Mexican food restaurant in the middle of business hours, ordering customers out of the establishment, and telling the patrons that the restaurant was being forfeited because ''the owners were drug dealers.'' Local newspapers prominently publicized that Maya's restaurant had been closed and seized by the government for ''drug dealing.''

Exequiel Soltero is the president and sole stockholder in Soltero Corp., the small business owner of the restaurant. The actual allegation was that his brother had sold a few grams of cocaine in the men's restroom of the restaurant at some point.

Exequiel Soltero and the Soltero Corporation Inc. were completely innocent of any wrongdoing and had no knowledge whatsover of the brother's suspected drug sale inside the restaurant. According to the informant relied upon by the law enforcement officers, the brother had told him that he was part owner of the restaurant. This was not true. It was nothing but puffery from the brother. The officers never made any attempt to check it out. If they had, they would have easily learned that Exequiel Soltero was the sole owner of the Soltero Corp., Inc., and Maya's.

There was no notice or any opportunity for Mr. Soltero to be heard before the well-publicized, business-ruining raid and seizure of his restaurant. Fortunately, Mr. Soltero was able to hire a lawyer to contest the government's seizure and forfeiture action, but not until his restaurant had already been raided and his business had suffered an onslaught of negative media attention about being seized for ''drug dealing.'' Further his restaurant was shut down for 5 days before his lawyer was able to get it re-opened.

Finally, when Mr. Soltero volunteered to take, and passed, a polygraph test conducted by a police polygraph examiner, the case was dismissed. However the reckless raid, seizure and forfeiture quest by the authorities cost him thousands of dollars in lost profits for the several days his restaurant was shut down, as well as significant, lingering damages to his good business reputation. And he suffered the loss of substantial legal fees fighting the seizure of his business.

[Source: National Association of Criminal Defense Lawyers (NACDL) Asset Forfeiture Abuse Task Force Co-Chair Richard Troberman, Seattle, Washington (unreported case)]

NOTES ON RECENT CASES AND HYDE/CONYERS ASSET FORFEITURE REFORM ACT, H.R. 1658

Each of the above cases demonstrates the importance of the Hyde/Conyers Asset Forfeiture Reform Act. Several features of the legislation would deter governmental abuse of innocent Americans and legitimate business under the civil asset forfeiture laws.

Placing the burden of proof where it belongs, on the government—to prove its takings of private property are justified, by a clear and convincing standard of evidence—should curb reckless seizures and forfeiture actions like those described above. Now, the government can seize and pursue forfeiture against private property without any regard to its evidence, or lack thereof, without any burden of proof. The burden is borne by the citizen or business, to prove the negative, that the property seized is in fact innocent.

The clarification of a uniform innocent owner defense will also protect businesses and other property owners and stakeholders from wrongful seizures and forfeiture actions, based now on nothing more than a ''negligence'' theory of civil asset forfeiture liability. The uniform innocent owner provision will protect all innocent owners, no matter which particular federal civil asset forfeiture provision is invoked against their property.

The Hyde/Conyers Asset Forfeiture Reform Act will also place a time-clock on forfeiture actions by the government, akin to the Speedy Trial Act, which protects persons accused of crime. This will prevent the type of post-seizure, foot-dragging in civil forfeiture cases like those above, in which the government can simply wear down and bankrupt innocent individuals and businesses, who cannot withstand the loss of operating assets and lengthy litigation against the government.

The court-appointed counsel provision will ensure a fair fight against the government's forfeiture actions—even for those with less financial resources than the individuals and businesses described above. This is especially important to those the government can otherwise render indigent, and unable to afford counsel, simply by seizing all of their assets.

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

The CHAIRMAN. The Committee will rise informally.

The Speaker pro tempore (Mr. BRYANT) assumed the chair.

SUNDRY MESSAGES FROM THE PRESIDENT

Sundry messages in writing from the President of the United States were communicated to the House by Mr. Sherman Williams, one of his secretaries.

The SPEAKER pro tempore. The Committee will resume its sitting.

CIVIL ASSET FORFEITURE REFORM ACT

The Committee resumed its sitting.

Mr. HYDE. Mr. Chairman, may I inquire of the Chair how much time I have remaining.

The CHAIRMAN. The gentleman from Illinois (Mr. HYDE) has 22½ minutes remaining.

Mr. HYDE. Mr. Chairman, I am pleased to yield 6 minutes to the distinguished gentleman from Tennessee (Mr. BRYANT).

Mr. BRYANT. Mr. Chairman, I thank the gentleman from Illinois (Mr. HYDE) for yielding this time to me. It is with great respect that I rise in opposition to the underlying bill and urge my colleagues to support the Hutchinson substitute.

The gentleman from Illinois (Mr. HYDE) and I have been together on many issues, and actually we are not that far apart on this one. The Hyde-Conyers bill, in many ways, has the same provisions that the Hutchinson substitute has, but I think the substitute makes some very important improvements to the bill.

I do not think there is any question that this bill is good. The Hyde-Conyers bill needs to be passed into the law, at least some form of it does. It is time that we have the reform in the area of asset forfeiture that that bill speaks directly to.

It is very important in this country, I think, that we begin to address the due process involved in property rights. Those are very important issues, and I am proud to be a part of this. I just think that the bill, as it is written, while well constructed and well thought out and certainly well intended, needs some fine tuning, if you will, some changes to it, I think, to strike a more reasonable balance.

Before, things were out of balance one way, and I want to be careful, as I urge the adoption of the Hutchinson substitute, that we do not take it too far out of balance the other way.

There are a number of law enforcement, some 19 major law enforcement groups that support the Hutchinson substitute, among those, the Drug Enforcement Administration, the DEA, the Fraternal Order of Police, the National Troopers Association, the National Sheriff's Association, the National Association of Chiefs of Police, and many others.

The reason they support this is because, as we all agree here today, we need to be able to seize the ill-gotten gains of criminals, seize that property, and use that, convert that over and use that to fight more crime. I think that is very important. We agree on that.

Now, I would like to see this go a little further on the other end, and I have asked that report language be put into this bill that there be a little bit more accountability on the use of these funds.

I know in my area back in Western Tennessee, this is a very important issue right now, is what happens to these funds once they get into the hands of law enforcement. I would like to see some very broad community-based, through a government agency, through the mayor, the county mayor, city mayor, oversight of these funds, with all due respect to the necessity sometimes in police work that they have flexibility and secrecy in using some of these funds. But at least there will be some accountability on the end of where it is used to fight crime as it is supposed to be done.

But in the Hutchinson substitute, we have brought the Hyde-Conyers bill, I think, back to a better balance. Rather than requiring that law enforcement prove by a clear and convincing bit of evidence that this money was ill-gotten and as a result of crime, we use the normal, the customary standard in civil cases, which is what this is, and that is a preponderance of the evidence. I am sure we have people that agree with that.

We also talk about furnishing some lawyers to people for free. Now, in the civil context, that is not typically done in any case. There are hardship cases where it is rarely done, and certainly that would apply here given the circumstances of the particular forfeiture, the amount of money involved, the needs of the people. That can be done. But on a routine required basis that the underlying bill would require, I do not think we need that.

□ 1430

I think that would be very, very expensive and probably result in much more litigation than we really need.

Also, the hardship provision is addressed in the Hutchinson amendment, and it refines that language. Certainly there are circumstances where I think the court should have the authority if it creates a hardship and the property can be protected, that that ought to happen; that the person ought to have that property returned pending the trial. But in many cases it has been shown that evidence, money, or whatever might be seized disappears, along with people sometimes. So if we can assure that there is adequate protection there to ensure that this will be there when the trial comes up, that the property will still be there and the property owner will still be there, then certainly if that is a hardship situation, that can be addressed.

So I would respectfully disagree with my colleague from Michigan (Mr. CONYERS) that we are miles apart on this. I think we are very close on many of the issues, and if we can just work through a couple more of these issues and agree to these, which, again, I think the Hyde-Conyers bill is good but can be made better, then I think we would be better served.

Let me clear up one thing, too, that the gentleman from Michigan (Mr. CONYERS) said in terms of the percentages being high of people being caught with money but no drugs. The way the system works in this is when there are couriers, they do not have them both at the same time. They either have the money or they have the drugs, but they do not have them both. They carry the money to point X to get the drugs to bring back to point Y. So we either find drugs on the person or money on the person, depending which way they are going.

So it is not unusual in that context for there to be a seizure of money without finding any drugs on the person, because we are usually dealing with a mule, a courier, somebody whose job it is to go to a drug source city and bring the drugs back and pay for it as they go down. So that is not anything out of the ordinary.

I think this is a very good cause we are working for. I think we are all trying to achieve the same results, and I just simply ask that we go back to the normal standards that we have in a civil case, preponderance of evidence, no appointed counsel, and work closer on the hardship situations to ensure that the money, the evidence, and the defendant will be there at trial.

Mr. CONYERS. Mr. Chairman, I yield myself 30 seconds.

The problem with the assertions of the gentleman from Tennessee (Mr. BRYANT) that a drug courier is either carrying money or drugs is quite correct. But the problem is, unless they are drug couriers, we could end up with a person with large amounts of money on them that they have to then prove where and how they got the money, which is a little bit out of line. And if they are carrying drugs, that is patently illegal, too, so they will be arrested.

Mr. Chairman, I yield such time as he may consume to the gentleman from Massachusetts (Mr. DELAHUNT), a law enforcement prosecutor of many years and a valued member of the Committee on the Judiciary.

Mr. DELAHUNT. Mr. Chairman, I thank the gentleman for yielding me this time, and I rise in support of Hyde-Conyers bill and in opposition to the substitute proffered by the gentleman from Arkansas (Mr. HUTCHINSON) and the gentleman from New York (Mr. WEINER).

Mr. Chairman, a few days from now the sun will finally set on the Independent Counsel Act that has come to embody for many Americans all the evils of prosecutorial excess. But the problems illustrated by the Independent Counsel Act are not unique to special prosecutors, nor are they confined to cases involving Presidents and high civil officials.

The potential for abuse and excess is inherent in a system of justice which delegates such enormous power and discretion to every prosecutor. Now, most prosecutors exercise these awesome responsibilities with decency and restraint. But, unfortunately, there are a few who do not, and they bring the entire system of justice into disrepute, and they encourage, by their actions, public cynicism and, unfortunately, erode respect for the rule of law.

Now, the Hyde-Conyers bill recognizes that asset forfeiture is an extraordinarily powerful tool in the hands of a prosecutor, a tool that is so potent, and under current law so easy to apply, that it is also highly prone to abuse. And, in fact, there is a growing litany of cases documenting that abuse occurs. This bill recognizes that the time has come to impose reasonable, and let me underscore reasonable, restraints on this power so as to maintain public confidence in the fundamental fairness and integrity of our criminal justice system that is so essential in a democracy.

