then we will resolve these outstanding issues. Everyone has spoken in the spirit of compromise. The question that this motion poses is which road we will take. Are we going to engage in serious, sincere negotiation which will result in a bill in a week or so or an insincere process that will lead to the finger-pointing that will be inevitable with a veto?

I urge my colleagues to support the motion to instruct.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. PEASE). Without objection, the previous question is ordered on the motion to instruct.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to instruct offered by the gentleman from Michigan (Mr. CONYERS).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. CONYERS. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 426, nays 0, not voting 8, as follows:

[Roll No. 253]

YEAS—426

Abercrombie
Ackerman
Aderholt
Allen
Andrews
Archer
Armey
Bachus
Baird
Baker
Baldacci
Baldwin
Ballenger
Barcia
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bass
Bateman
Becerra
Bentsen
Bereuter
Berkley
Berman
Berry
Biggert
Bilbray
Bilirakis
Bishop
Blagojevich
Bliley
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonior
Bono
Borski
Boswell
Boucher
Boyd
Brady (PA)
Brady (TX)
Brown (FL)
Brown (OH)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cannon
Capps
Capuano
Cardin
Carson
Castle
Chabot
Chambliss
Chenoweth
Clay
Clayton
Clyburn
Coble
Coburn
Collins
Combest
Condit
Conyers
Cook
Cooksey
Costello
Cox
Coyne
Cramer
Crane
Crowley
Cubin
Cummings
Cunningham
Danner
Davis (FL)
Davis (IL)
Davis (VA)
Deal
DeFazio
DeGette
Delahunt
DeLauro
DeMint
Deutsch
Diaz-Balart
Dickey
Dicks
Dingell
Dixon
Doggett
Dooley
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Ewing
Farr
Fattah
Filner
Fletcher
Foley
Forbes
Ford
Fossella
Fowler
Frank (MA)
Franks (NJ)
Frelinghuysen
Frost
Gallegly
Ganske
Gejdenson
Gekas
Gephardt
Gibbons
Gillmor
Gilman
Gonzalez
Goode
Goodlatte
Goodling
Gordon
Goss
Graham
Granger
Green (TX)
Green (WI)
Greenwood
Gutierrez
Gutknecht
Hall (OH)
Hall (TX)
Hansen
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill (IN)
Hill (MT)
Hilleary
Hilliard
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Hooley
Horn
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hutchinson
Hyde
Inslee
Isakson
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Kelly
Kennedy
Kildee
Kilpatrick
Kind (WI)
King (NY)
Kingston
Kleczka
Klink
Knollenberg
Kolbe
Kucinich
Kuykendall
LaFalce
LaHood
Lampson
Lantos
Largent
Larson
Latham
LaTourette
Lazio
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Luther
Maloney (CT)
Maloney (NY)
Manzullo
Markey
Martinez
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCrery
McDermott
McGovern
McHugh
McInnis
McIntosh
McIntyre
McKeon
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Metcalf
Mica
Millender-McDonald
Miller (FL)
Miller, Gary
Miller, George
Minge
Mink
Moakley
Mollohan
Moore
Moran (KS)
Moran (VA)
Morella
Murtha
Myrick
Nadler
Napolitano
Neal
Nethercutt
Ney
Northup
Norwood
Nussle
Oberstar
Obey
Olver
Ortiz
Ose
Owens
Oxley
Packard
Pallone
Pascrell
Pastor
Paul
Payne
Pease
Pelosi
Peterson (MN)
Peterson (PA)
Petri
Phelps
Pickering
Pickett
Pitts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Quinn
Radanovich
Rahall
Ramstad
Rangel
Regula
Reyes
Reynolds
Riley
Rivers
Rodriguez
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Rothman
Roukema
Roybal-Allard
Royce
Rush
Ryan (WI)
Ryun (KS)
Sabo
Salmon
Sanchez
Sanders
Sandlin
Sanford
Sawyer
Saxton
Scarborough
Schaffer
Schakowsky
Scott
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shows
Shuster
Simpson
Sisisky
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Souder
Spence
Spratt
Stabenow
Stark
Stearns
Stenholm
Strickland
Stump
Stupak
Sununu
Sweeney
Talent
Tancredo
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Thune
Thurman
Tiahrt
Tierney
Toomey
Traficant
Turner
Udall (CO)
Udall (NM)
Upton
Velazquez
Vento
Visclosky
Vitter
Walden
Walsh
Wamp
Waters
Watkins
Watt (NC)
Watts (OK)
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Weygand
Whitfield
Wicker
Wilson
Wise
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NOT VOTING—8

