



May 25, 2017

The Honorable Tim Walberg
U.S. House of Representatives
2436 Rayburn House Office Building
Washington, DC 20515

The Honorable Rand Paul
U.S. Senate
167 Russell Senate Office Building
Washington, DC 20510

Dear Representative Walberg and Senator Paul,

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. 1555 and S. 642, the *Fifth Amendment Integrity Restoration Act of 2017*, or FAIR Act.

According to an NFIB member ballot, 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 reforms 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, in this position, must spend a significant amount of resources proving his/her innocence to re-take possession of his/her property. Under the FAIR Act, law enforcement is required first to show that the property owner knew of the crime, or was willfully blind before the property is seizable.

Second, the FAIR Act raises 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 wrongly targeted small business owners. The clear and convincing standard would raise the burden of proof for law enforcement, and thereby protects innocent small business owners.

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

We look forward to working with you on this measure to protect small business as the 115th Congress moves forward.

Sincerely,

A handwritten signature in black ink that reads "Juanita D. Duggan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Juanita D. Duggan
President & CEO
NFIB