And let us be clear. This bill would not hamper the ability of law enforcement to go after the bad folks, the drug kingpins and racketeers who are the proper targets of forfeiture laws. What it would do is to prevent law enforcement officials from abusing these laws to the detriment of ordinary innocent citizens. It would ensure that when prosecutors wrongfully seize, wrongfully seize the property of owners who are innocent of any crime, the owners have the ability to recover their property and make themselves whole.

And make no mistake, we are not talking about a few marginal cases. Some 80 percent of the people whose property is seized are never even charged with a crime. Think of that, Mr. Chairman, 80 percent of those whose property is seized are never even charged with a crime.

Now, let me put forth some examples; like the traveler whose property was seized at the Detroit airport because he was carrying a large amount of cash and simply happened to fit a profile of a drug courier. No arrest, no conviction; or the 33 tenants in a New York apartment building who were evicted by the government because the building had previously been home to a drug ring, which none of the tenants were connected with and had no knowledge of, yet they were evicted; or the hotel owner in Houston whose hotel was seized by Federal agents after patrons were accused of drug trafficking; or how about the 72-year-old woman in Washington, D.C., right here in the Nation's Capital, whose home and personal effects were seized by the FBI because her nephew, her nephew, who was staying in the house overnight, was suspected of selling drugs from the porch. Suspected of selling drugs from her porch. A 72-year-old woman.

The irony is that all of these people would have been entitled to some due process if they had been charged with a crime. If they had been charged criminally, they would have had a shot. But under the civil forfeiture laws, the government can seize the property of innocent owners without even triggering basic minimal due process requirements. That is not, I daresay, what most of us think about when we think of the American system of justice.

Supreme Court Justice Clarence Thomas has likened this situation to, and I am quoting now, ''a roulette wheel employed to raise revenue from innocent but hapless owners whose property is unforeseeably misused,'' rather than a tool for ensuring that justice is done.

In 1997, the Court of Appeals for the 7th Circuit confessed itself to be enormously troubled by the government's increasing and virtually unchecked use of the civil forfeiture statutes and the disregard for due process that is buried in those statutes.

We cannot allow, I submit, such a situation to continue, Mr. Chairman, and I urge my colleagues to support Hyde-Conyers and defeat the substitute.

Mr. HYDE. Mr. Chairman, I yield 5 minutes to the gentleman from South Carolina (Mr. GRAHAM).

Mr. GRAHAM. Mr. Chairman, I thank the gentleman for yielding me this time, and I, too, rise in support of the Hyde-Conyers Civil Asset Forfeiture Reform Act of 1999, and I would ask the Members listening to the debate to focus their attention on the title and see if it lives up to its billing: Reform Act. What are we trying to do; and is it an act in need of reform; and do the measures envisioned in this bill create some reform.

I would point the Members' attention to the burden of proof. There is a dramatic change in this bill from existing law, and I believe it justifies the title of reform and is very much a necessary measure in terms of reforming the law.

Imagine this: An individual has a piece of property, an innocent owner. At least they want to claim that status. And that individual winds up facing their government after a seizure

has occurred through a mere probable cause analysis, and they now have to prove by a preponderance of evidence that they are innocent and that the forfeiture should never have occurred. I think that is appalling. I do not believe in America any citizen should have to go into a court and fight the government and prove that they are innocent in terms of their connection to their property. While it may not be depriving them of a liberty interest, it certainly is depriving them of a property interest.

This bill, quite rightly, corrects that measure, and it does reform the burden of proof because it places upon the government the duty to prove that the assets seized should be taken and denied to the rightful owner by a clear and convincing evidence standard.

The substitute changes the burden, which I think is an acknowledgment that the basic law is very much off base. It is a matter of what standard we would like to place upon the government before people are denied their property. In my opinion, the standard should be more rather than less; that when we are facing the government, they should have a strong burden before they can take our property forever from us. And the clear and convincing evidence standard in civil law, I think, is the appropriate remedy, and the preponderance of evidence standard that the substitute bill has is an inappropriate remedy.

The innocent owner defense. Most of us cannot imagine a situation where we find ourselves before a Federal court, losing our property because of someone else's misdeeds, but it happens every day in this country. As my friend from Massachusetts (Mr. DELAHUNT) indicated, 80 percent of the people affected by this law are never prosecuted. What if an individual owned an asset or were a joint titled owner of a car, and somebody in the family or some friend chooses to engage in criminal activity with that individual's vehicle without their knowledge or without their permission. Under the current law that individual has to go and prove they are innocent before they lose their property.

We have talked about changing the burden. Before an individual's property could be taken under what the gentleman from Illinois (Mr. HYDE) and the gentleman from Michigan (Mr. CONYERS) have done, they have to make a compelling case that that individual was involved, that that individual had knowledge. And what this law does, Mr. Chairman, is it brings uniformity across the board in civil asset forfeiture statutes under the Federal law, bringing uniformity to the innocent owner defense. In civil forfeiture cases involving illegal gambling activities, there is no such innocent owner defense, and I think that is appalling.

So the good thing about this bill, in my opinion, is it brings uniformity and it establishes a standard that makes a lot of common sense; that the government has to prove at the time of the instance in question that an individual did not know of the conduct giving rise to the forfeiture, because if someone does not know of the conduct and was not involved, they should not lose their property because someone intends to violate the law or does violate the law, because that individual has done nothing wrong.

Upon learning of the conduct, if a person does all that is reasonably expected under the circumstances to terminate such use of the property, the law should not allow the taking of a person's property because they acted in a responsible manner.

This bill brings uniformity to the law. It is a haphazard catch-as-you-can series of statutes, and now is the time to correct that as we go into the next century.

□ 1445

An appointment of counsel. This bill I believe remedies a very big problem. A lot of people are subject to losing their assets under this law, and when it comes time to have their day in court and they are an indigent person or without the means to have counsel, for whatever reasons, they are facing the Government alone. That is no place to be when their property is taken from them by the Government.

It is true we normally do not appoint counsels in civil matters because civil matters are usually between two citizens litigating over some property interest. This is different, Mr. Chairman. This is a person fighting the Government for their property. I believe it is only right and fitting that we appoint counsel under those circumstances.

I ask my colleagues to support this measure.

Mr. CONYERS. Mr. Chairman, I am pleased to yield 3 minutes to my friend, the gentleman from New York (Mr. WEINER.)

Mr. WEINER. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I rise in support of the Hutchinson amendment and with deep reservations about the base bill, the Hyde-Conyers bill.

There is a great deal, frankly, that we agree about in this debate. My good friend from Massachusetts read a litany of concerns about the present civil forfeiture dynamic. It is broken. It is broken. I believe that the Hyde effort is one that is laudable and goes a long way towards trying to fix the problem. But there also seems to be emerging in this House a fundamental debate about whether or not we should have civil forfeiture at all. And I would argue that we should, and I would argue that it has been a tool that has been very helpful.

I would argue that law enforcement agencies all around this country have rallied to the cause of trying to preserve civil asset forfeiture because it is vitally necessary to continue the downward trend in crime that we have seen. That is why sheriff's associations around the country have supported the Hutchinson–Weiner-Sweeney substitute. That is why the City of New York and Los Angeles and other places have all supported the idea of making it important that the Government prove its case but just have a reasonable standard.

Now, since we have heard so many horror stories about what is wrong with civil forfeiture, I think it is important that we understand that there are many times where it is used in ways that I think we all agree it is important, like a crack house in the Middle District of Tennessee that over and over again was the subject of criminal activity. The owner of the house was not the person who was doing the criminal activity, but it was allowed to go on there. The children, the spouse, people in the community were selling drugs out of that home. Finally that problem, which was right next to a church, was solved by using this civil asset forfeiture.

There are frequently times that the criminal statutes do not allow us to fully sink our teeth into what some of these problems are. I believe that the main difference between the Hyde-Conyers bill and the Hutchinson–Weiner-Sweeney substitute are the burden of proof that we set. We do not make it a burden of proof that is so difficult that localities who are now making this argument will never be able to use civil asset forfeiture laws again.

We make it a reasonable test. The Government still has to prove its case. They cannot seize their property and keep it wantonly. They are going to have a tough test. We are going to have provisions in the amendment that provide for counsel. But we also make sure that these forfeiture laws remain intact so we can continue to confiscate contraband, drugs, obscene matters, explosives, counterfeit money and seize the instrumentalities of crime, crack houses, handguns, and cash.

We have to recognize that there are times that there is not the direct connection between the person and the criminal activity and the fact that we know with some certitude that that is an instrument of crime.

The Hutchinson–Weiner amendment will allow us to get at the crime problem while dealing with many of the abuses that the gentleman from Illinois (Mr. HYDE) has correctly pointed out.

Mr. HYDE. Mr. Chairman, I am pleased to yield 5 minutes to the distinguished gentleman from Georgia (Mr. BARR).

Mr. BARR of Georgia. Mr. Chairman, I thank the distinguished gentleman from Illinois (Mr. HYDE) the chairman of the Committee on the Judiciary not only for his work in bringing this important piece of legislation to the floor today but over the course of many years for his championing the rights of our citizens both on the law enforcement side of the equation as well as on the civilian side.

The chairman of the Committee on the Judiciary has been a tireless champion in support of our Constitution, all of our Constitution, in this regard.

Mr. Chairman, when we look at asset forfeiture, we have to be struck by the fact that what was originally intended to be an extraordinary remedy to be used in only those most serious of criminal cases has become a commonplace tool of law enforcement. Unfortunately, Mr. Chairman, not only has it become a common tool of law enforcement, but in many jurisdictions, not all, but in far too many it has become the monetary tail wagging the law enforcement dog.

Mr. Chairman, as more and more offenses over the last several years have been added to the predicates on which asset forfeiture seizures and forfeitures can take place, it becomes more and more incumbent on us to take a very close look, a comprehensive look, at exactly where we stand in America with regard to this awesome power the Government has.

It is our responsibility, which we are exercising today under the leadership of the chairman of the Committee on the Judiciary, to bring back into focus this power the Government has that we all believe Government needs to have but to bring it back into proper focus. And that means balancing the important needs of law enforcement to strike at the criminal element where it really hurts, and that is in their pocketbook, but not with a blunderbuss, not to the extent that we also rope into that power the civil rights, the individual rights, the constitutional rights of law-abiding citizens.

Many who are opposed for example, Mr. Chairman, say that the sky will fall if we dare reform asset forfeiture laws. That is not the case. I say that, Mr. Chairman, from the standpoint of both having been a United States Attorney and having exercised in the Northern District of Georgia the tremendous power of asset seizure and forfeiture, but also from the civilian side of the bar.

Let us be perfectly clear, Mr. Chairman. H.R. 1658 does not and will not eviscerate asset forfeiture power. It reforms it. It does not kill it. We need also only to look, Mr. Chairman, to the experiences in recent years of some States which have grappled with the issue of reforming their own asset forfeiture laws to make them more mindful and reflective of individuals' rights to see that despite the naysayers and the Chicken Little sometimes running around saying the sky is going to fall if we dare reform this particular process, that in fact it has not.