Brown (CA)
Clement
DeLay
Ehrlich
Gilchrest
Kasich
Rogan
Towns

□ 1343

So the motion to instruct was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore (Mr. PEASE). Without objection, the Chair appoints the following conferees:

From the Committee on the Judiciary, for consideration of the House bill and the Senate amendment, and modifications committed to conference:

Messrs. HYDE, SENSENBRENNER, GOODLATTE, CONYERS, and Ms. LOFGREN.

From the Committee on Commerce, for consideration of section 18 of the Senate amendment, and modifications committed to conference:

Messrs. BLILEY, OXLEY, and DINGELL.

There was no objection.

PROVIDING FOR CONSIDERATION OF H.R. 1658, CIVIL ASSET FORFEITURE REFORM ACT

Ms. PRYCE of Ohio. Mr. Speaker, by the direction of the Committee on Rules, I call up House Resolution 216 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 216

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 1658) to provide a more just and uniform procedure for Federal civil forfeitures, and for other purposes. The first reading of the bill shall be dispensed with. All points of order against consideration of the bill are waived. General debate shall be confined to the bill and shall not exceed one hour equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary. After general debate the bill shall be considered for amendment under the five-minute rule. It shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule an amendment in the nature of a substitute consisting of the bill modified by the amendment recommended by the Committee on the Judiciary now printed in the bill. Each section of that amendment in the nature of a substitute shall be considered as read. Before consideration of any other amendment it shall be in order to consider the amendment printed in the report of the Committee on Rules accompanying this resolution, which may be offered only by Representative Hyde or his designee, may amend portions of the bill not yet read for amendment, and shall be considered as read. No further amendment to the amendment in the nature of a substitute made in order as original text shall be in order except those printed in the portion of the Congressional Record designated for that purpose in clause 8 of rule XVIII and except pro forma amendments for the purpose of debate. Each amendment so printed may be offered only by the Member who caused it to be printed or his designee and shall be considered as read. The chairman of the Committee of the Whole may: (1) postpone until a time during further consideration in the

Committee of the Whole a request for a recorded vote on any amendment; and (2) reduce to five minutes the minimum time for electronic voting on any postponed question that follows another electronic vote without intervening business, provided that the minimum time for electronic voting on the first in any series of questions shall be 15 minutes. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. Any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the amendment in the nature of a substitute made in order as original text. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

□ 1345

The SPEAKER pro tempore (Mr. PEASE). The gentlewoman from Ohio (Ms. PRYCE) is recognized for 1 hour.

Ms. PRYCE of Ohio. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentlewoman from New York (Ms. SLAUGHTER), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, House Resolution 216 is a modified, open rule providing for the consideration of H.R. 1658, the Civil Asset Forfeiture Reform Act.

The Committee on the Judiciary reported the bill by a bipartisan vote of 27-to-3, which demonstrates the broad support this legislation has garnered across the ideological spectrum.

The list of organizations that have endorsed H.R. 1658 ranges from the Eagle Forum, Americans for Tax Reform, and the NRA, to the National Association of Criminal Defense Lawyers, the American Bar Association, and the ACLU.

Despite this broad support, there are some who feel that this legislation may go too far, and the rule accommodates these concerns by providing ample opportunity to debate and amend the bill.

Under the rule, 1 hour of general debate will be equally divided among the chairman and ranking minority member of the Committee on the Judiciary. The rule waives all points of order against consideration of the bill and, for the purpose of amendment, the rule makes in order the amendment in the nature of a substitute modified by the amendment recommended by the Committee on the Judiciary, which is now printed in the bill.

