your opposition to the proposed rewrite of Initiative B. Insist upon a thorough and independent

investigation on why no forfeited property or money has been received by the state Treasurer, *as the law requires*.

- Contact Speaker Marty Stephens, who will control the outcome of this legislation in the House. He has expressed opposition to rewrite of the initiative, but also is responsible for the appointment of every House member on the Law Enforcement and Criminal Justice Interim Committee who voted against your right to own and use property. Contact Marty Stephens at home at 801-731-5346.
- Contact Attorney General Mark Shurtleff and request that he honor his campaign statement to support forfeiture only when the property owner is convicted of a crime. General Shurtleff may be reached at (801) 538-1191.
- Please respond to me so that I can readily keep you informed as this attack unfolds. I can also respond to questions or issues not addressed by this alert. My e-mail address is <mailto:ajgaunt@xmission.com>. *Your response is particularly important if you have not received this message directly from me or from a mailing list to which we are both subscribed.*
- Please let me know how your Representative, Senator, and Marty Stephens respond when you make contact. Identification of legislative supporters and opponents is critical to accountability and success.
- Please forward this message to your family, friends, associates, and receptive lists! Let them know what is at stake, and that we need their help to secure our right to own and enjoy property.