I would cite to our colleagues the case of California, which just a few years ago addressed the issue of asset forfeiture reform, changed the process, changed the burdens. Many in law enforcement in California were very concerned that, in fact, those changes to the laws where they shifted the burden and brought a little bit more balance to the process would eviscerate the ability of California law enforcement authorities and prosecutors to truly go after and seize legitimate criminal assets of the criminal element.

In fact, Mr. Chairman, as over the last few years, that reform system in California has worked its way through the system, people have become used to it, the system has brought itself back into balance. Even the prosecutors, one of whom I spoke with just yesterday here in Washington who is currently still with the Attorney General's Office in California, says there has in fact been no precipitous drop-off, as a matter of fact, overall no drop-off in the ability and the amounts of seizures and forfeitures that have, in fact, taken place.

When we look also, for example, Mr. Chairman, at the specifics of this legislation, as the distinguished gentleman from South Carolina (Mr. GRAHAM) just got through talking about, if we look at what this legislation, that is H.R. 1658, does, it is fairness, it is the embodiment of fairness and constitutional due process.

It places the burden where it ought to be, on the Government, to prove by clear and convincing evidence, which is a standard burden that is placed on the Government, in many cases on private parties, in many cases on States in many civil cases, to prove by substantial evidence that the property has in fact been used for the furtherance of criminal activity. It really is hard, Mr. Chairman, to imagine why anybody would object to that.

As a matter of fact, the power of the Government, when they focus on the problem of asset forfeiture honestly in this way, they will recognize that this simply may create just a slight burden, a temporary burden, on law enforcement, but it will force them to pay closer attention to what they are doing.

The gentleman from South Carolina (Mr. GRAHAM) also properly noted several other specific aspects of this legislation that I believe lend itself to strong support for H.R. 1658 and against the substitute proposal, which does not reform the system in any meaningful way.

Mr. Chairman, some who are opposed to civil asset forfeiture reform would have us believe the sky will fall if we dare reform these laws. As someone who has served on both sides of the bar, first as a federal prosecutor, and later as a private attorney, I can tell you this is simply not the case. But don't take my word for it. Let's get to specifics. What exactly does our legislation do? And, what doesn't it do?

First, let's be perfectly clear, H.R. 1658 does not and will not eviscerate asset forfeiture power; it reforms, but it does not kill.

Secondly, it addresses basic procedures, not underlying authority. For example, H.R. 1658 requires the government to prove by clear and convincing evidence that the property being seized has been used in criminal conduct. This goes back to a very basic principle: innocent until proven guilty. We should all be able to agree on that. Otherwise, we end up with justice according to the Queen in Alice in Wonderland, ''[s]entence first—verdict afterwards.''

Thirdly, our legislation would allow judges to release seized property, pending final adjudication, in order to prevent the property holder from suffering substantial hardship. This would allow judges, for example, to exercise their discretion to prevent a person who has not been convicted for any crime from losing their job because the police have seized the car they use to travel to work.

Again, no sensible person can argue that our legal system will collapse if we trust judges to make this simple judgement call.

Additionally, our legislation eliminates the requirement that an owner file a 10 percent cost bond in order to defend against the seizure of their property. Remember, under current law, if the government simply thinks you're guilty, it can take your property; and then, in addition, require you to post a bond simply for the privilege of walking into a courtroom and arguing your innocence. To make matters worse, the very fact that your assets have been seized, may very well make it impossible for you to post the bond. This kind of treatment is simply not acceptable in a country that purports to balance individual and property rights against necessary law enforcement powers.

Finally, our reform legislation provides the owners of seized property with a reasonable time period within which to contest the seizure in court. Strict and very limited time limits in current law frequently slam the doors of justice shut before the target of a seizure even has a fair opportunity to pass through them into court.

Those who oppose these common sense changes say the government cannot fight crime unless asset forfeiture laws remain dramatically tilted in its favor. However, as the 65,000 member Law Enforcement Alliance of America—which supports our legislation—knows, effective law enforcement depends ultimately on citizens having confidence in its fairness and honesty. Our current asset forfeiture laws undermine this confidence by treating some citizens unfairly, and sending others a message that our legal system is arbitrary, capricious, and motivated by profit rather than principle.

Unfortunately, the substitute being offered today does not address the fundamental problems inherent in the current system. It does not level the playing field, and it does not improve the access to our legal system by innocent citizens whose property has been seized. The substitute resembles rejected legislation from the last Congress; a proposal that was opposed by groups as diverse as the National Rifle Association and the National Association of Criminal Defense Lawyers.

Few, if any in this House, oppose law enforcement having the necessary and appropriate tools with which to fight crime; I certainly don't. One of these appropriate tools is asset forfeiture; but it must be fair and reasonable asset forfeiture; and it must not be allowed to be abused as some jurisdictions now do.

In fact, our legislation preserves assets forfeiture, placing only very reasonable limits on its use; it restores the balance intended in the original legislation. This was done just a few years ago in California; where, despite

naysayers predicting the collapse of asset forfeitures, state prosecutors and law enforcement in fact adjusted to the new requirements and continued to seize and forfeit assets.

A vote for the Civil Asset Forfeiture Act is a vote for returning to our law the basic principle that each of us is innocent until proven guilty. Remember, this Act in no way restricts the ability of law enforcement to seize the assets of someone who has been convicted of a crime under criminal asset forfeiture laws. It applies only to civil asset forfeiture provisions, which are used to seize property based not on a guilty verdict or plea—that is, proof beyond a reasonable doubt—but on a much, much lower standard.

Simply put, a vote for the substitute amendment is a vote to presume that an individual citizen is a criminal, and that the government can take their car, cash, or home simply because it harbors reasonable suspicious doubt. This is wrong. We all know it is wrong. Let's take this opportunity to change it.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield 5½ minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the distinguished gentleman from Massachusetts for yielding me the time.

Mr. Chairman, I come to this debate with a slightly different perspective, some that the Members may have coming from local government and being in the local government arena when the civil asset forfeiture law was, in fact, passed by this body.

I have worked with a number of law enforcement agencies. I have worked with communities, particularly when many of our inner city communities, many of our rural communities suburban communities were under siege with the bad behavior, the bad actors of drug running, drug activity.

I know neighborhoods in my community where crack took over in some of the older neighborhoods. Many times we would find senior citizens still living amongst houses that had been abandoned or the owner had left, or it was a rental property and the crack dealers or crack possessors, the crack sellers would take over.

So some years ago, as this legislation was passed, it became a godsend for our local law enforcement, our sheriffs, our police departments, our constables to protect our neighborhoods. And at the same time, I remember, as a member of city council, those well-needed funds used appropriately added extra resources for clean parks and new equipment for our children.

So I would like to at least acknowledge that we have had good uses, good intentions of this legislation. And I would hope that our law enforcement community would recognize, prosecutors included, that we are supportive of their efforts to still be able to use these tools to effectively fight crime.

We do not want the crack dealers, cocaine dealers, any kind of dealers setting up and getting rich over these criminal activities. We do not want to see the elderly dispossessed from their neighborhoods. We do not want to see young families not able to allow their children to be out playing because these activities have been going on. We do not want the fraudulent activities of money laundering to result in the wealth of individuals while others are suffering.

At the same time, I support the strategies of the Hyde-Conyers amendment because I think there have been a number of abuses that, keeping with the Constitution and property rights, we frankly should address. We should not be frightened to balance the needs of law enforcement along with the needs of citizens to protect their property rights.

In particular, I think it is worth noting, as my colleague noted, there is some 80 percent of those who have had their property civilly taken because they are related to or they are thought to be associated with and have been found to be criminally associated with and have never been prosecuted. For that reason, I think we have a problem. This is a huge number, 80 percent.

Who could that be? Spouses, sisters, brothers, relatives of any kind? Who could that be who have lost their property because they have been associated with someone who has done the wrong thing?

I believe that this is a good balance to take law enforcement needs and consideration into account along with those who have suffered and lost property. I would hope that we would have an opportunity, however, Mr. Chairman, to look at some other aspects of concern that I have.

I had a number of amendments. The substitute includes one of them. But I think, regardless of what happens to the substitute, we should have further discussion as to whether or not the clear and convincing evidence standard is the right balance for law enforcement versus the preponderance of evidence.

I think we should also discuss, Mr. Chairman, the issue as to the district court of a claimant reviewing the district court of a claimant for substantial hardship to render decision on that hardship issue within 10 days. I am concerned that we would have a problem there.

Mr. Chairman, I have another one on 10 days with respect to notice and another one with the Attorney General with respect to 30 days to a motion regarding the claimant's cause.

Mr. HYDE. Mr. Chairman, will the gentlewoman yield?

Ms. JACKSON-LEE of Texas. I yield to the gentleman from Illinois.

Mr. HYDE. Mr. Chairman, I think the gentlewoman has raised some very significant issues worthy of study. And I pledge that, should this legislation pass and reach conference, that her concerns will be fully considered and debated and, hopefully, we can do something about them.

Ms. JACKSON-LEE of Texas. Mr. Chairman, reclaiming my time, I appreciate the fact that we will be engaged in this issue, because it is a balance between property rights and law enforcement.

The one point that I would like to end on, I certainly would like innocent individuals to know early who has their property if it has been seized and I would like to make sure that we bring that time frame down under the 60-day time frame.

Mr. Chairman, I am in support of this bill which calls for civil assets forfeiture reform. Your leadership on this issue is to be commended. This is a good bipartisan bill which now shifts the burden of proof to the government to prove by clear and convincing evidence when seizing property and permits the appointment of counsel for indigent claimants while protecting innocent owners. I believe however in conference we might consider the burden of the government being a preponderance of the evidence.

Unlike criminal forfeiture, civil forfeiture requires no due process before a property owner is required to surrender their property.

Studies suggest that minorities are acutely affected by civil asset forfeitures. As we are well aware by now, racial profiling by the police has alarmingly increased the number of cases of minorities involved in traffic stops, airport searches and drug arrests. These cases afford the government, sometimes justifiably, with the opportunity to seize property. Since 1985, the Justice Department's asset forfeiture fund increased from $27 million to $338 million.

Since a deprivation of liberty is not implicated in a civil forfeiture, the government is not bound by the constitutional safeguards of criminal prosecution. The government needs only show probable cause that the property is subject to forfeiture. The burden shifts to property owner to prove that the property is not subject to forfeiture.

The property owner may exhaust his or her financial assets in attorney's fees to fight for the return of property. If the financial burden of attorney's fees is not crushing enough, the owner has to post a bond worth 10 percent of the value of the property, before contesting the forfeiture. Indigent owners are not entitled to legal counsel.

Interestingly enough, persons charged in criminal cases are entitled to a hearing in court and the assistance of counsel. The government need not charge a property owner with a crime when seizing property under civil laws. The result is that an innocent person, or a person not charged with a crime, has fewer rights than the accused criminal. This anomaly must end.

Reform of civil asset forfeiture laws is long overdue. I have several amendments regarding a sooner notice for property owners whose property as seized—I also hope we can present this in conference. My constituents' property rights must be protected.

