



May 4, 2023

Chairman Jim Jordan  
Ranking Member Jerrold Nadler  
House Judiciary Committee  
2138 Rayburn House Office Building  
Washington, D.C. 20515

**RE: H.R. 1525, the FAIR Act (Civil Asset Forfeiture Reform)**

Dear Chairman Jordan and Ranking Member Nadler,

On behalf of the undersigned organizations dedicated to the protection of civil liberties and property rights, we ask that you support H.R. 1525, the Fifth Amendment Integrity Restoration Act (FAIR Act), a bill that will reform our federal civil asset forfeiture system. We greatly appreciate that each of you has cosponsored the FAIR Act in prior Congresses, and urge you to work to ensure that it now becomes law.

The FAIR Act is necessary because the current law of civil asset forfeiture allows the federal government to seize—and keep—cash, cars, homes and other property that law enforcement merely *suspects* is related to criminal activity. The government need not ever charge the property owner with a crime, much less secure a conviction, for it to seek forfeiture, and the procedural deck is stacked against private citizens who challenge the government. This

system is unjust on its face, has a disproportionate impact on poor and otherwise disadvantaged communities, and undermines public respect for law enforcement.

Why does law enforcement use civil asset forfeiture? Quite simply, it has a strong financial incentive to do so. In the federal system and in most states, the property that is seized and forfeited does not go to the general treasuries, to be spent as legislative bodies determine pursuant to law, but instead is kept by the law enforcement agencies themselves.<sup>1</sup>

The FAIR Act attacks this improper financial incentive in two important ways. First, it directs all federal forfeiture proceeds to the General Fund of the U.S. Treasury so that Congress can appropriate those monies as it sees fit. Second, the bill ends the “equitable sharing” program that enables state and local law enforcement to evade their state legislatures’ limits on state-level forfeiture—limits that may include, for example, higher burdens of proof, more equitable procedural rules, or a requirement that proceeds go only to the general treasury—by “partnering” with federal law enforcement in exchange for a “cut” of forfeiture proceeds. The FAIR Act will close this loophole that undermines hard-won state legislative reforms.

The financial incentives embedded in today’s civil asset forfeiture system are the most important problem to address, but the FAIR Act also makes significant procedural reforms at the federal level. Foremost, it ends administrative forfeiture proceedings. Today, more than 80% of federal forfeitures are finalized through an administrative process in which the same agency that seized the property acts as judge and jury if the property owner challenges the forfeiture.<sup>2</sup> These administrative forfeitures are not decided by administrative law judges but are typically handled by the agency’s office of forfeiture counsel, which has a vested interest in their outcome. The FAIR Act ensures that property owners have their day in a *real* court with a neutral judge.

Further procedural changes will also protect the public. Given the difficulty property owners face when navigating the federal civil asset forfeiture regime, the bill will guarantee the right to counsel during federal civil forfeiture proceedings. It also requires the federal government to prove by clear and convincing evidence (as opposed to mere preponderance of the evidence) that the property is related to a crime. Finally, innocent owners of property used *by another person* to allegedly commit a crime will not have to prove their own innocence to recover their seized property; instead, the government will be required to show that the property owner knew or should have known about the alleged unlawful use by that third party and failed to take steps to prevent it.

It is also very important to emphasize what the FAIR Act does *not* do. Law enforcement can continue seizing property based on probable cause; these reforms only address what happens when the government seeks to *keep* the property through civil forfeiture. The FAIR Act does not prevent state and local law enforcement from using their own state-level civil asset forfeiture laws, as long as they adhere to the procedures that those states’ legislatures have enacted. Neither does the FAIR Act touch *criminal* asset forfeiture—forfeitures made *after* a criminal conviction relating to the use of the seized property.

One defense of civil forfeiture is the vague claim that its use helps crimefighting, but the evidence for this claim is lacking. The Department of Justice’s own Inspector General has found

---

<sup>1</sup> For a state-by-state analysis of civil forfeiture laws, see *Policing for Profit: The Abuse of Civil Asset Forfeiture (3rd Edition)* (Dec. 2020), available at <https://ij.org/report/policing-for-profit-3/>.

<sup>2</sup> See *Policing for Profit*, supra n. 1, at pp. 24-26.

that the department does not track how forfeitures might be linked to criminal prosecutions.<sup>3</sup> At the state level, recent research demonstrates that crime rates did not increase and arrest rates did not drop in New Mexico after that state abolished civil forfeiture in 2015.<sup>4</sup> In addition, Prof. Brian D. Kelly conducted the first-ever multistate study of the impact of civil forfeiture and found that there are no data supporting the argument that its use decreases crime, and ample evidence that its primary purpose is to generate revenue.<sup>5</sup>

Finally, we are confident the public will support you in this reform effort. In a September 2020 national survey, respondents opposed any use of civil forfeiture as currently practiced, by a margin of 59% to 25%.<sup>6</sup> Moreover, 63% of respondents oppose allowing law enforcement agencies to keep forfeiture proceeds for their own use, and 69% oppose allowing state law enforcement to use the equitable sharing program to evade state restrictions.<sup>7</sup>

For further information from any of our organizations, including legal briefs, economic studies, state-by-state analysis, and constituent contacts, please direct your questions through Dan Alban, Senior Attorney and Co-Director of the National Initiative to End Forfeiture Abuse at the Institute for Justice, at [dalban@ij.org](mailto:dalban@ij.org). He will ensure that you reach the appropriate expert in each of our organizations.

Sincerely,

Institute for Justice  
American Civil Liberties Union  
Americans for Prosperity  
Competitive Enterprise Institute  
Drug Policy Alliance  
Due Process Institute  
Goldwater Institute  
Law Enforcement Action Partnership

Leadership Conference on Civil and Human Rights  
NAACP  
National Association of Criminal Defense Lawyers  
National Federation of Independent Business  
National Motorists Association  
National Taxpayers Union  
R Street Institute

---

<sup>3</sup> See DOJ OIG, *Review of the Department's Oversight of Cash Seizure Case and Forfeiture Activities*, (Mar. 2017), at p. 16, available at <https://www.oversight.gov/sites/default/files/oig-reports/e1702.pdf>.

<sup>4</sup> See *Policing for Profit*, supra n. 2, at pp. 32-33.

<sup>5</sup> Prof. Brian D. Kelly, *Does Forfeiture Work: Evidence from the States* (Feb. 2021), available at <https://ij.org/wp-content/uploads/2021/02/does-forfeiture-work-web.pdf>.

<sup>6</sup> Institute for Justice/YouGov poll, September 2020, available at <https://ij.org/wp-content/uploads/2020/11/Results-for-Institute-for-Justice-Civil-Forfeiture-245-9.30.2020-1-Civil-Forfeiture-2.pdf>.

<sup>7</sup> Id. A 2018 IJ-YouGov poll showed similar results. See <https://ij.org/press-release/new-poll-76-of-americans-more-likely-to-vote-for-candidates-who-back-forfeiture-reform/>.