

May 24, 2016

The Honorable Robert W. Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington D.C. 20515

The Honorable John Conyers, Jr.
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington D.C. 20515

Re: H.R. 5283 (the Due Process Act of 2016)

Dear Chairman Goodlatte and Ranking Member Conyers:

We understand that the Committee will soon consider legislation to reform legal processes under federal civil asset forfeiture law. On behalf of the American Bar Association (ABA), I write to express our strong support for the Deterring Undue Enforcement by Protecting Rights of Citizens from Excessive Seizures Act (H.R. 5283, or Due Process Act) and to urge members of the House Judiciary Committee to promptly approve the bill.

We commend Crime Subcommittee Chair Jim Sensenbrenner, Ranking Member Conyers, Chairman Goodlatte, and Crime Subcommittee Ranking Member Sheila Jackson Lee for the bipartisan negotiations that have resulted in a consensus bill to reform federal civil asset forfeiture laws. The Due Process Act will provide key protections to innocent persons whose property is seized. It represents the most significant major reform of federal forfeiture laws since 2000, when Congress passed the Civil Asset Forfeiture Reform Act.

The 2000 Act legislation initially contained a provision strongly supported by the ABA to raise the standard of proof the government is required to establish in order to seize civil assets to “clear and convincing” evidence. However, during the legislative process that standard was dropped to the lowest standard in civil proceedings, “preponderance of the evidence.” Since 2000 the value of seizures subjected to federal forfeiture has exploded from \$313 million to more than \$1 billion in 2013. Federal forfeiture laws have come under scrutiny following a series of investigatory reports by the *Atlantic Magazine* and *Washington Post* and hearings in both the House and Senate Judiciary Committees that documented widespread abuses under current law and the lack of fundamental due process afforded persons whose property has been seized.

The Due Process Act would raise the evidentiary standard in federal forfeiture cases to “clear and convincing evidence,” requiring that the government meet a significantly higher standard of proof. It would also provide for appointment of counsel to indigent property owners, institute a new early hearing process, allow for easier recovery of legal fees if the property owner is successful in the case, and codify the Department of Justice’s recent administrative changes to its civil asset forfeiture guidelines.

The ABA recognizes and supports the use of forfeiture as a valuable tool in fighting crime. But we have strong and growing concerns about the excessive and too-often unwarranted use of forfeiture against innocent property owners. The Due Process Act is an important, bipartisan step to address these problems and will significantly strengthen federal due process protections for innocent persons whose property is subject to civil seizure. We urge the Committee to approve the Due Process Act without weakening amendments so that it may soon be considered by the full House and enacted into law this year.

Sincerely,

A handwritten signature in black ink, reading "Thomas M. Susman". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Thomas M. Susman
Director, ABA Governmental Affairs Office

cc: Members of the Committee