

**Norman L. Reimer**  
Executive Director

### Re: Support for H.B. 347

Dear Members of the Ohio House Committee on the Judiciary:

On behalf of the National Association of Criminal Defense Lawyers (NACDL), I write to urge your support for H.B. 347. This legislation would bring much-needed improvements to Ohio's asset forfeiture laws.

NACDL is the preeminent organization advancing the mission of the criminal defense bar to ensure justice and due process for persons accused of crime or wrongdoing. A professional bar association founded in 1958, NACDL's approximately 9,200 direct members in 28 countries—and 90 state, provincial and local affiliate organizations totaling up to 40,000 attorneys—include private criminal defense lawyers, public defenders, military defense counsel, law professors and judges committed to preserving fairness and promoting a rational and humane criminal justice system.

A number of recent news stories have shined a light on disturbing abuses of forfeiture authority and have sparked public outcry and fueled reform efforts. Of particular note is The Washington Post's 6-part investigative series highlighting systemic abuses of power in the use of civil asset forfeiture laws by federal, state, and local law enforcement agencies. As one victim of forfeiture abuse profiled in that series observed, "It's like they are at war with innocent people."<sup>1</sup> Policymakers have taken heed, and legislative reform efforts are active in at least 30 states and in the United States Congress.

H.B. 347 tackles several areas of asset forfeiture in most need of reform by (1) eliminating the problem of property being forfeited without a person ever being convicted of criminal wrongdoing; (2) shifting the burden of proof to the government to establish that initial seizures of property are lawful and raising the government's proof in final criminal forfeiture proceedings; and (3) expanding

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<sup>1</sup> The *Washington Post* published a 6-part investigative series highlighting systemic abuses of power in the use of civil asset forfeiture laws by federal, state, and local law enforcement agencies. See Michael Sallah, Robert O'Harrow Jr., Steven Rich, Wash. Post, *Stop and Seize* (2014), <http://www.washingtonpost.com/sf/investigative/collection/stop-and-seize-2/>.

access to remedies and clarifying notice requirements for property owners aggrieved by an alleged unlawful seizure.

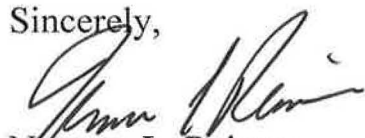
Specifically, H.B. 347 would eliminate the civil forfeiture process, leaving the criminal forfeiture process as the means to pursue forfeiture. H.B. 347 requires the government to pursue forfeiture through the criminal process with the prosecution of the underlying offense in order to ensure property is not mistakenly or unfairly seized from innocent owners. In addition to the existing laudable goals of Ohio's forfeiture laws, a new purpose will be to prohibit forfeiture of a person's property unless the person has been convicted of a criminal offense.

Additionally, this legislation properly shifts the burden of proof for initial seizures to the state and, post-conviction, raises the necessary proof to a "clear and convincing" standard to better comply with the general constitutional requirements for government accusations of criminal activity. For an initial seizure, current law puts the burden on an individual to prove that the seizure was unlawful and that the person is entitled to the property. Post-conviction, current law only requires the government to meet a "preponderance of the evidence" showing that the person's money or property is subject to forfeiture—a very low standard of proof. A bedrock principle of our criminal justice system is the presumption of innocence—a defendant is innocent until proven guilty. Existing forfeiture law turns that principle on its head when it allows the government to confiscate a person's property without proof of guilt and forces that person to prove that a seizure was unlawful in order to get their property back. By properly putting the burden on the government, and by increasing burdens of proof, H.B. 347 would add some much-needed balance back to this area of law.

Lastly, H.B. 347 expands access to hearings for property owners and clarifies notice requirements, while tightening the time requirements for deciding on forfeiture petitions, thus reducing unnecessary delays and property held in limbo.

H.B. 347 would bring much-needed improvements to Ohio's asset forfeiture laws, and NACDL strongly urges its passage.

Sincerely,



Norman L. Reimer

Executive Director

National Association of Criminal Defense Lawyers