I urge you to support this bill to ensure that innocent owners are provided some measure of due process before their property is seized.

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Mr. FRANK of Massachusetts. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the substitute seems to me to be based on one premise which I reject, that is, that having the government take your property but calling it civil somehow is different than if the government takes your property and says it is criminal. In either case, you lost the property. In either case, you are stigmatized. In either case, the reason for the loss of the property is that you are considered to have done something wrong.

We have already conceded a great deal, it seems to me, in saying that the government, which must prove beyond a reasonable doubt to fine you criminally, need only meet the lesser standard of clear and convincing evidence to fine you civilly. But to go below that to the preponderance of the evidence is to engage the fiction, indulge the fiction that losing your home because someone did something wrong there, a member of your family, is somehow not as serious a penalty as being fined $10,000. We acknowledge the value of what you are losing through this procedure could far exceed what you might be hit with a criminal fine. Indeed, there is no proportionality here, so that you might lose much more through this civil procedure than through the criminal procedure. If, in fact, your property is taken, it is probably going to be known, so that the obloquy is there, so the question then is, does the legal fiction of calling this a civil asset forfeiture when it looks, smells, talks, acts and operates like a criminal penalty justify making it easier for the government to take it away from you, because that is what we are talking about.

The government takes something away from you because you did something wrong. Or because somebody else did something wrong and you did not try hard enough to stop it, in the judgment of the government. Why should the government have a lower standard of proof in that situation than in another situation where the penalty might be less? While imprisonment obviously is more, criminal fines could be less than the amount of the civil forfeiture, but we make it easier for the government to do the one than the other for no good reason.

I must say it has been my experience when I meet with people in this regard that when they ask to have this explained, they are incredulous that the government does this.

I also want to say, I am a great supporter of law enforcement. In the substitute that the gentleman from Michigan put forward to the juvenile justice bill, there was a bill that I had cosponsored with some of my Massachusetts colleagues to renew the COPS program and to allow law enforcement to continue to pay cops who were originally federally paid. I want to provide more money for law enforcement, but I want to do that through the rational process of appropriations. The notion that we should give law enforcement differential incentives by saying that if they enforce this law they are direct financial beneficiaries but not if they enforce that law seems to me a terrible idea. We should not put our police officers on a bounty system. We ought to fund them better than we now fund them but through the regular process.

I congratulate the gentleman from Illinois for the hard work he has done in bringing this forward. He has already, I think, been judicious in his compromises, and there is no reason to indulge the continuing legal fiction that suffering the penalty of the loss of your property through a civil asset forfeiture is somehow less damaging to you than losing it through a criminal conviction. In every real way, the impact is the same on the individual, and thus by dealing with a clear and convincing standard, we have already lowered the bar for government. To lower it further as this substitute requires is to lower too low the protections that a citizen ought to enjoy vis-a-vis the government.

I hope that we will proceed to considering defeating the substitute and passing the legislation as proposed by the gentleman from Illinois.

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

Mr. HYDE. Mr. Chairman, I yield 2 minutes to the gentleman from Arkansas (Mr. HUTCHINSON).

Mr. HUTCHINSON. Mr. Chairman, I thank the gentleman for yielding me this time.

Clearly we are all supportive of reform. I think that that has been clear from the debate today. I want to respond to the gentleman from Massachusetts concerning the difference in standard of proof. If a student is sued to collect on a defaulted government loan, the government must prove it by a preponderance of the evidence. But if you go against a drug dealer, it has to be a much higher standard of proof, and I think that is unfair. If the government goes after a doctor or a hospital for overcharging on Medicare, you have a lower standard of proof than if you are going after a drug dealer. I think that is fundamentally unfair. And so I think there is a rational reason for keeping the standard of proof the same.

There have been some complaints about the uses of the forfeiture money. Neither the base bill nor the substitute addresses whether it goes through the appropriation process. That is not addressed in these bills. But we have to acknowledge there have been some very beneficial uses, victims assistance programs, safety equipment for law enforcement officers, helping our local law enforcement communities. This would be severely undermined if we cannot go after the drug dealer's assets.

In East St. Louis, Illinois, $350,000 was used of federally forfeited money for a water park that assisted a community. And then in regards to the appointment of counsel, I think there are certain instances in which that would be appropriate, but you have to have adequate safeguards.

If you have a car transporting drugs from New York to Florida, there is an arrest made and there is $60,000 in there, you could have potentially four different people, from the person in New York to the recipient in Florida, to the individuals in the vehicle that would be claiming that money. Would they all be entitled to have appointed counsel? How much is this going to cost the taxpayers? And so I think that we are for reform.

The gentleman from Illinois has done such an extraordinary job with the gentleman from Michigan and others. We are together on this. But I do believe that the substitute offers some improvements that will continue this as a useful tool for law enforcement. And so I think that we need to consider that as we move forward into the debate.

Mr. HYDE. Mr. Chairman, I yield myself the balance of my time.

The CHAIRMAN. The gentleman from Illinois is recognized for 4½ minutes.

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

Mr. HYDE. Mr. Chairman, I want to thank my friends on both sides of the aisle for the enlightening debate on this issue and I would like to respond briefly to my friend from Arkansas. He keeps saying going after a drug dealer. When did he become a drug dealer? You have filed a probable cause. You have not convicted him of anything. But you have confiscated his property, you have put him out of business, you have put him out of house and home. You persist in calling him a drug dealer, but he has not been convicted of anything. He is innocent until proven guilty, unless we follow the perverse logic of our civil asset forfeiture laws.

Now, we want to give some poor guy who has been wiped out by the government on probable cause a lawyer. You say, ''Okay, we'll give you a lawyer, but let the government cross-examine him first, extensively, about anything and everything.'' My God, then he does not need a lawyer. You have held him up to the light and shaken him. You have cross-examined him. Is that the hurdle he has to mount and surmount to get a lawyer? That is really not so.

The preponderance of evidence is fine in a civil suit and the highest standard is beyond all reasonable doubt. We suggest a middle standard, clear and convincing. Why? Because it is not a civil suit. It is a quasi-criminal suit and it is punishment. The Supreme Court has said when they confiscate your property, that is punishment. And so you ought to meet a little higher standard than preponderance and that is the standard of clear and convincing.

The gentleman's bill, his substitute, expands incrementally, exponentially the field of civil asset forfeiture. That may be a good idea, but not in this bill. This is a reform of the process. This is

not a bill to broaden the concept of civil asset forfeiture. I am interested in it. If he wants to prepare a bill and file it, I will give him very good hearings and quick hearings. But this bill is to reform the process and ought not to be diluted or diverted into issues over which we have had no hearings.

Now, all I want to do is give the average citizen who is not a sheriff, who does not have a relative in the city council, I want to give him due process of law. That means the government, King Louis XIV, does not confiscate your property on probable cause. That is all. You prove, Mr. Government, that you ought to have that property, that some crime has been committed and it is connected to the defendant and that is fine. I am all for it. I will open the door for you. But on an affidavit of probable cause to inflict drastic punishment on somebody and make them prove they are not guilty is not, in my humble opinion, the American way.

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

The CHAIRMAN. All time for general debate has expired.

The amendment in the nature of a substitute consisting of the bill, modified by the amendments printed in the bill, shall be considered by sections as an original bill for the purpose of amendment and, pursuant to the rule, each section is considered read.

Before consideration of any other amendment, it shall be in order to consider the amendment printed in House Report 106–193 if offered by the gentleman from Illinois (Mr. HYDE) or his designee. That amendment shall be considered read and may amend portions of the bill not yet read for amendment.

No further amendment to the amendment in the nature of a substitute is in order except those printed in the appropriate portion of the CONGRESSIONAL RECORD. Those amendments shall be considered read.

The Chairman of the Committee of the Whole may postpone a request for a recorded vote on any amendment and may reduce to a minimum of 5 minutes the time for voting on any postponed question that immediately follows another vote, provided that the time for voting on the first question shall be a minimum of 15 minutes.

It is now in order to consider the amendment printed in House Report 106–193.

AMENDMENT OFFERED BY MR. HYDE

Mr. HYDE. Mr. Chairman, I offer an amendment made in order by the rule.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. HYDE:

Page 11, strike line 3 and all that follows through line 3 on page 12 and redesignate sections 4, 5, and 6 as sections 3, 4, and 5, respectively.

Page 12, line 17, strike ''forfeiture'' and insert ''forfeiture under any provision of Federal law (other than the Tariff Act of 1930 or the Internal Revenue Code of 1986) providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense''.

Page 13, beginning in line 20 strike ''under any Act of Congress'' and insert ''under any provision of Federal law (other than the Tariff Act of 1930 or the Internal Revenue Code of 1986) providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense''.

Page 13, line 25, strike ''pre-judgment interest'' and insert ''for pre-judgment interest in a proceeding under any provision of Federal law (other than the Tariff Act of 1930 or the Internal Revenue Code of 1986) providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense''.

Page 14, line 17, strike ''any intangible benefits'' and insert ''any intangible benefits in a proceeding under any provision of Federal law (than the Tariff Act of 1930 or the Internal Revenue Code of 1986) providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense''.

Mr. HYDE. Mr. Chairman, it was always the intent to modify the procedures for Federal civil asset forfeitures. This is a purely technical amendment which clarifies in the few cases where the bill may be unclear that we are talking about civil asset forfeiture and not criminal asset forfeiture. I move its adoption.

Mr. FRANK of Massachusetts. Mr. Chairman, I agree with the gentleman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois (Mr. HYDE).

The amendment was agreed to.

The CHAIRMAN. The Clerk will designate section 1.

The text of section 1 is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Civil Asset Forfeiture Reform Act''.

The CHAIRMAN. Are there any amendments to section 1?

AMENDMENT NO. 25 IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. HUTCHINSON

Mr. HUTCHINSON. Mr. Chairman, I offer an amendment in the nature of a substitute.

The CHAIRMAN. The Clerk will designate the amendment in the nature of a substitute.

The text of the amendment in the nature of a substitute is as follows:

Amendment No. 25 in the nature of a substitute offered by Mr. HUTCHINSON:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Civil Asset Forfeiture Reform Act''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

SEC. 2. CREATION OF GENERAL RULES RELATING TO CIVIL FORFEITURE PROCEEDINGS.

(a) IN GENERAL.—Chapter 46 of title 18, United States Code, is amended by inserting the following new section after section 982:

''§ 983. Civil forfeiture procedures

''(a) ADMINISTRATIVE FORFEITURES.—(1)(A) In any nonjudicial civil forfeiture proceeding under a civil forfeiture statute, with respect to which the agency conducting a seizure of property must send written notice of the seizure under section 607(a) of the Tariff Act of 1930 (19 U.S.C. 1607(a)), such notice together with information on the applicable procedures shall be sent not later than 60 days after the seizure to each party known to the seizing agency at the time of the seizure to have an ownership or possessory interest, including a lienholder's interest, in the seized article. If a party's identity or interest is not determined until after the seizure but is determined before a declaration of forfeiture is entered, such written notice and information shall be sent to such interested party not later than 60 days after the seizing agency's determination of the identity of the party or the party's interest.