First, it will be in order to consider an amendment printed in the Committee on Rules report, which may be offered by the gentleman from Illinois (Mr. HYDE) or his designee.

The Hyde amendment clarifies that the bill applies only to civil asset forfeiture, not criminal asset forfeiture. Few dispute that it is proper for the government to seize the yachts, planes and mansions of convicted drug dealers who finance their possessions with illegal drug money. Therefore, the bill does not alter the law with regard to criminal asset forfeiture.

What H.R. 1658 seeks to address are the abuses of civil asset forfeiture law, where the government can seize the property of a person who may never be accused of any crime or wrongdoing. The Hyde amendment makes the focus of this bill unmistakably clear.

After consideration of the amendment of the gentleman from Illinois (Mr. HYDE), the rule allows the House to debate and vote on any amendment, as long as it has been preprinted in the CONGRESSIONAL RECORD and complies with the Rules of the House.

To ensure the orderly and timely consideration of H.R. 1658, the Chair is given the option of postponing votes and reducing voting time to 5 minutes on postponed questions, as long as the first vote in the series is a 15-minute vote.

Finally, the rule provides the minority with the option of offering a motion to recommit with or without instructions.

Mr. Speaker, American citizens hold dear the protections they are afforded under our Constitution. Sometimes, we take these rights for granted, but we are quick to identify violations of the principles that serve as a foundation of our system of justice and government.

Our current civil asset forfeiture laws, at their core, deny basic due process, and the American people have reason to be both offended and concerned by the abuse of individual rights which happens sometimes under these laws.

Today, the government may seize the assets of any individual if there is probable cause to believe that these assets have been part of some illegal activity. Strange as it may sound, the legal tenet behind this process is that it is the property that is being accused, not the person. That means that even if there is no related criminal charge or extra conviction against the individual, the government may confiscate his or her property. And the current law gives little consideration to whether the forfeiture of the property results in a mere inconvenience to the owner, or jeopardizes the owner's business or very livelihood.

All that is required of the government is a demonstration of probable cause, an unreasonably low standard of proof, given the fundamental property rights at stake. Then the burden shifts to the property owner, who may have done nothing wrong and may have absolutely no knowledge of any crime to prove that his property is not subject to forfeiture.

To reclaim his property, the owner must overcome a number of obstacles that turn the principles of presumed innocence on its head.

To contest a seizure of property, the owner must come up with $5,000 or a 10 percent cost bond, whichever is less. This serves little purpose other than to discourage individuals from seeking justice, and may even preclude low-income folks or those who have been made poor by the seizure of their assets altogether.

Then, if the owner can come up with the money and afford to hire a lawyer, he has the burden of proving, by a preponderance of the evidence, that his property is ''innocent.'' And again, under current law, if the owner succeeds in reclaiming his property, the government owes him nothing for his trouble; no apology, no interest, no compensation, nothing whatsoever.

H.R. 1658 would put into check the possibility of government to unintentionally trample over the rights of innocent citizens in its rightful pursuit of the criminal element in our society.

Again, this bill does nothing to prevent the confiscation of assets owned by convicted criminals. It applies only to civil asset forfeiture in an effort to restore due process for law-abiding citizens who are not accused of doing any wrongdoing.

The bill includes eight reforms to restore fairness to the law.

Under H.R. 1658, if a property owner challenges a seizure, the burden would be placed on the government to prove by clear and convincing evidence that the property is ''guilty'' and is subject to forfeiture. In cases where the confiscation of property imposes substantial hardship on a citizen, judges would have the flexibility to release the property before final disposition of the case. Judges also would be able to appoint counsel for indigent citizens in civil forfeiture proceedings to ensure that the poorest in society are protected from the government's exercise of power. In addition, property owners would no longer have to file a bond, and they could sue if their property is damaged while in the government's possession.

The bill also provides for interest payments to a property owner who is successful in winning his money back.

Other reforms would increase the time period during which a citizen may challenge civil forfeiture and provide a uniform defense for innocent owners who knew nothing of the illegal use of their property or did all that they could reasonably do to prevent it.

