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May 24, 2016

The Honorable Robert Goodlatte
Chairman
House Judiciary Committee
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable Jim Sensenbrenner
Chairman
House Judiciary Crime Subcommittee
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable John Conyers
Ranking Member
House Judiciary Committee
B-336 Rayburn House Office Building
Washington, DC 20515

The Honorable Sheila Jackson Lee
Ranking Member
House Judiciary Crime Subcommittee
B-336 Rayburn House Office Building
Washington, DC 20515

Support H.R. 5283, the DUE PROCESS Act of 2016

Dear Chairman Goodlatte, Ranking Member Conyers, Chairman Sensenbrenner, and
Ranking Member Jackson Lee:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the rights of all persons in the United States, we write to express our qualified support for H.R. 5283, the Deterring Undue Enforcement by Protecting Rights of Citizens from Excessive Searches and Seizures Act (DUE PROCESS Act) of 2016. While the bill constitutes an important step and offers substantial procedural protections for those subjected to civil asset forfeiture, the legislation should include provisions addressing profit incentives created by civil asset forfeiture and demographic data pertaining to forfeiture practices.

The Leadership Conference believes current federal asset forfeiture laws violate the civil and human rights of Americans and are antithetical to principles of due process and procedural fairness. Federal civil asset forfeiture laws are particularly harmful to lower income communities and communities of color; create a perverse financial incentive for federal, state and local law enforcement to pursue profit over the fair administration of justice; encourage violations of due process and property rights; and facilitate the circumvention of state laws that prohibit abuse of civil asset forfeiture. We urge you to support comprehensive reform that will effectively address defects in current law and procedures that have become serious threats to an individual's civil rights.

The current federal civil asset forfeiture program undermines civil rights and violates due process rights by providing law enforcement with the power to take property from someone who has not been convicted of a crime. Innocent citizens can be deprived of their property



without due process of law, often without an arrest or a hearing. Property owners bear the burden and the costs of demonstrating a property's "innocence" and are not entitled to a lawyer.

We support the procedural reforms made by the DUE PROCESS Act, including the increased burden of proof, right to counsel, and the innocent owner protections. The bill raises the burden of proof from a preponderance of the evidence to clear and convincing evidence, making it more difficult for meritless forfeiture cases to proceed. The legislation provides property owners who are indigent with access to counsel in forfeiture proceedings, giving them a much needed resource when navigating forfeiture processes. Finally, the bill provides additional protection for innocent property owners, requiring the government – instead of the owner – to prove a connection between the property, owner, and alleged offense.

While we support these provisions of the DUE PROCESS Act, the bill must provide further protections to innocent property owners, especially property owners of color. We thus urge that you include the following provisions:

I. Data collection on the demographics of individuals subjected to seizures and forfeitures

While we applaud Section 8 of the legislation, "Publically Available Databases," for attempting to bring transparency and accountability to forfeitures, the DUE PROCESS Act must include provisions that require demographic information of those affected by seizures and forfeitures. Section 8 mandates data on several forfeiture practices, including the seizing agency and type of property seized, but to provide an understanding of the impact of forfeiture practices on communities most vulnerable to forfeiture, this Section should also mandate data collection on demographics. Reports have shown a disproportionate number of people of color and low income people are subjected to these practices.¹ Demographic data, including race, ethnicity, nationality, gender, age, and disability, should also be collected and reported under the DUE PROCESS Act.

II. Eliminate profit incentive and equitable sharing

The DUE PROCESS Act should include a provision eliminating the profit incentive driving civil asset forfeiture, including equitable sharing. Federal forfeiture law provides law enforcement with a strong monetary interest in asset seizures. Under the Department of Justice's equitable sharing program – the federal and local sharing in the bounty of seized items – state and local law enforcement that turn over seized property to the federal government can pocket up to 80 percent of the forfeiture proceeds. The practice of equitable sharing has incentivized forfeitures to the tune of billions of dollars.² Since 2008, state and local police have made more than 55,000 seizures of cash and property worth \$3 billion with the

¹ *Forfeiting the American Dream*, Center for American Progress (April 2016) <https://cdn.americanprogress.org/wp-content/uploads/2016/04/01060039/CivilAssetForfeiture-reportv2.pdf>; *Guilty Property*, ACLU of Pennsylvania (June 2015) https://www.aclupa.org/files/3214/3326/0426/Guilty_Property_Report_-_FINAL.pdf

² Robert O'Harrow, Jr., Sari Horwitz, and Steven Rich, *Holder limits seized-asset sharing process that splits billions with local, state police*, WASH. POST (Jan. 16, 2015), http://www.washingtonpost.com/investigations/holder-ends-seized-asset-sharing-process-that-split-billions-with-local-state-police/2015/01/16/0e7ca058-99d4-11e4-bcfb-059ec7a93ddc_story.html.



help of the federal government.³ In 2014 alone, federal forfeiture laws were used to take in \$4.5 billion.⁴ Allowing law enforcement to keep the proceeds has created a strong monetary incentive for law enforcement to engage in civil forfeiture while undermining Congress's ability to oversee and control appropriations to law-enforcement agencies. In addition, equitable sharing has enabled state and local law enforcement to circumvent their own state laws by allowing federal agencies to pay a bounty to these law enforcement agencies for participating in civil forfeitures under federal law. Because civil asset forfeiture laws create a perverse financial incentive for federal, state, and local law enforcement to prioritize profit over the fair administration of justice, equitable sharing must be eliminated from the DUE PROCESS Act.

While the DUE PROCESS Act is a substantial step in civil asset forfeiture reform, we encourage you to provide within the bill even stronger protections to protect communities of color and innocent property owners, as well as curb the misaligned policy and economic incentives surrounding the use of civil asset forfeiture. We thank you for your leadership on civil asset forfeiture reform and your consideration of this matter. If you have any questions, please contact either of us, or Counsel Sakira Cook, at cook@civilrights.org or 202-263-2894.

Sincerely,

Wade Henderson
President & CEO

Nancy Zirkin
Executive Vice President

³ *Id.*

⁴ Jason Clayworth and Grant Rodgers, *Solutions to Iowa's broken forfeiture system*, Des Moines Register (Apr. 5, 2015), <http://www.desmoinesregister.com/story/news/investigations/2015/04/04/solutions-broken-forfeiture-system/25304121/>.