''(B) If the Government does not provide notice of a seizure of property in accordance with subparagraph (A), it shall return the property pending the giving of such notice.

''(2) The Government may apply to a Federal magistrate judge (as defined in the Federal Rules of Criminal Procedure) in any district where venue for a forfeiture action would lie under section 1355(b) of title 28 for an extension of time in which to comply with paragraph (1)(A). Such an extension shall be granted based on a showing of good cause.

''(3) A person with an ownership or possessory interest in the seized article who failed to file a claim within the time period prescribed in subsection (b) may, on motion made not later than 2 years after the date of final publication of notice of seizure of the property, move to set aside a declaration of forfeiture entered pursuant to section 609 of the Tariff Act of 1930 (19 U.S.C. 1609). Such motion shall be granted if—

''(A) the Government failed to take reasonable steps to provide the claimant with notice of the forfeiture; and

''(B) the person otherwise had no actual notice of the seizure within sufficient time to enable the person to file a timely claim under subsection (b).

''(4) If the court grants a motion made under paragraph (3), it shall set aside the declaration of forfeiture as to the moving party's interest pending forfeiture proceedings in accordance with section 602 et seq. of the Tariff Act of 1930 (19 U.S.C. 1602 et seq.), which proceedings shall be instituted within 60 days of the entry of the order granting the motion.

''(5) If, at the time a motion under this subsection is granted, the forfeited property has been disposed of by the Government in accordance with law, the Government shall institute forfeiture proceedings under paragraph (4). The property which will be the subject of the forfeiture proceedings instituted under paragraph (4) shall be a sum of money equal to the value of the forfeited property at the time it was disposed of plus interest.

''(6) The institution of forfeiture proceedings under paragraph (4) shall not be barred by the expiration of the statute of limitations under section 621 of the Tariff Act of 1930 (19 U.S.C. 1621) if the original publication of notice was completed before the expiration of such limitations period.

''(7) A motion made under this subsection shall be the exclusive means of obtaining judicial review of a declaration of forfeiture entered by a seizing agency.

''(b) FILING A CLAIM.—(1) Any person claiming such seized property may file a claim with the appropriate official after the seizure.

''(2) A claim under paragraph (1) may not be filed later than 30 days after—

''(A) the date of final publication of notice of seizure; or

''(B) in the case of a person receiving written notice, the date that such notice is received.

''(3) The claim shall set forth the nature and extent of the claimant's interest in the property.

''(4) Any person may bring a direct claim under subsection (b) without posting bond with respect to the property which is the subject of the claim.

''(c) FILING A COMPLAINT.—(1) In cases where property has been seized or restrained by the Government and a claim has been filed, the Attorney General shall file a complaint for forfeiture in the appropriate court in the manner set forth in the Supplemental Rules for Certain Admiralty and Maritime Claims not later than 90 days after the claim was filed, or return the property pending the filing of a complaint. By mutual agreement between the Government and the claimants, the 90-day filing requirement may be waived.

''(2) The Government may apply to a Federal magistrate judge (as defined in the Federal Rules of Criminal Procedure) in any district where venue for a forfeiture action would lie under section 1355(b) of title 28 for an extension of time in which to comply with paragraph (1). Such an extension shall be granted based on a showing of good cause.

''(3) Upon the filing of a civil complaint, the claimant shall file a claim and answer in accordance with the Supplemental Rules for Certain Admiralty and Maritime Claims.

''(d) APPOINTMENT OF COUNSEL.—(1) If the person filing a claim is financially unable to obtain representation by counsel and requests that counsel be appointed, the court may appoint counsel to represent that person with respect to the claim. In determining whether to appoint counsel to represent the person filing the claim, the court shall take into account—

''(A) the nature and value of the property subject to forfeiture, including the hardship to the claimant from the loss of the property seized, compared to the expense of appointing counsel;

''(B) the claimant's standing to contest the forfeiture; and

''(C) whether the claim appears to be made in good faith or to be frivolous.

''(2) The court shall set the compensation for that representation, which shall be the equivalent to that provided for court-appointed representation under section 3006A of this title, and to pay such cost, there are authorized to be appropriated such sums as are necessary as an addition to the funds otherwise appropriated for the appointment of counsel under such section.

''(3) The determination of whether to appoint counsel under this subsection shall be made following a hearing at which the Government shall have an opportunity to present evidence and examine the claimant. The testimony of the claimant at such hearing shall not be admitted in any other proceeding except in accordance with the rules which govern the admissibility of testimony adduced in a hearing on a motion to suppress evidence. Nothing in this paragraph shall be construed to prohibit the admission of any evidence that may be obtained in the course of civil discovery in the forfeiture proceeding or through any other lawful investigative means.

''(e) BURDEN OF PROOF.—In all suits or actions brought for the civil forfeiture of any property, the burden of proof at trial is on the United States to establish, by a preponderance of the evidence, that the property is subject to forfeiture. If the Government proves that the property is subject to forfeiture, the claimant shall have the burden of establishing any affirmative defense by a preponderance of the evidence.

''(f) INNOCENT OWNERS.—(1) An innocent owner's interest in property shall not be forfeited in any civil forfeiture action.

''(2) With respect to a property interest in existence at the time the illegal conduct giving rise to the forfeiture took place, the term 'innocent owner' means an owner who—

''(A) did not know of the conduct giving rise to the forfeiture; or

''(B) upon learning of the conduct giving rise to the forfeiture, did all that reasonably could be expected under the circumstances to terminate such use of the property.

''(3)(A) With respect to a property interest acquired after the conduct giving rise to the forfeiture has taken place, the term 'innocent owner' means a person who, at the time that person acquired the interest in the property, was a bona fide purchaser for value and was at the time of the purchase reasonably without cause to believe that the property was subject to forfeiture.

''(B) Except as provided in paragraph (4), where the property subject to forfeiture is real property, and the claimant uses the property as his or her primary residence and is the spouse or minor child of the person who committed the offense giving rise to the forfeiture, an otherwise valid innocent owner claim shall not be denied on the ground that the claimant acquired the interest in the property—

''(i) in the case of a spouse, through dissolution of marriage or by operation of law, or

''(ii) in the case of a minor child, as an inheritance upon the death of a parent,

and not through a purchase. However, the claimant must establish, in accordance with subparagraph (A), that at the time of the acquisition of the property interest, the claimant was reasonably without cause to believe that the property was subject to forfeiture, and was an owner of the property, as defined in paragraph (6).

''(4) Notwithstanding any provision of this section, no person may assert an ownership interest under this section—

''(A) in contraband or other property that it is illegal to possess; or

''(B) in the illegal proceeds of a criminal act unless such person was a bona fide purchaser for value who was reasonably without cause to believe that the property was subject to forfeiture.

''(5) For the purposes of paragraph (2) of this subsection a person does all that reasonably can be expected if the person takes all steps that a reasonable person would take in the circumstances to prevent or terminate the illegal use of the person's property. There is a rebuttable presumption that a property owner took all the steps that a reasonable person would take if the property owner—

''(A) gave timely notice to an appropriate law enforcement agency of information that led to the claimant to know the conduct giving rise to a forfeiture would occur or has occurred; and

''(B) in a timely fashion, revoked permission for those engaging in such conduct to use the property or took reasonable steps in consultation with a law enforcement agency to discourage or prevent the illegal use of the property.

The person is not required to take extraordinary steps that the person reasonably believes would be likely to subject the person to physical danger.

''(6) As used in this subsection—

''(A) the term 'civil forfeiture statute' means any provision of Federal law (other than the Tariff Act of 1930 or the Internal Revenue Code of 1986) providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense.

''(B) the term 'owner' means a person with an ownership interest in the specific property sought to be forfeited, including a lien, mortgage, recorded security device, or valid assignment of an ownership interest. Such term does not include—

''(i) a person with only a general unsecured interest in, or claim against, the property or estate of another;

''(ii) a bailee unless the bailor is identified and the bailee shows a colorable legitimate interest in the property seized; or

''(iii) a nominee who exercises no dominion or control over the property;

''(C) a person shall be considered to have known that the person's property was being used or was likely to be used in the commission of an illegal act if the person was willfully blind.

''(7) If the court determines, in accordance with this subsection, that an innocent owner had a partial interest in property otherwise subject to forfeiture, or a joint tenancy or tenancy by the entirety in such property, the court shall enter an appropriate order—

''(A) severing the property;

''(B) transferring the property to the Government with a provision that the Government compensate the innocent owner to the extent of his or her ownership interest once a final order of forfeiture has been entered and the property has been reduced to liquid assets; or

''(C) permitting the innocent owner to retain the property subject to a lien in favor of the Government, to the extent of the forfeitable interest in the property, that will permit the Government to realize its forfeitable interest if the property is transferred to another person.

To effectuate the purposes of this subsection, a joint tenancy or tenancy by the entireties shall be converted to a tenancy in common by order of the court, irrespective of state law.

''(8) An innocent owner defense under this subsection is an affirmative defense.

''(g) MOTION TO SUPPRESS SEIZED EVIDENCE.—At any time after a claim and answer are filed in a judicial forfeiture proceeding, a claimant with standing to contest the seizure of the property may move to suppress the fruits of the seizure in accordance with the normal rules regarding the suppression of illegally seized evidence. If the claimant prevails on such motion, the fruits of the seizure shall not be admitted into evidence as to that claimant at the forfeiture trial. However, a finding that evidence should be suppressed shall not bar the forfeiture of the property based on evidence obtained independently before or after the seizure.

''(h) USE OF HEARSAY AT PRE-TRIAL HEARINGS.—At any pre-trial hearing under this section in which the governing standard is probable cause, the court may accept and consider hearsay otherwise inadmissible under the Federal Rules of Evidence.

''(i) STIPULATIONS.—Notwithstanding the claimant's offer to stipulate to the forfeitability of the property, the Government shall be entitled to present evidence to the finder of fact on that issue before the claimant presents any evidence in support of any affirmative defense.

''(j) PRESERVATION OF PROPERTY SUBJECT TO FORFEITURE.—The court, before or after the filing of a forfeiture complaint and on the application of the Government, may—

''(1) enter any restraining order or injunction in the manner set forth in section 413(e) of the Controlled Substances Act (21 U.S.C. 853(e));

''(2) require the execution of satisfactory performance bonds;

''(3) create receiverships;

''(4) appoint conservators, custodians, appraisers, accountants or trustees; or

''(5) take any other action to seize, secure, maintain, or preserve the availability of property subject to forfeiture under this section.

''(k) EXCESSIVE FINES.—(1) At the conclusion of the trial and following the entry of a verdict of forfeiture, or upon the entry of summary judgment for the Government as to the forfeitability of the property, the claimant may petition the court to determine whether the excessive fines clause of the Eighth Amendment applies, and if so, whether forfeiture is excessive. The claimant shall have the burden of establishing that a forfeiture is excessive by a preponderance of the evidence at a hearing conducted in the manner provided in Rule 43(e), Federal Rules of Civil Procedure, by the Court without a jury. If the court determines that the forfeiture is excessive, it shall adjust the forfeiture to the extent necessary to avoid the Constitutional violation.