Mr. Speaker, these are reasonable reforms that bring the scales of justice closer to balance and to protect the rights of Americans. For those who disagree, the rule provides an opportunity to debate the finer points of the law and amend the legislation, if it is the will of this House.

I look forward to today's debate, and I hope my colleagues will give serious consideration to the fundamental issues of fairness that this legislation embodies. I urge the swift passage of the rule so that the House may proceed with the bill's consideration.

Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I thank my good friend, the gentlewoman from Ohio (Ms. PRYCE) for

yielding me the customary time, and I yield myself such time as I may consume.

(Ms. SLAUGHTER asked and was given permission to revise and extend her remarks.)

Ms. SLAUGHTER. Mr. Speaker, while I generally support this rule, I do not support the requirement that amendments to this bill must be preprinted in the CONGRESSIONAL RECORD. We offered an amendment in the Committee on Rules to delete this provision from the bill, but it was defeated.

I am concerned that there seems to be an increasing pattern on the part of my friends on the Committee on Rules majority to report rules which allow only those amendments which are preprinted. This may be helpful to the committee of jurisdiction in preparing for the floor, but it can be troublesome to the rest of the House Members who are then limited in their opportunities to contribute their ideas to the overall debate. A truly open rules process does not limit the offering of amendments in this way.

The Civil Asset Forfeiture Reform Act, H.R. 1658, gives people whose property has been seized by the Federal Government because of alleged connection to criminal activity improved chances to recover that property.

To some degree, we are today attempting to amend the law of unintended consequences, a law of nature which usually applies in situations where apparent only through the luxury of hindsight.

Civil asset forfeiture in its current form was created to fight the war on drugs. Law enforcement officials have reported that civil asset forfeiture is one of law enforcement's most effective tools and have expressed concern that H.R. 1658 would impair the ability of law enforcement to deprive criminals of the proceeds of their illegal activities, and I hope that an amendment will pass today that will satisfy the concerns of law enforcement.

However, in recent years, many have complained that the government's authority to seize property has been used excessively and has resulted in abuse suffered by innocent property owners.

Civil assets forfeiture differs from criminal assets forfeiture in that criminal forfeitures are part of a criminal proceeding against a defendant, and the verdict of forfeiture is rendered by a court or jury only if a defendant is found guilty of the underlying crime.

In contrast, civil asset forfeiture focuses on property connected to an alleged crime. The government targets the property, and because the property itself is the defendant, the guilt or innocence of the property owner is said to be irrelevant.

This bill requires the government to prove by clear and convincing evidence that the property confiscated was subject to forfeiture because of illegal misuse. Under current law, the burden of proof lies with the person whose property was seized, and the government has only to show probable cause that the property is subject to forfeiture.

Under the bill, an owner would not be required to forfeit property at the time of the illegal conduct if the person did not know of the conduct giving rise to forfeiture; or, if the property owner did all that he reasonably could to keep the property from being used illegally. The bill requires the Federal Government to give 60 days written notice when confiscating private property.

Under the bill, a person would also be entitled to the immediate release of seized property if continued possession by the government would cause substantial hardship, such as preventing the functioning of a business, preventing an individual from working, or leaving an individual homeless.

Moreover, the bill provides financial damages to be paid for the destruction, injury or loss of goods or merchandise while forfeited property is in the government's possession.

As was pointed out during the hearing in the Committee on Rules hearing, this bill is sponsored by the members of the Committee on the Judiciary on both sides of the aisle who often represent divergent points of view. The fact that they are in concert regarding this measure favorably commends it to the House.

Mr. Speaker, I reserve the balance of my time.

Ms. PRYCE of Ohio. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from Arkansas (Mr. HUTCHINSON), a member of the Committee on the Judiciary.

Mr. HUTCHINSON. Mr. Speaker, I thank the gentlewoman for yielding me this time.

I want to express my support for this rule which allows consideration of the base bill, but also a substitute bill that has been offered by myself, the gentleman from New York (Mr. WEINER) and the gentleman from New York (Mr. SWEENEY). This substitute that is being offered is drawn from the provisions of a bill that passed out of the Committee on the Judiciary last year that was supported by both the gentleman from Illinois (Mr. HYDE), the chairman of the Committee on the Judiciary, and the gentleman from Michigan (Mr. CONYERS), the ranking member of that committee, and the Justice Department.

