



April 15, 2015

The Honorable Chuck Grassley
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Patrick Leahy
Ranking Member, Senate Judiciary Committee
152 Dirksen Senate Office Building
Washington, DC 20510

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Re: ACLU Supports Bipartisan, Bicameral Asset Forfeiture Reform

Dear Chairman Grassley and Ranking Member Leahy:

The American Civil Liberties Union (ACLU) is pleased that the Senate Judiciary Committee is convening today's hearing on "The Need to Reform Asset Forfeiture." We applaud continued bipartisan and bicameral efforts to reform asset forfeiture, which is reflective of the diverse constituency that has serious concerns with the practice.

The ACLU's opposition to civil asset forfeiture is consistent with the organization's nearly 100 year old mission to defend and preserve the individual rights and liberties that the Constitution and the laws of the United States guarantee everyone in this country. As the nation's guardian of liberty, and with more than a million members, activists, and supporters nationwide, the ACLU advances the principle that every individual's rights must be protected equally under the law, regardless of race, religion, gender, sexual orientation, disability, or national origin.

The current federal civil asset forfeiture program undermines civil liberties and violates due process rights. Civil asset forfeiture provides law enforcement with the power to take property from someone who has not been convicted of a crime. Innocent citizens are deprived of their property without due process of law, often without an arrest or a hearing. Property owners bear the burden and the costs of demonstrating a property's "innocence" and in most cases are not entitled to a lawyer.

As outrageous as this sounds, civil asset forfeiture is used by federal, state, and local law enforcement throughout the country. The practice is driven by the billions of dollars it generates annually for law enforcement at all levels because law enforcement is permitted to keep the assets it seizes. As such, it has been appropriately called “policing for profit” by the Institute for Justice and a “system of legal thievery” in *The Des Moines Register*. Since 2008, state and local police have made more than 55,000 seizures of cash and property worth \$3 billion dollars with the help of the federal government.¹

Far greater than these billions, however, is the price that people pay when their homes, businesses, cars, cash, and other property have been seized. Civil asset forfeiture has long been used to carry out the ineffective and abusive War on Drugs. Just as the War on Drugs disproportionately impacts people and communities of color, so has civil asset forfeiture. For decades, Blacks and Latinos have had their property seized based on mere suspicion of drug activity as a consequence of racial profiling. In the 1990’s, in one Florida county, 90% of the drivers from whom cash was confiscated without arrest were Black or Latino.²

In response to such suspicionless seizures, the ACLU supported efforts that resulted in the Civil Asset Forfeiture Reform Act of 2000. We found that in “traffic stops, airport searches, and drug arrests . . . minorities are hardest hit.”³ This continues to be the case more than a decade later. In 2012, the ACLU settled a lawsuit on behalf of African American and Latino drivers in two East Texas counties where police seized \$3 million dollars between 2006 and 2008. None of these people were ever arrested or charged with a crime.⁴ And had it not been for the ACLU’s intervention, these drivers with low and modest incomes would have never seen justice. Very few people have the resources to take on the government, especially when the deck is stacked against property owners as it is in civil asset forfeiture cases.

Civil asset forfeiture is also fueling police militarization, another byproduct of the War on Drugs. Police departments are able to purchase military weapons and equipment using the profits they reap from forfeitures. They can do so with little oversight or accountability. In one Georgia town, police used forfeiture funds to purchase a \$230,000 armored personnel carrier. Across the country, police have spent more than \$175 million

¹ Robert O’Harrow, Jr., Sari Horwitz, and Steven Rich, Holder limits seized-asset sharing process that splits billions with local, state police, WASH. POST (Jan. 16, 2015), http://www.washingtonpost.com/investigations/holder-ends-seized-asset-sharing-process-that-split-billions-with-local-state-police/2015/01/16/0e7ca058-99d4-11e4-bcfb-059ec7a93ddc_story.html.

² Jeff Brazil and Steve Berry, Tainted cash or easy money?, ORLANDO SENTINEL (June 14, 1992), http://articles.orlandosentinel.com/1992-06-14/news/9206131060_1_seizures-kea-drug-squad.

³ Letter from the ACLU and NAACP to the U.S. House of Representatives on the Civil Asset Forfeiture Reform Act of 1999 (June 10, 1999), available at <https://www.aclu.org/racial-justice/letter-house-civil-asset-forfeiture-act-1999>.

⁴ Press Release, ACLU Announces Settlement in “Highway Robbery” Cases in Texas (Aug. 3, 2012), <https://www.aclu.org/criminal-law-reform/aclu-announces-settlement-highway-robbery-cases-texas>.

on weaponry with funds acquired through federal and local partnering on civil asset forfeiture.⁵

A federal legislative response to civil asset forfeiture, like the Fifth Amendment Integrity Restoration (FAIR) Act, is necessary. The FAIR Act responds to community concerns by addressing three aspects of the civil asset forfeiture program. First, it eliminates the profit incentives driving civil asset forfeiture at all levels by ending federal and state/local partnerships known as “equitable sharing” that have been used to circumvent state civil forfeiture reforms. It also tackles the perverse profit incentives by sending forfeiture proceeds to the U.S. Treasury’s General Fund for congressional spending on any purpose instead of to the Department of Justice (DOJ) Asset Forfeiture Fund that pads only the DOJ budget.

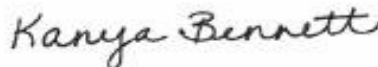
The second thing the FAIR Act does is increase the burden of proof from a “preponderance of the evidence” to “clear and convincing evidence” before the government can take someone’s property believed to be connected to a crime. And finally, the FAIR Act provides property owners with the right to counsel in all civil forfeiture proceedings. As a result, the FAIR Act reforms should help minimize civil asset forfeiture’s disproportionate impact on people of color and low-income people.

This hearing is an important first step in addressing the problems with civil asset forfeiture. We now encourage you to advance bicameral and bipartisan reform legislation. If you have any questions or comments, please feel free to contact Kanya Bennett, Legislative Counsel, phone: (202) 715-0808 or email: kbennett@aclu.org.

Sincerely,



Michael W. Macleod-Ball
Acting Director



Kanya Bennett
Legislative Counsel

cc: Members of the U.S. Senate Judiciary Committee

⁵ Nick Sibilla, Federal forfeiture program: what’s it funding?, FORBES (Oct. 22, 2014), <http://www.forbes.com/sites/instituteforjustice/2014/10/22/how-civil-forfeiture-fuels-police-militarization-and-lets-cops-buy-sports-cars-and-hire-clowns/>.