''(2) The claimant may not object to the forfeiture on Eighth Amendment grounds other than as set forth in paragraph (1), except that a claimant may, at any time, file a motion for summary judgment asserting that even if the property is subject to forfeiture, the forfeiture would be excessive. The court shall rule on such motion for summary judgment only after the Government has had an opportunity—

''(A) to conduct full discovery on the Eighth Amendment issue; and

''(B) to place such evidence as may be relevant to the excessive fines determination before the court in affidavits or at an evidentiary hearing.

''(l) PRE-DISCOVERY STANDARD.—In a judicial proceeding on the forfeiture of property, the Government shall not be required to establish the forfeitability of the property before the completion of discovery pursuant to the Federal Rules of Civil Procedure, particularly Rule 56(f) as may be ordered by the court or if no discovery is ordered before trial.

''(m) APPLICABILITY.—The procedures set forth in this section apply to any civil forfeiture action brought under any provision of this title, the Controlled Substances Act, or the Immigration and Naturalization Act.''.

(b) RELEASE OF PROPERTY.—Chapter 46 of title 18, United States Code, is amended to add the following section after section 984:

''§ 985. Release of property to avoid hardship

''(a) A person who has filed a claim under section 983 is entitled to release pursuant to subsection (b) of seized property pending trial if—

''(1) the claimant has a possessory interest in the property sufficient to establish standing to contest forfeiture and has filed a nonfrivolous claim on the merits of the forfeiture action;

''(2) the claimant has sufficient ties to the community to provide assurance that the property will be available at the time of the trial;

''(3) the continued possession by the United States Government pending the final disposition of forfeiture proceedings will cause substantial hardship to the claimant, such as preventing the claimant from working, leaving the claimant homeless, or preventing the functioning of a business;

''(4) the claimant's hardship outweighs the risk that the property will be destroyed, damaged, lost, concealed, diminished in value or transferred if it is returned to the claimant during the pendency of the proceeding; and

''(5) none of the conditions set forth in subsection (c) applies;

''(b)(1) The claimant may make a request for the release of property under this subsection at any time after the claim is filed. If, at the time the request is made, the seizing agency has not yet referred the claim to a United States Attorney pursuant to section 608 of the Tariff Act of 1930 (19 U.S.C. 1608), the request may be filed with the seizing agency; otherwise the request must be filed with the United States Attorney to whom the claim was referred. In either case, the request must set forth the basis on which the requirements of subsection (a)(1) are met.

''(2) If the seizing agency, or the United States Attorney, as the case may be, denies the request or fails to act on the request within 20 days, the claimant may file the request as a motion for the return of seized property in the district court for the district represented by the United States Attorney to whom the claim was referred, or if the claim has not yet been referred, in the district court that issued the seizure warrant for the property, or if no warrant was issued, in any district court that would have jurisdiction to consider a motion for the return of seized property under Rule 41(e), Federal Rules of Criminal Procedure. The motion must set forth the basis on which the requirements of subsection (a) have been met and the steps the claimant has taken to secure the release of the property from the appropriate official.

''(3) The district court must act on a motion made pursuant to this subsection within 30 days or as soon thereafter as practicable, and must grant the motion if the claimant establishes that the requirements of subsection (a) have been met. If the court grants the motion, the court must enter any order necessary to ensure that the value of the property is maintained while the forfeiture action is pending, including permitting the inspection, photographing and inventory of the property, and the court may take action in accordance with Rule E of the Supplemental Rules for Certain Admiralty and Maritime Cases. The Government is authorized to place a lien against the property or to file a lis pendens to ensure that it is not transferred to another person.

''(4) If property returned to the claimant under this section is lost, stolen, or diminished in value, any insurance proceeds shall be paid to the United States and such proceeds shall be subject to forfeiture in place of the property originally seized.

''(c) This section shall not apply if the seized property—

''(1) is contraband, currency or other monetary instrument, or electronic funds unless such currency or other monetary instrument or electronic funds constitutes the assets of a business which has been seized,

''(2) is evidence of a violation of the law,

''(3) by reason of design or other characteristic, is particularly suited for use in illegal activities; or

''(4) is likely to be used to commit additional criminal acts if returned to the claimant.''

''(d) Once a motion for the release of property under this section is filed, the person filing the motion may request that the motion be transferred to another district where venue for the forfeiture action would lie under section 1355(b) of title 28 pursuant to the change of venue provisions in section 1404 of title 28.''.

(c) CHAPTER ANALYSIS.—The chapter analysis for chapter 46 of title 18, United States Code, is amended—

(1) by inserting after the item relating to section 982 the following:

''983. Civil forfeiture procedures''; and

(2) by inserting after the item relating to section 984 the following:

''985. Release of property to avoid hardship''.

(f) CIVIL FORFEITURE OF PROCEEDS.—Section 981(a)(1) of title 18, United States Code, is amended—

(1) in subparagraph (C) by inserting before the period the following: ''or any offense constituting 'specified unlawful activity' as defined in section 1956(c)(7) of this title or a conspiracy to commit such offense''; and

(2) by striking subparagraph (E).

(d) UNIFORM DEFINITION OF PROCEEDS.—Section 981(a) of title 18, United States Code, as amended by subsection (c), is amended—

(A) in paragraph (1), by striking ''gross receipts'' and ''gross proceeds'' wherever those terms appear and inserting ''proceeds''; and

(B) by adding the following after paragraph (1):

''(2) For purposes of paragraph (1), the term 'proceeds' means property of any kind obtained, directly or indirectly, as the result of the commission of the offense giving rise to forfeiture, and any property traceable thereto, and is not limited to the net gain or profit realized from the commission of the offense. In a case involving the forfeiture of proceeds of a fraud or false claim under paragraph (1)(C) involving billing for goods or services part of which are legitimate and part of which are not legitimate, the court shall allow the claimant a deduction from the forfeiture for the amount obtained in exchange for the legitimate goods or services. In a case involving goods or services provided by a health care provider, such goods or services are not 'legitimate' if they were unnecessary.

''(3) For purposes of the provisions of subparagraphs (B) through (H) of paragraph (1) which provide for the forfeiture of proceeds of an offense or property traceable thereto, where the proceeds have been commingled with or invested in real or personal property, only the portion of such property derived from the proceeds shall be regarded as property traceable to the forfeitable proceeds. Where the proceeds of the offense have been invested in real or personal property that has appreciated in value, whether the relationship of the property to the proceeds is too attenuated to support the forfeiture of such property shall be determined in accordance with the excessive fines clause of the Eighth Amendment.''

SEC. 3. COMPENSATION FOR DAMAGE TO SEIZED PROPERTY.

(a) TORT CLAIMS ACT.—Section 2680(c) of title 28, United States Code, is amended—

(1) by striking ''law-enforcement'' and inserting ''law enforcement''; and

(2) by inserting before the period the following: '', except that the provisions of this chapter and section 1346(b) of this title do apply to any claim based on the destruction, injury, or loss of goods, merchandise, or other property, while in the possession of any officer of customs or excise or any other law enforcement officer, if the property was seized for the purpose of forfeiture under any provision of Federal law (other than the Tariff Act of 1930 or the Internal Revenue Code of 1986) providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense but the interest of the claimant is not forfeited.

(b) DEPARTMENT OF JUSTICE.—

(1) IN GENERAL.—With respect to a claim that cannot be settled under chapter 171 of title 28, United States Code, the Attorney General may settle, for not more than $50,000 in any case, a claim for damage to, or loss of,

privately owned property caused by an investigative or law enforcement officer (as defined in section 2680(h) of title 28, United States Code) who is employed by the Department of Justice acting within the scope of his or her employment.

(2) LIMITATIONS.—The Attorney General may not pay a claim under paragraph (1) that—

(A) is presented to the Attorney General more than 1 year after it occurs; or

(B) is presented by an officer or employee of the United States Government and arose within the scope of employment.

SEC. 4. PREJUDGMENT AND POSTJUDGMENT INTEREST.

Section 2465 of title 28, United States Code, is amended—

(1) by inserting ''(a)'' before ''Upon''; and

(2) adding at the end the following:

''(b) INTEREST.—

''(1) POST-JUDGMENT.—Upon entry of judgment for the claimant in any proceeding to condemn or forfeit property seized or arrested under any provision of Federal law (other than the Tariff Act of 1930 or the Internal Revenue Code of 1986) providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense, the United States shall be liable for post-judgment interest as set forth in section 1961 of this title.

''(2) PRE-JUDGMENT.—The United States shall not be liable for prejudgment interest in a proceeding under any provision of Federal law (other than the Tariff Act of 1930 or the Internal Revenue Code of 1986) providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense, except that in cases involving currency, other negotiable instruments, or the proceeds of an interlocutory sale, the United States shall disgorge to the claimant any funds representing—

''(A) interest actually paid to the United States from the date of seizure or arrest of the property that resulted from the investment of the property in an interest-bearing account or instrument; and

''(B) for any period during which no interest is actually paid, an imputed amount of interest that such currency, instruments, or proceeds would have earned at the rate described in section 1961.

''(3) LIMITATION ON OTHER PAYMENTS.—The United States shall not be required to disgorge the value of any intangible benefits nor make any other payments to the claimant not specifically authorized by this subsection.''.

SEC. 5. APPLICABILITY.

Unless otherwise specified in this Act, the amendments made by this Act apply with respect to claims, suits, and actions filed on or after the date of the enactment of this Act.

Mr. HUTCHINSON. Mr. Chairman, it was Ronald Reagan who understood how to fight and win the war on drugs. It was President Reagan who knew that you had to seize the drug dealers' cars, boats, airplanes and cash that were used to carry on the drug business in order to hit them where it hurts.

Asset forfeiture has proven without any doubt to be an effective weapon in the war on drugs. This is not the time to disarm our soldiers and to demoralize our police on the front line and it is certainly not the right time to send the signal to the drug dealers that we are weakening our resolve.

For that reason, I, along with the gentleman from New York (Mr. WEINER) and the gentleman from New York (Mr. SWEENEY) have offered a substitute to H.R. 1658 which would accomplish the reform that the gentleman from Illinois has worked so valiantly for but at the same time our substitute will not cripple our drug enforcement agents who put their lives on the line every day.

I agree that no innocent citizen should have to prove his or her innocence to the government in order to protect their property from government seizure. It should not be probable cause as the gentleman from Illinois pointed out. This substitute includes the identical provisions in the base bill on shifting the burden of proof to the government, eliminating the necessity of a cost bond, providing a means to recovery for citizens who have their property damaged, and it pays interest on assets returned. We can all be for protection of our citizens and for reform while also going after the drug dealers. And so there are some corrections in the substitute that provides balance to this legislation.