□ 1400

It was a compromise proposal that accomplished significant reform, but also did not do damage to the legitimate interests of law enforcement. So that is the essence of the substitute that will be considered under this rule.

I want to take this opportunity to extend my appreciation to the gentleman from Illinois (Chairman HYDE) for his leadership on this critical issue. Certainly in our society we know there is need for reform, so he has led the fight on that. This substitute I believe improves on the effort that he is trying to accomplish in a way that is consistent and balances the interests of law enforcement.

Some of the things provided in the substitute include very similar provisions to the base bill in terms of protecting our citizens. It includes eliminating the cost bond, it includes reimbursing claimants for damage the government might do to an innocent person's property. Most importantly, it shifts the burden of proof to the government in an asset forfeiture case, and it also provides paying of interest on assets that are returned.

So there are many similarities and significant reform, accomplished both in the substitute and the base bill. But there are some significant differences as well.

The first one and probably the most significant is the burden of proof. The substitute that is offered continues to ensure that the government bears the burden of proving that the property has been used in illegal activity, but maintains the same standard of proof as in all civil cases, which is a preponderance of the evidence.

Let us examine the distinction, here. If the standard of proof is clear and convincing, then there will be cases in which the government can show by the weight of the evidence that the money was used in criminal activity, but yet the criminal will be able to maintain those assets. I believe that is fundamentally wrong.

The greatest problem with the high standard of proof, clear and convincing standard, is whenever there is that sophisticated international money laundering on behalf of the south American drug cartels. Such schemes invariably involve shadowy transactions through bank secrecy jurisdictions conducted by shell corporations claiming to be in the travel, import-export, or money remitting businesses.

Most of these cases are dependent upon circumstantial evidence, so it would be difficult to prosecute to obtain those assets with such a standard that is unusual in ordinary civil cases.

The American people certainly want fairness in their forfeiture laws, but they do not want to grant extraordinary protections to the financial henchmen of the drug lord. So that is the distinction.

Another one is in reference to appointment of counsel. The Department of Justice undertakes 30,000 seizures a year, most of them in drug and alien smuggling cases. The base bill authorized the appointment of counsel in all of those cases, at taxpayers' expense. For anyone who asserts an interest in the seized property, the potential for abuse is clearly there.

The substitute continues to allow for the appointment of counsel, but with greater safeguards to eliminate that abuse.

There are other distinctions in there. The innocent owner defense is somewhat different in the substitute language. The base bill provides that when

there is an innocent owner, and there are de facto innocent owners who are bona fide purchasers, and those also who receive the property through probate. We see that as a problem. The substitute maintains that innocent owner defense but ensures that the provision will not be used by criminals to shield their property through sham transactions.

For example, the probate provision would allow a drug dealer to amass a large fortune, and then to transfer that by his will to his criminal cohorts or his mistress, and upon his death, if he has died in a shootout or an arrest, then it would transfer without being able to to be seized, even though it is clearly the result of drug trafficking. So that is fundamentally wrong, and the substitute would correct that problem.

There are a number of other distinctions, Mr. Speaker, in the base bill and the substitute that is being offered, but we believe that the rule is fair that allows this. It would allow a fair debate on this.

I will point out that law enforcement has expressed concern in the base bill, from the Drug Enforcement Administration to the International Association of Chiefs of Police. So I would ask my colleagues to support the rule.

Ms. SLAUGHTER. Mr. Speaker, I yield 1 minute to the gentleman from Michigan (Mr. CONYERS).

Mr. CONYERS. Mr. Speaker, I thank the gentlewoman for New York for yielding time to me.

Mr. Speaker, I rise to indicate that on our side we support the rule, a modified open rule, and urge its support by all the Members. We want to try to proceed to general debate and the amendments, and hope that this measure may terminate and be concluded in final passage by this evening.

