



April 30, 2015

Representative Tim Walberg  
2436 Rayburn House Office Building  
Washington, DC 20515

Senator Rand Paul  
167 Russell Senate Office Building  
Washington, DC 20510

Representative Keith Ellison  
2263 Rayburn House Office Building  
Washington, DC 20515

Representative Tony Cardenas  
1510 Longworth House Office Building  
Washington, DC 20515

Dear Congressmen and Senator,

On behalf of the National Federation of Independent Business (NFIB), the nation's leading small business advocacy organization, I am writing in support of H.R. 540 and S. 255, the Fifth Amendment Integrity Restoration Act, or FAIR Act.

In the most recent NFIB federal ballot (finalized April 2015), 92 percent of small business owners agree that Congress should require law enforcement to provide a judge with clear and convincing evidence of a crime before seizing a small business' assets. The FAIR Act would accomplish this, while further protecting small business owners.

First, the legislation would reform the "innocent owner defense" by placing the burden of proof on the government, rather than the small business owner. Currently, law enforcement routinely confiscates property – including cash and bank accounts – and keeps the property without charging the owner with a crime. A small business owner who finds him/herself in this position is forced to spend a significant amount of resources proving his/her innocence to re-take possession of his/her property. Under the FAIR Act, law enforcement would be required to first show that the property owner knew of the crime, or was willfully blind, before the property could be seized.

Second, the FAIR Act would raise the standard of proof the government must show from "preponderance of the evidence" to "clear and convincing." The preponderance standard is a low hurdle for the government to clear and does not adequately protect small business owners who are wrongly targeted. The clear and convincing standard would raise the burden of proof for law enforcement and thereby greater protects innocent small business owners.

Additionally, small business owners rarely have in-house legal counsel. This bill would appropriately provide them legal representation in all civil forfeiture proceedings. The FAIR Act would also reduce any profit incentive for law enforcement to unjustly target small business owners and their property. Instead of padding law enforcement budgets, the FAIR Act would direct the proceeds of civil forfeiture to the U.S. Treasury's General Fund.

While small business owners were encouraged to see former Attorney General Eric Holder restrict part of the federal civil forfeiture program, Congress must still act. Without passage of the FAIR Act, any future attorney general could reinstitute, or even expand, the civil forfeiture program, making small business owners further vulnerable. Too many small business owners have been unreasonably targeted by authorities using the civil forfeiture program. The FAIR Act would make the civil forfeiture program more transparent, reduce the law enforcement's profit incentives and make for greater oversight.

We look forward to working with you on this measure to protect small business as the 114<sup>th</sup> Congress moves forward.



Amanda Austin  
Vice President  
Public Policy