



March 16, 2017

The Honorable Rand Paul
167 Russell Senate Office Building
Washington, DC 20510

The Honorable Tim Walberg
2436 Rayburn House Office Building
Washington, DC 20515

AMERICAN CIVIL
LIBERTIES UNION
WASHINGTON
LEGISLATIVE OFFICE
915 15th STREET, NW, 6TH FL
WASHINGTON, DC 20005
T/202.544.1681
F/202.546.0738
WWW.ACLU.ORG

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

Dear Senator Paul and Representative Walberg:

FAIZ SHAKIR
DIRECTOR

The American Civil Liberties Union (ACLU) is pleased to support the Fifth Amendment Integrity Restoration (FAIR) Act, comprehensive civil forfeiture reform legislation.

NATIONAL OFFICE
125 BROAD STREET, 18TH FL.
NEW YORK, NY 10004-2400
T/212.549.2500

These bipartisan bills 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 two 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.

OFFICERS AND DIRECTORS
SUSAN N. HERMAN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

ROBERT REMAR
TREASURER

Current federal civil forfeiture laws undermine civil liberties and violate due process rights. Civil forfeiture provides law enforcement with the power to seize and take property from someone who has not been convicted of a crime. Property owners who challenge a seizure 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 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 with the help of the federal government.¹ Between 2000 and 2013, the Department of Justice (DOJ) paid state and local law enforcement \$4.7 billion dollars in forfeiture proceeds.² DOJ's Asset Forfeiture Fund took in \$4.5 billion dollars in 2014 alone.³

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 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 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.⁴

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."⁵ This continues to be the case more than a decade later. In 2015, in Philadelphia, the ACLU found 71% of people whose cash is seized through civil forfeiture are Black.⁶ In 2012, in East Texas, the ACLU settled a lawsuit on behalf of African American and Latino drivers in two counties where police seized \$3 million dollars between 2006 and 2008. None of these people were ever arrested or charged with a crime.⁷ 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 forfeiture cases.

Civil 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,

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 Institute for Justice, POLICING FOR PROFIT: THE ABUSE OF CIVIL ASSET FORFEITURE, 2ND EDITION (Nov. 2015), <http://ij.org/wp-content/uploads/2015/11/policing-for-profit-2nd-edition.pdf>.

³ *Id.*

⁴ 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.

⁵ 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>.

⁶ ACLU of PA, GUILTY PROPERTY: HOW LAW ENFORCEMENT TAKES \$1 MILLION IN CASH FROM INNOCENT PHILADELPHIANS EVERY YEAR – AND GETS AWAY WITH IT (June 2015), https://www.aclupa.org/files/3214/3326/0426/Guilty_Property_Report_-_FINAL.pdf.

⁷ 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>.

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 forfeiture.⁸

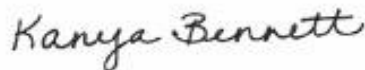
The FAIR Act responds to the public's concerns by addressing three aspects of current federal civil forfeiture laws. First, it eliminates the profit incentives driving civil forfeiture at all levels by ending federal and state/local partnerships known as "equitable sharing" that have been used to circumvent 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 as opposed to DOJ's Asset Forfeiture Fund which 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 forfeiture's disproportionate impact on people of color and low-income people.

Again, the ACLU is pleased to support the Fifth Amendment Integrity Restoration (FAIR) Act. We encourage other Members of Congress to support the FAIR Act and look forward to working with you to advance this 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,



Faiz Shakir
National Political Director



Kanya Bennett
Legislative Counsel

cc: Chairman Chuck Grassley, U.S. Senate Judiciary Committee
Ranking Member Dianne Feinstein, U.S. Senate Judiciary Committee
Chairman Robert W. Goodlatte, U.S. House Judiciary Committee
Ranking Member John Conyers, Jr., U.S. House Judiciary Committee
Members of the U.S. Senate Judiciary Committee
Members of the U.S. House Judiciary Committee

⁸ 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/>.