Ms. SLAUGHTER. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Ms. PRYCE of Ohio. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, in closing, let me reiterate that the criteria does nothing to undermine laws that allow for the confiscation of property in the case of a convicted criminal. Instead, the bill focuses on the potential abuse under civil forfeiture laws when a property owner may not be accused of any crime or wrongdoing.

The reforms in the bill protect the rights of innocent citizens to basic due process. The bill has the support of numerous organizations who span the ideological spectrum, but if my colleagues do not share the views of this broad coalition, they are free to offer amendments under this fair rule.

Every Member of the House should support this rule, which provides for a full and fair debate on civil asset forfeiture reform in the interest of restoring fairness to our system of justice. I urge a yes vote on the rule.

Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. HYDE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material in the RECORD on H.R. 1658.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

CIVIL ASSET FORFEITURE REFORM ACT

The SPEAKER pro tempore. Pursuant to House Resolution 216 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 1658.

□ 1406

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 1658) to provide a more just and uniform procedure for Federal civil forfeitures, and for other purposes, with Mr. LAHOOD in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from Illinois (Mr. HYDE) and the gentleman from Michigan (Mr. CONYERS) each will control 30 minutes.

The Chair recognizes the gentleman from Illinois (Mr. HYDE).

Mr. HYDE. Mr. Chairman, I yield myself such time as I may consume.

(Mr. HYDE asked and was given permission to revise and extend his remarks.)

Mr. HYDE. Mr. Chairman, about 6 years ago I was reading a newspaper and I read an op ed article in the Chicago Tribune explaining a process that goes on in our country, and I must tell the Members, I could not believe it. I thought that over 200 years we had ironed out what due process meant, what equal protection under the law meant. But I found out that there are corners in our legal proceedings into which light needs to be shed. One of them concerns civil asset forfeiture.

There are two kinds of forfeiture, criminal asset forfeiture and civil asset forfeiture. What is the difference? The difference is in criminal asset forfeiture you must be indicted and convicted. Once that happens, the government then may seize your property if your property was used, however indirectly, in facilitating the crime for which you have been convicted.

You are a criminal, you are convicted, and they seize your property. I have no problem with that. I think that is useful in deterring drug deals and extortionists and terrorists. I have no problem with criminal asset forfeiture.

But the other type is civil asset forfeiture. That is a horse of a different color. In civil asset forfeiture, the government, the police, the gendarmes, can seize your property upon the weakest, most flimsy, diaphenous charge, probable cause. Probable cause will let you execute a search warrant or maybe frisk somebody, but no, they use probable cause as the basis to seize your property. I do not just mean your roller skates, they can take your business, they can take your home, they can take your farm, they can take your airplane. They take anything and everything premised on the weakest of criminal charges, probable cause.

What is also unbelievable is that unless you take action in court, you cannot get your property back. They do not have to convict you, they do not have to even charge you with a crime, but they have your property because they allege probable cause.

How do you get your business back, your home back? You go to court, you hire a lawyer, you post a bond, and then you have to prove within 10 days, you have 10 days to do all this, you have to prove that your property was not involved in a crime. In other words, you prove a negative.

I do not know how you do that. I have been a lawyer since 1950, and I do not know how you prove that something did not happen. But nonetheless, that is the burden now. Under our jurisprudence, the burden of proof should be with the government. If you are guilty of anything, then prove it. The standard is beyond a reasonable doubt in a criminal case.

So what we are asking is to turn justice right side up, to switch the burden of proof from the poor victim, who has been deprived of his property and not convicted of anything, to the government, who has seized this property.

Now, may I suggest there are some incentives for some police organizations not to do this, because they share in the proceeds of the seized property. It is like the speed trap along the rural highway where the sheriff waits for us, takes us to a magistrate, and his salary is paid out of the fines he levies against us. We do not have a very great chance at equal justice.

That is the situation here. Civil asset forfeiture as allowed in our country today is a throwback to the old Soviet Union, where justice is the justice of the government and the citizen did not have a chance.

So I suggest we remedy this, and that is what we are trying to do.

The bill before us makes eight changes. First, the burden of proof goes to the government, where it belongs.

Secondly, the standard is clear and convincing. The reason it is not a mere, simple preponderance is that this is quasi-criminal. They are punishing