

## **H.R. 5502 The Fifth Amendment Integrity Restoration Act**

*Introduced by Congressmen*

*Scott Garrett (R-NJ) & Tony Cardenas (D-CA)*

Federal civil forfeiture laws stack the deck against innocent property owners by (1) imposing a low burden on the government to forfeit seized property and (2) improperly requiring owners of seized property to prove their innocence to get it back.

### **The FAIR Act would protect the rights of property owners and restore the Fifth Amendment's role in civil forfeiture proceedings.**

- **Innocent Until Proven Guilty:** Under current law, federal law enforcement agencies may take property suspected of involvement in crime without ever charging, let alone convicting, the property owner of a crime—even when that property was used unlawfully by a third party without the property owner's consent. It is then up to the property owner to prove his innocence to get the property back. The FAIR Act would restore the American principle of innocent until proven guilty by placing on the government the burden to show that a property owner consented to his property being used in a crime by a third party (or that the property owner was willfully blind to the criminal activity).
- **Clear and Convincing Evidence:** Under current law the government need only prove by a preponderance of the evidence that a defendant's property was used for an illegal purpose to forfeit the property. This is a very easy standard for the government to meet and does not adequately protect the rights of innocent property owners. The FAIR Act would require that the government prove its case by the higher standard of clear and convincing evidence.
- **Eliminating Equitable Sharing:** The federal equitable sharing program allows state law enforcement officers to turn seized property over to federal officials for forfeiture—and get up to 80% of the proceeds of the forfeited property. State law enforcement agencies routinely use the equitable sharing program to do an end-run around state civil forfeiture reforms, which require proceeds of forfeiture to go to state general funds or prohibit civil forfeiture in various circumstances. Under the FAIR Act, a state's law enforcement agencies may not subvert their own state law in civil forfeiture actions.
- **Removing the Profit Incentive:** Law enforcement should be motivated by public safety, not financial rewards. In 1986, Congress provided a direct financial incentive to law enforcement agencies to engage in forfeiture by allowing agencies to keep most of the property they forfeit. The result has been an explosion in the number of forfeitures and predictable cases of innocent property owners losing their property. The FAIR Act would restore the rule in which the proceeds of forfeiture go to the Treasury's General Fund, where Congress can appropriate the money for any purpose.