For example, the drug trafficker who unloads shiploads of cocaine upon our Nation's youth should not be afforded more protection than a student who defaults on his loan. The government has to prove the case by a preponderance against the student, but there is a higher standard when going after the assets of drug dealers by clear and convincing evidence.

□ 1515

Now, as pointed out, that we do not know they are a drug dealer. Eighty percent of the cases there is an arrest or a charge against the individual. But in some instances we will have assets are abandoned by people who are clearly engaging in drug trafficking, but they will go across the border. We will have someone who is not prosecutable because we do not have good extradition laws, and so we can still seize their assets under those circumstances. This makes sense, and the substitute corrects the problem.

Now, if there was a medal of honor to be given to someone in the war on drugs, it would be to Tom Constantine, the DEA Administrator. Listen to what he has to say:

> Drug trafficking is not a crime of passion, but one of greed. The DEA and the law enforcement community know that to dissolve a drug trafficking organization we must eliminate the financial base and profit. The enactment of H.R. 1658 would severely limit DEA's ability to use its effective law enforcement tool.

He goes on to say that the broad brush of H.R. 1658 would destroy or severely limit the ability of law enforcement to attack drug traffickers and other criminal elements.

This is the DEA Administrator.

I think we have to be consistent here in this Congress. How does disarming law enforcement fit into the war on drugs? We push other countries to adopt laws that allow seizure of assets; we push them to do that, and then we back off from our own commitment to take drug dealers' assets. We form a Speaker's Task Force for a Drug-free America. We want to de-certify Mexico. We get upset about the lack of commitment from other countries. Then we throw up our hands and say that we want to overreact and back off from our support of law enforcement.

We need to ask ourselves how can we weaken the forfeiture laws to such an extent that we discourage law enforcement. We are telling them that we do not have the resolve. We are telling the DEA that we are not going to help them. We cannot demoralize the courageous law enforcement men and women who are trying to save the lives of our teenagers and the next generation.

The bill of the gentleman from Illinois (Mr. HYDE) does extraordinary good to what we are trying to accomplish in making sure citizens are protected, but the reasonable Hutchinson–Weiner-Sweeney amendment makes it a balance so that we do not hamper the legitimate efforts of law enforcement.

So I would ask my colleagues to support this substitute that is offered that would bring reason to the appointment of attorneys, that would make sure that it is not simply retroactive in application, it does not affect pending cases, as the base bill does. Our bill would say it would apply after the date of enactment. It is much a more commonsense approach to the enactment of a bill. Whenever it comes to the hardship cases, we make it clear that there is a difference between the cash and those things that are used for drug crimes during the pendency of an action versus otherwise, and so I ask my colleagues to support this reasonable substitute.

Mr. WEINER. Mr. Chairman, I rise in support of the Hutchinson amendment.

Mr. Chairman, the gentleman from Arkansas (Mr. HUTCHINSON) has outlined for us in great detail how we are simply seeking to make the civil asset forfeiture law, make it a little bit more fair and to make it so it can be used by law enforcement authorities. But there has been some argument here about whether or not we should have civil asset forfeiture at all, and I would like to spend a moment or two just reviewing some of the circumstances that perhaps my colleagues have not considered where civil asset forfeiture is the only way to really get at the root of crime, and it is the reason why we have had such great results against crime in many localities around the country.

First of all, criminal forfeiture, which is something that my colleague from Massachusetts has argued in support of, and frankly I believe we all believe that criminal forfeiture where it is written into the law is the most important tool that should be used against a criminal is useless if the criminal is either dead or fugitive from the law. If someone leaves the scene of a crime, if we are in pursuit of them and they leave behind a sack of money and drugs, under the argument that has been made here we would not be able to seize that unless, of course, we

are able to reach a much higher standard than presently exists.

Secondly, criminal forfeiture is limited to the property of the defendant, and just as I said earlier, there are very frequently times, especially in the locality that I am from in New York City where we have homes, where we have apartments, where we have houses that are used for illegal activity and sometimes even used for illegal activity with the knowledge of the occupant. But since the occupant or the owner is not the person that does that criminal activity, civil asset forfeiture is frequently the only way that we can get it. If an airplane that is used for drug smuggling, for example, belongs to the wife of the defendant or belongs to a corporation or to his partner, this is a way that we can get at that article of crime.

Also, civil forfeiture is the only way to seize drug money that is carried by a courier when there is no way to know exactly which drug dealer it belongs to. Eighty-five percent of such civil forfeiture cases are uncontested. Without civil forfeiture this money would have to be released to the courier.

Again civil forfeiture is the only way to shut down a crack house or a property. Civil forfeiture is needed when we do not, we are not, when we are seizing something under federal law when the crime has happened under State law.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. WEINER. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. He said, and I thank the gentleman for yielding; he said that some of the 85 percent of them were uncontested. Is the gentleman telling us that one could not meet the standard of clear and convincing in an uncontested case?

Mr. WEINER. If I can reclaim my time, what I am arguing to the gentleman from Massachusetts is that there are some people who have looked on and listened to the debate and said why is it that we should have civil forfeiture statutes at all? Why is it necessary that they exist in the law?

The gentleman from Illinois, the distinguished chairman, raised a very interesting question about whether it is indeed an un-American thing to do, and what I am trying to do is lay out the ways in the real world law enforcement authorities all across this country who from A to Z have lined up in favor of the Hutchinson–Weiner-Sweeney amendment are using it.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield again?

Mr. WEINER. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. I understand, but the amendment is to a bill which leaves civil forfeiture in place, and the gentleman just cited as an argument for the amendment, presumably, that many, many of these are uncontested.

Now the underlying bill says they just have to meet the clear and convincing standard, and I am arguing that in an uncontested case one does not have to be a crack lawyer to meet the standard of clear and convincing, so that is an irrelevancy on the question of the amendment versus the underlying bill.

Mr. WEINER. As I reclaim my time, I guess I understand from that question and that argument that the gentleman from Massachusetts supports civil forfeiture in those cases.

Mr. FRANK of Massachusetts. If the gentleman would yield, I congratulate the gentleman on getting me to acknowledge what has been my policy for years and what is the Chairman's policy. The gentleman is flailing away at a straw man. I do not see anything on here that totally abolishes civil forfeiture anywhere.

Mr. WEINER. In fact, I would say to the gentleman from Massachusetts, the straw man here is the argument that these abuses represent the true state of civil forfeiture law in this country. In fact, these things that I am listing are how indeed law enforcement authorities every day are using the civil forfeiture statute. The abuses that exist, and they do, they represent the straw man in this debate because indeed we all want to do away with the abuses.

The question becomes do we then say by doing away with these abuses do we obviate all civil forfeiture statutes? The gentleman from Illinois, the very distinguished chairman, argued on the well of this House that it was un-American in some way, and all I am trying to delineate for the American people and for the folks in this Chamber; the fundamental argument has emerged: Should we have civil forfeiture, and I believe we should.

Mr. HYDE. Mr. Chairman, I move to strike the last word.

As my colleagues know, we a have a lot of fevered debate around here by well-meaning people, and that is fine, that is what this place is all about. So I just want to say a few things about the amendment offered by my good friend, the gentleman from Arkansas (Mr. HUTCHINSON), the gentleman from New York (Mr. SWEENEY), and the gentleman from New York (Mr. WEINER). It is so unfair, it is unfair.

Mr. Chairman, I will tell my colleagues why it is unfair. The bill, the underlying bill, guarantees a property owner is considered an innocent owner and receives protection from forfeiture if he or she notifies the police of the unauthorized illegal use of his or her property by others and revokes their permission to use the property. That is the innocent owner defense. Is that fair? Well, I think it is, but it is not in their bill. They do not permit an innocent owner who has gone to the police and said, ''Some of my tenants are selling dope, and I have tried to evict them, and they threw a knife at me.'' Well, he loses his building because they do not have an innocent owner defense in their substitute.

Now, they do not protect innocent heirs. Somebody inherits something, and 10 years ago it was used in a crime, he does not know about it, totally innocent; he loses his property. I know the police like that; they like those assets. I understand that. The substitute does not require the government to establish the forfeitability of the property before completion of discovery. As the gentleman from Michigan (Mr. CONYERS) said, seize now and prove later. That is a wonderful idea; that is very fair.

The substitute dramatically expands the field of civil asset forfeiture; no hearings on that at all. It weakens almost all of our reforms. The burden of proof belongs with the government when they are punishing someone, and this is punishment. It has been held to be punishment, quasi criminal, and therefore their standard ought to be, ought to be, clear and convincing.

Now, Mr. Constantine had an interesting quote there, and I have nothing but admiration for people who are fighting the drug battle, but I did not hear a peep out of those people while all of these abuses were going on, while people had their property confiscated on probable cause. I would think more of their essential fairness had they brought this to our attention and not some newspaper man.

Mr. WEINER. Mr. Chairman, will the gentleman yield?

Mr. HYDE. I yield to the gentleman from New York.

Mr. WEINER. Mr. Chairman, first of all just a point of correction on a couple of points.

We do indeed have an innocent owner defense in the Sweeney-Hutchinson–Weiner substitute, and as to the point that there were not hearings on the bill, this virtually identical bill passed by 26 to 1 last year in the Committee on the Judiciary of this House.

Mr. HYDE. Mr. Chairman, I did not hear the gentleman.

Mr. WEINER. Our substitute passed 26 to 1 last year in the Committee on the Judiciary of this House.

Mr. HYDE. Last year I tried to compromise with the Justice Department. I bent over backwards trying to accommodate everybody, and the more their bill grew and was distorted into areas where I did not want it to go, I lost support, and finally I had a nice shell of nothing. So I decided to get pure and go back to the original bill, and that is what we are doing.

Mr. WEINER. I just want a clarification on the notion that there was no hearings because indeed there were.

Mr. HYDE. There were no hearings on the burden of proof and things like that, and the gentleman from New York was not here.

Mrs. MEEK of Florida. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I have an amendment at the desk.

The CHAIRMAN. The gentlewoman's amendment can be considered during a later section in the bill.

Mrs. MEEK of Florida. That is true, but I amended both of them. I amended

this particular bill as well as the later bill.

PARLIAMENTARY INQUIRY

Mr. FRANK of Massachusetts. Parliamentary inquiry, Mr. Chairman.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. FRANK of Massachusetts. Mr. Chairman, if there were to be unanimous consent for it to be offered now since it might not get too far along, would that be in order, to ask for unanimous consent that the gentlewoman be allowed to offer it now?

The CHAIRMAN. Does the gentlewoman from Florida have an amendment to this amendment?

Mrs. MEEK of Florida. Yes, I do.

The CHAIRMAN. Would she present it to the Clerk?

Mrs. MEEK of Florida. Yes, it has been presented, and it is preprinted in the CONGRESSIONAL RECORD.

□ 1530

AMENDMENT OFFERED BY MRS. MEEK OF FLORIDA TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. HUTCHINSON

Mrs. MEEK of Florida. Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute.

