

April 14, 2015

The Honorable Chuck Grassley
Chairman
Senate Judiciary Committee
Washington, DC 20510

The Honorable Patrick Leahy
Ranking Member
Senate Judiciary Committee
Washington, DC 20510

The Honorable Bob Goodlatte
Chairman
House Judiciary Committee
Washington, DC 20515

The Honorable John Conyers, Jr.
Ranking Member
House Judiciary Committee
Washington, DC 20515

RE: Statement of Principles Necessary for Achieving Effective Federal Forfeiture Reform

Dear Chairman Grassley, Ranking Member Leahy, Chairman Goodlatte and Ranking Member Conyers:

On behalf of the 24 undersigned organizations, representing the interests of criminal justice reform, civil and human rights, faith, business, and community, we wish to thank you for the attention you have paid to civil asset forfeiture and your commitment to reform. Current federal forfeiture laws create a financial incentive to pursue profit over the fair administration of justice, facilitate the circumvention of state laws intended to protect citizens from abuse, encourage the violation of due process and property rights of Americans, and disproportionately impact people of color and those with modest means. We urge you to support civil forfeiture reform that will effectively address defects in current law and procedures that have become serious threats to the rights of property owners.

As you build upon the bipartisan support in Congress for reform, we ask that you advance federal forfeiture reforms that embrace the following actions and principles:

Restore congressional oversight and eliminate profit incentives for forfeiture funds

Federal forfeiture reform should restore congressional oversight and control over forfeiture proceeds by directing those proceeds to the Department of Treasury's General Fund. Barring this reform, Congress should direct forfeiture proceeds toward programs that would not perpetuate improper forfeiture-related incentives. Whereas federal, state and local law enforcement agencies had no real financial incentive to engage in forfeiture prior to the creation of civil asset forfeiture funds within the Department of Justice and Department of Treasury in 1984, the creation of these funds encourages forfeitures by allowing both agencies to retain these proceeds for their own use. Congress should restructure how forfeiture proceeds are deposited and allocated by the government with an eye toward restoring oversight of proceeds and eliminating improper incentives that are created when government agencies maintain control over forfeiture funds for law enforcement use.

Respect federalism principles and eliminate equitable sharing

Congress should end the federal Equitable Sharing Program. This program violates federalism principles and erodes state-level protections. Although Attorney General Eric Holder recently implemented a new policy that limits the ability of federal agencies to adopt some forfeiture cases from state and local law enforcement agencies, the new policy does not apply to the overwhelming number of seizures that result from joint state and federal investigations or involve a federal seizure warrant. This change in Department of Justice policy may be a step in the right direction, but it still does not resolve the improper financial incentives and federalism issues inherent in the Equitable Sharing Program.

Advance due process and protect property owners in forfeiture proceedings

Federal law favors the government over property owners in civil forfeiture proceedings. Congress should boost the legal rights granted to property owners in these proceedings, including individuals who have no recourse to challenge a wrongful seizure. Currently, indigent claimants are entitled access to counsel only when the individual's primary residence is in jeopardy of being forfeited. All individuals whose rights are affected by any threatened forfeiture should have recourse to counsel.

Furthermore, property owners currently must prove their own innocence to get their property back—turning the presumption of innocence on its head. Congress should strengthen protections for property owners by shifting the burden to the government to prove that an owner was aware that his or her property was being used in criminal activity.

Moreover, the government is currently only required to meet a “preponderance of the evidence” standard when demonstrating the “guilt” of the property involved in a civil forfeiture case. However, in a criminal case, the government must prove “beyond a reasonable doubt” the guilt of the individual who will lose their freedom. The government should be required to meet a similarly high burden to deprive a person of their property. At a minimum, Congress should raise the standard of proof the government must meet to seize property to “clear and convincing.”

Finally, as a result of the Supreme Court's decision in *Kaley v. U.S.*, defendants are not entitled to a pretrial hearing on the seizure of funds necessary to retain counsel of their choice or pay for basic necessities of life. Forfeiture reform should repair the promise of the Fifth Amendment right to due process and the Sixth Amendment right to counsel by guaranteeing defendants a right to such a hearing.

These procedural reforms will improve due process protections and protect property rights.

Protect innocent business owners subjected to forfeiture

Congress should end the use of civil forfeiture proceedings in structuring cases where funds cannot be tied to illegal activity or are not derived from an illegal source. The IRS and other federal agencies should be required to prove that cash and other property is connected to illegal activity or derived from an illegal source that is separate and apart from a federal structuring

offense. The law has ensnared a diverse array of small businesses that deal primarily in cash transactions. Even if a reputable business owner structured their deposits, they should not be deprived of their lawfully earned funds. Attorney General Eric Holder recently implemented a new policy that limits the government's pursuit of structuring offenses to illegal-source cases where funds were derived from or used for illegal activity, but this new policy reserves significant discretion to federal officials and could be reversed by a future administration. Ultimately, Congress must ensure that these policy changes are made permanent through statute.

Property rights and due process are fundamental American principles. Congress has an enormous opportunity to address civil forfeiture abuses that undermine property rights, due process, and economic freedom. We hope you agree that adoption of our principles would not interfere with the authority or recourse of federal, state, and local law enforcement to pursue property obtained through unlawful means.

Thank you for your commitment to reform and for considering our views and requests. We stand ready to assist you and your staff, and are available to answer any questions you may have. Please feel free to contact Darpana Sheth, Attorney, Institute for Justice at dsheth@ij.org or 703-682-9320; Kanya Bennett, Legislative Counsel, ACLU at kbennett@aclu.org or 202-715-0808; or Grant Smith, Deputy Director, Drug Policy Alliance at gsmith@drugpolicy.org or 202-683-2984.

Sincerely,

American Civil Liberties Union

American Conservative Union Foundation

Americans for Tax Reform

Call to Do Justice

Campaign for Liberty

Citizens Opposing Prohibition

Clergy for a New Drug Policy

CURE

Disciples Justice Action Network

DKT Liberty Project

Drug Policy Alliance

Families for Justice as Healing

FedCURE

Institute for Justice

The Leadership Conference on Civil and Human Rights

Marijuana Policy Project

NAACP

National African American Drug Policy Coalition

National Association of Criminal Defense Lawyers

National Association of Social Workers

National LGBTQ Task Force Action Fund

Prison Policy Initiative

StoptheDrugWar.org

T'ruah: The Rabbinic Call for Human Rights

CC: Senate Judiciary Committee Members and House Judiciary Committee Members