

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. 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 con-

victed. 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 you when they have taken charge of your assets and of your property.

The next thing it does, it permits the judge to release the property pending the disposition in case a hardship exists and you are out of business or you have no place to live.

The third thing is the court can, in an appropriate case, appoint counsel. That is important if you are broke, if they have taken your property. You need help, you cannot afford a lawyer. The reason some organizations resist appointing counsel is because if you cannot get a lawyer, you cannot file a claim, so the forfeiture stands. You have a disincentive, you are discouraged from filing a claim because you cannot pay for a lawyer.

We also eliminate the bond, and I am happy to see that the gentleman from Arkansas (Mr. HUTCHINSON) eliminates the bond, too.

Our bill provides an innocent owner defense which is uniform across the country. If you own something and somebody else performed a crime in it or with it, and you are perfectly innocent and that can be established, that is a defense. You can sue the government under my bill if they destroy your property, and you can get interest if they have held your cash, and you can have 30 days to file your claim, not 10 or 20.

Lastly, let me just say this. This bill puts civil liberties and due process back in our criminal justice system. I am so delighted at the sponsors of this bill, both Democrats and Republicans, liberals and conservatives.

I am also delighted at the organizations that have endorsed it: The American Bar Association, the National Rifle Association, the National Association of Criminal Defense Lawyers, the American Civil Liberties Union, Americans for Tax Reform, the National Association of Realtors, the Credit Union National Association, the American Bankers Association, National Association of Home Builders, and on and on; the U.S. Chamber of Commerce. There is the widest possible spectrum of support for this reformation of our civil asset forfeiture laws.

I beg Members to listen carefully and join me in this essential reform.

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

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

Mr. Chairman, to the Members of the House of Representatives, I would like Members to understand that there is wide, wide support not only in the committee but among organizations for reforming civil asset forfeiture.