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Before the 2023 Special Committee on Civil Asset Forfeiture
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Chairperson Owens, Vice Chair Warren, and Members of the Committee:

Thank you for the opportunity to provide testimony at this meeting of the Special Committee on Civil Asset Forfeiture. At a time when Mexican drug cartels are purposefully flooding our state with deadly fentanyl, and Kansans – especially Kansas kids – are dying by the dozens from fentanyl overdoses, now is not the time to eliminate or limit one of law enforcement’s most effective tools in battling these profit-driven criminal organizations.

First, please let me explain why I asked to testify as “neutral” on the issue of changes to the civil asset forfeiture statutes. The KBI stands shoulder-to-shoulder with the KHP and our other brothers and sisters in Kansas law enforcement in opposing changes to the Civil Asset Forfeiture Act. Many of the changes suggested in HB 2380 would – as I said – limit or eliminate law enforcement’s ability to use civil asset forfeiture laws to disrupt the trafficking of drugs (along with human trafficking, sex trafficking, and other forms of illegal activity) in our state. But, having sat on the Judicial Council’s Civil Asset Forfeiture Advisory Committee (the Committee), I support the thoughtful, measured, reasonable recommendations in the Committee’s report. I believe those recommendations strengthen the protections afforded to property owners without limiting the effectiveness of this important tool. So one could say that supporting the Committee’s recommendations make me a proponent for change. But opposing any changes beyond what the Committee recommends makes me an opponent. I thought the only way to reconcile the nuances of my testimony is to characterize my testimony as neutral.

As a preliminary matter, the narrative that Kansas civil asset forfeiture laws are being improperly used by the government to strong-arm innocent property owners is a false narrative. And that false narrative is being propagated by special interest groups that are intentionally misrepresenting both the substantial due process protections provided to property owners and the manner in which the proceeds of forfeiture are being used categorizing single issues as evidence of systemic problems.

The Kansas Standard Asset Seizure and Forfeiture Act (the Act) is a valuable tool for law enforcement in combating criminal activity in the state of Kansas. It allows agencies to target those who distribute narcotics, engage in human trafficking, and commit other enumerated offenses by removing the means and profit associated with the offenses. Removing the means and profits of these crimes interrupts those enterprises, thus making communities within our state safer. Like any tool, there are often ways to improve it and make it work better for those it serves.

I had the privilege over the past several months of working with the thoughtful individuals on the Committee examining ways we could improve this already useful tool. While the Act currently contains protections for the due process rights of owners, and allows law enforcement to interrupt criminal enterprises both large and small, there are several changes the Committee recommends in its report that strengthen those protections, while maintaining asset forfeiture's value to law enforcement in combating crime in Kansas.

Those changes include judicial review of the probable cause to seize property at the beginning of the case, a fee shifting provision that allows claimants who successfully recover more than half the value of their property to claim attorney's fees, and removing simple possession crimes from the list of offenses that authorize forfeiture. These changes strengthen due process rights already protected by the Act and narrow also the focus of forfeiture related to narcotics cases to crimes of distribution by excluding personal possession offenses committed by those individuals battling an addiction.

While the current Act is sufficient to protect the due process rights of individuals and provides law enforcement an invaluable tool in combating crime in Kansas, if this committee is going to contemplate changes to the Act, I would encourage you to focus on those suggested with unanimity by the Advisory Committee. Those changes continue to allow law enforcement to target criminal enterprises both large and small, and provide real and substantial protections for property owners.

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