



February 11, 2015

The Honorable Jim Sensenbrenner
Chairman, House Judiciary Crime Subcommittee
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable Sheila Jackson Lee
Ranking Member, House Judiciary Crime Subcommittee
B-351 Rayburn House Office Building
Washington, DC 20515

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Re: ACLU Endorsement of the Fifth Amendment Integrity Restoration (FAIR) Act

Dear Chairman Sensenbrenner and Ranking Member Jackson Lee:

The American Civil Liberties Union (ACLU) is pleased that the House Judiciary Crime Subcommittee is convening today's hearing on Federal Asset Forfeiture: Uses and Reforms. As the Subcommittee considers reforms to civil asset forfeiture, the ACLU would like to highlight its support of the Fifth Amendment Integrity Restoration (FAIR) Act offered by Representative Tim Walberg (R-MI) and Senator Rand Paul (R-KY).

These bipartisan bills (H.R. 540 and S. 255) are consistent with the ACLU'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 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. 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 on weaponry with funds acquired through federal and local partnering on civil asset forfeiture.⁵

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>.

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/>.

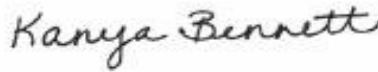
The FAIR Act responds to community concerns by addressing three aspects of the civil asset forfeiture program. First, it eliminates the profit incentives driving civil asset forfeiture at all levels by ending federal and state/local partnerships known as “equitable sharing” that have been used to circumvent 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. Second, the legislation increases 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. 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 the current civil asset forfeiture program. We encourage Members of Congress to support the FAIR Act as part of any federal reform effort. 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: Chairman Robert W. Goodlatte, U.S. House Judiciary Committee
Ranking Member John Conyers, Jr., U.S. House Judiciary Committee
Members of the U.S. House Judiciary Committee