June 24, 1999

Congressional Record – House

J. 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. 1688) 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 an original bill for the purpose of amendment during 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 reported 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 original text shall be in order except those portions of the bill not yet read for amendment. The Chairman of the Committee on Rules may, if requested, submit a substitute for the purpose of debate. Any 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 chairmen 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 involves another 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 final text. The previous question shall be considered as ordered on the bill and amendments there to final passage without intervening motion except one motion to recommit with or without instructions.

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 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 or substitute introduced 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, as opposed to a criminal or federal 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 has never been accused of 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 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 protections and the rights we enjoy 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, as 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 used in the commission of an 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 conviction and the owner did not own the property, the government may confiscate his or her property. And the current law gives little consideration to the fact that the owner, if anything, is only the victim of a crime.

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. And when an owner has been successful in winning his money back, 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 to the owner. 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.

Mr. Speaker, these are reasonable reforms that bring the scales of justice closer to balance and to protect the rights of American citizens. 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 this 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 commence.

(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 consider the 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 provide 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 that the property was being used illegally or that they reasonably could not control the property. The bill requires the federal government to give 60 days written notice when confiscating private property. If the property owner did not also try to sell the property, it would also be entitled to the immediate release of seized property if 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 substitute that is being offered in the House.

I want to take this opportunity to express my support for this rule which allows consideration of the substitute that is being offered in the House. It was a compromise proposal that has been used in all cases, which is a preponderance of the evidence.

Let us examine the distinction, here. If the standard of proof is clear and convincing, 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, 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.

One of these cases is 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 owners end up losing their property and that the provision will not be used by criminals to shield their property through sham transactions.

For example, the probate provision would allow, for example, a man 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 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 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.