DPFH WELCOMES US SUPREME COURT RULING ON ASSET FORFEITURE CASE, PROVIDES BOOST TO REFORM ALREADY UNDERWAY AT HAWAI'İ STATE LEGISLATURE

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CONTACT: Carl Bergquist, Executive Director, Drug Policy Forum of Hawai‘i (DFPH) (808) 518-3213; carl@dpfhi.org

HONOLULU, HI – In an unanimous ruling, the United States Supreme Court in Timbs v. Indiana effectively ruled for a property owner whose car was seized and sold by the State of Indiana, holding that the excessive fines clause of the United States Constitution’s Eighth Amendment applies to the states. Going forward this cast all state asset forfeiture laws into doubt, especially those as abused and mismanaged as Hawai‘i’s. Writing for the Court, Justice Ruth Bader Ginsburg did not mince her words about how the practice known as “policing for profit” operates:

Exorbitant tolls undermine other constitutional liberties. . .Excessive fines. . .may be employed ‘in a measure out of accord with the penal goals of retribution and deterrence,’ for ‘fines are a source of revenue,’ while other forms of punishment ‘cost a State money.’ 1

The US Supreme Court’s ruling comes on the heels of the devastating June 2018 report by the State Auditor of how Hawaii’s own asset forfeiture program is managed by the Department of the Attorney General, and as the Hawai‘i State Legislature is considering two separate bills (SB1467 & HB748) to seriously reform the state forfeiture law. The Senate bill is awaiting a hearing from the Senate Ways & Means Committee, while the House bill has a hearing in the Finance Committee tomorrow, Thursday 2/21 at 1:30pm.

The following comment is attributable to DPFH Board President Nikos Leverenz:

“Today’s court ruling affirmed that individual property rights must be duly respected by local prosecutors and law enforcement. People in this country have a right to be secure in their

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property and possessions. That right should not be forfeited without due process of law. Even with a criminal conviction, the Supreme Court is clear: forfeiture shouldn’t be excessive or punitive. Hawaii’s legislature should enact meaningful asset forfeiture reform this year to ensure that fundamental constitutional liberties are not discounted or ignored by seizing authorities. Local prosecutors should be precluded from circumventing the heightened protections of state law through federal adoption and “equitable sharing.” The legislature should also provide that all forfeiture proceeds are public dollars, not those of the seizing agency, and be subject to direct legislative oversight and control.”

**DPFH Executive Director Carl Bergquist added:**

“This is a historic day with the US Supreme Court giving a constitutional boost to the efforts of states like Hawai’i to reform their own Orwellian asset forfeiture laws. These bizarre laws rest on assumed guilt of property rather than presumed innocence of its owners. DPFH is humbled that we were asked to join to an amicus brief filed by the Drug Policy Alliance in the case decided today. This allowed us to bring national attention to the fact that 85% of forfeitures in Hawai’i are not contested by most innocent property owners. This is because real due process protections are absent in our state law. Even when innocent property owners targeted by our police and prosecutors are aware of their rights, few can afford to hire an attorney to help them navigate a Kafkaesque process in order to retrieve their property.”
For more civil asset forfeiture in Hawai‘i, please see:

1) The Hawai‘i State Auditor Report Audit of the Department of the Attorney General’s Asset Forfeiture Program No.18-09, June 2018:

2) Op-Ed by DPFH Board President Nikos Leverenz and Jennifer McDonald, Institute for Justice

3) Interview with DPFH Executive Director Carl Bergquist

4) Drug Policy Alliance Amicus Brief filed in Timbs v. Indiana:

5) The Institute for Justice’s Report Card for the Hawai‘i Forfeiture Law (Grade: D+)