The Clerk read as follows:

1Amendment offered by Mrs. MEEK of Florida to the amendment in the nature of a substitute offered by Mr. HUTCHINSON:

At the end add the following:

SEC. 5. FORFEITURE FOR ALIEN SMUGGLING.

Section 981(a)(1) of title 18, United States Code, is amended by adding at the end the following:

''(l)(1) Any conveyance, including any vessel, vehicle, or aircraft which has been used or is being used in commission of a violation of section 274(a) of the Immigration and Nationality Act (8 U.S.C. 1324(a)); and

''(2) Any property, real or personal that—

''(A) constitutes, is derived from, or is traceable to the proceeds obtained, directly or indirectly, from the commission of a violation of section 274(a) of the Immigration and Nationality Act (8 U.S.C. 1324(a)); or

''(B) is used to facilitate, or is intended to be used to facilitate, the commission of a violation of such section.

Mrs. MEEK of Florida (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Florida?

There was no objection.

Mrs. MEEK of Florida. Mr. Chairman, my amendment addresses the pernicious practice of alien smuggling which is so often experienced in my area of south Florida. It is a huge problem there, especially those who bring passengers in from Haiti and Cuba to south Florida, frequently on unsafe and rickety boats, and many times under dangerous conditions, and many times with the loss of life.

For example, in March of this year, Mr. Chairman, an alien smuggler's boat sank off the coast of West Palm Beach, Florida, and depending upon whether or not the Coast Guard or press reports of this horrendous tragedy, whether those reports are correct, there were some 15 to 40 Haitian passengers who drowned because of that illegal smuggling act of bringing these poor and disadvantaged people from Haiti.

These heartless and inhumane alien smugglers are really parasites. They are making huge sums of money from these poor people who are fleeing from very bad conditions in their own countries. They seek to come to this country by any means because of their desperate condition, and they become easy prey for the smugglers, and they want to come to the United States.

We must provide law enforcement with some available remedies to assure that the smugglers cannot continue to exploit vulnerable communities such as the Haitians and the Cubans. Unfortunately, the existing civil asset forfeiture provisions for alien smuggling, they are far more limited than those available to address drug offenses, and there is a considerable need here for stronger, stricter regulations on these alien smugglers.

Current law authorizes the forfeiture of vehicles, vessels, and aircraft used to commit alien smuggling offenses. This has proven to be a very good law enforcement tool that the INS uses more than 12,000 times a year. But the law itself has some very glaring loopholes. We know that there are other types of property other than vessels and vehicles and aircraft that will facilitate the kind of illegal stuff that the smugglers are doing. But this type of property right now is not subject to civil asset forfeiture.

To give just one example of that, alien smugglers use electronic gear to monitor law enforcement activity directed against alien smuggling. The smugglers also use very large and well-equipped warehouses where vehicles, vessels and even human beings, many times, are stashed to avoid detection by the Coast Guard or the Border Patrol. Yet these other types of property currently are not subject to civil asset forfeiture.

Suffice it to say, Mr. Chairman, that there is an arena where current laws do not cover what is going on with these people who are dealing in human cargo. So my amendment seeks to correct these deficiencies by expanding the scope of permissible civil asset forfeiture in alien smuggling.

Law enforcement should have the ability to reach any property that is owned by the smugglers. Right now they do not. There is no logical reason why they cannot.

I thank the distinguished chairman, and I thank the people who are offering this substitute amendment, Mr. Chairman, for expressing their willingness to address this major problem that I have brought up between now and conference.

Mr. Chairman, based upon their statements and upon my understanding of what they have said, that they will address this later, I ask unanimous consent to withdraw my amendment.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Florida?

There was no objection.

Mr. GILMAN. Mr. Chairman, I move to strike the requisite number of words.

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

Mr. GILMAN. Mr. Chairman, I rise in support of the substitute presently before us, and I urge my colleagues to support it as well. It is a carefully drawn proposal with the input of the Department of Justice and the law enforcement community. It, too, has an innocent owner defense. It also works to make certain that the defense will not be used by any criminals to shield their property.

The underlying Hyde bill is opposed by the DEA, the International Association of Chiefs of Police, by the New York State Police, the New York attorneys general, the New York State District Attorneys Association, the National Sheriffs Association, the Fraternal Order of Police, the national drug enforcement officers, among just a few in our law enforcement community. These are the frontline forces in our fight against illicit drugs and crime. We should heed their sound advice and be wary of anything that can make their already difficult job any harder.

Our superintendent of the New York State Police, an outstanding and dedicated police officer, and who once served in my district, put this whole debate in proper perspective when he wrote me on June 18 stating, and I quote, we are aware of no instance since the inception of the Federal equitable forfeiture sharing program of any case involving this agency whereby a hardship was endured by any innocent owner, close quote.

Let us not throw out the baby with the bath water while we try to reform asset forfeiture. Accordingly, I urge a vote for the Hutchinson-Weiner-Sweeney substitute. I think it is a well-crafted and well-thought-out compromise that was developed last year with the input of those who have been fighting the scourge of drugs and crime each and every day all across our Nation.

Mr. Chairman, I insert the following correspondence for the RECORD:

STATE OF NEW YORK,
EXECUTIVE CHAMBER,
New York, NY, June 23, 1999.

Hon. BENJAMIN A. GILMAN,
U.S. House of Representatives, Rayburn Office Building, Washington, DC.

DEAR CONGRESSMAN GILMAN: I take this opportunity to express New York State's concern with regard to H.R. 1658 which is imminently scheduled to come before the full House of Representatives for vote. Passage of H.R. 1658 will seriously impair law enforcement's ability to seize assets of criminal enterprises. As such, when Congressman Hyde offers H.R. 1658 to address criminal asset forfeitures, I strongly urge members to support the substitute amendment being offered by Congressman Sweeney, Weiner and Hutchinson.

One of the most potent weapons in our efforts to combat illegal drugs and other organized criminal activity has been comprehensive Federal forfeiture statutes that strip criminal enterprises of their accumulated wealth and distribute it to state and local law enforcement agencies. The forfeited assets are then utilized by law enforcement agencies to augment their capacity to combat a broad array of criminal activity.

New York has been the major recipient of these shared forfeited assets. Indeed, since inception of this program in 1985, New York State law enforcement agencies have received over $380 million in forfeited assets, more than three times the amount of any other state. The New York State Police, alone, have received in excess of $100 million, enabling the agency to build a new $25 million Forensic Investigation Center funded entirely by forfeited assets returned to New York State. State and local police and prosecutors throughout the State received over $28 million in federally forfeited criminal proceeds in 1998 alone.

Unfortunately, this very laudable and effective program is threatened by H.R. 1658 as introduced by Congressman Hyde which, in my view, has the potential of decimating the forfeited asset sharing program in New York and across the nation.

Under the legitimate guise of protecting the rights of ''innocent'' owners, the bill unfortunately goes far beyond what is reasonably necessary to accomplish that goal and restructures the Federal forfeiture law in a manner that tips the scale sharply in favor of the criminal. The unrealistically high burdens of proof the Hyde language places upon police officers and the government, its provisions that eliminate cost bonds, permit transfer of assets to relatives, and permit the utilization of seized assets for legal fees will, I believe, hasten the demise of an outstanding program, and result in millions of dollars of tainted criminal assets being retained by organized criminal enterprises. It is, therefore, no surprise that H.R. 1658 is strongly opposed by virtually every law enforcement organization in the country, as sell as the United States Department of Justice.

Fortunately, to the extent that minor corrective measures are needed with regard to Federal forfeiture, there are realistic alternatives to H.R. 1658 which deserve your consideration and support. The substitute amendment being offered by Congressmen Sweeney, Hutchinson, and Weiner, strengthens the procedures that protect truly innocent owners, while preserving the inherent integrity of the forfeiture laws.

I respectfully request that you vote against H.R. 1658, unless the Sweeney/Weiner/Hutchinson amendment passes.

Please contact me if I can provide further information. Thank you for your assistance.

Sincerely,

KATHERINE N. LAPP.

NEW YORK STATE POLICE,
STATE CAMPUS,
Albany, NY, June 18, 1999.

Hon. BENJAMIN A. GILMAN,
Member of Congress, U.S. House of Representatives, Rayburn House Office Building, Washington, DC.

Re: H.R. 1658.

DEAR CONGRESSMAN GILMAN: As you know, I have expressed our strong opposition to the above-referenced measure. As a result of follow-up discussions by counsel from our respective offices, I would like to reiterate one particular point that has surfaced in relationship to this bill.

We are aware of no instance, since the inception of the federal equitable forfeiture sharing program, of any case involving this agency whereby a hardship was endured by a truly innocent owner.

It is not the intention of this agency, nor, in my opinion, the intention of law enforcement in general, to deprive truly innocent owners of property due to the illegal use of the property by criminals.

I would have no difficulty supporting a measure that protects legitimate innocent owners such as bona-fide purchasers or parents who have no involvement of knowledge of the criminal activity. I do believe however, that the above-referenced measure goes too far in permitting the divestiture of property to others in order to avoid forfeiture.

Thank you for your assistance.

Sincerely,

JAMES W. MCMAHON,
Superintendent.

Mr. FRANK of Massachusetts. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I want to speak on the amendment. I say that because not all of the conversation we have had was on the amendment. My colleague from New York brilliantly argued against a nonexistent proposition, at least existent in the current context; namely, that we should do away with civil asset forfeiture. There was an agreement that we should have it.

The questions are several. One, should the standard that the government has to meet to take someone's property because that person has either committed a crime or not prevented a crime, should the standard be the lowest possible, preponderance of the evidence, or should it be the intermediate standard of clear and convincing?

We are in an ironic situation now, and we will be even after the bill is passed, as I hope it will be, because I do not think it should be changed from that; it is now harder to prove that one is guilty of the crime than to take away one's property, even though the property may be more. In fact, we have this situation: One may be punished here substantially by the loss of one's property not for committing a crime, but for failing to prevent a crime from being committed. One forfeits one's innocent-owner defense if one has not taken steps to prevent the crime from being committed.

Now, the government need only prove, according to the amendment to the amendment, by a preponderance of the evidence that one failed to prevent the crime from being committed, and it can take one's property. That seems to me to be quite astonishing, that there is a lower standard for punishing someone for simply not stopping someone else from committing a crime than from committing the crime. It seems to me one is more culpable if one commits the crime, but it is easier to go after someone in the other circumstance.

Again, I want to stress, the notion that there is some division between losing one's property in a civil forfeiture and losing it in a criminal proceeding exists in very few minds and in no reality. There is no difference between having one's property taken.

The debate here is clear and convincing versus preponderance. The gentleman from New York said, in 85 percent of the cases, they are uncontested. Well, I submit that in 85 percent of the cases, if they are uncontested, establishing this to occur under a clear and convincing standard would not be that hard. One cannot lose, it seems to me, an uncontested case simply because the standard of truth is too high. We could probably meet beyond a reasonable doubt. We could probably meet absolute certainty, but we could certainly meet clear and convincing. So in those cases which are uncontested, the amendment is, of course, irrelevant. In those cases which are uncontested, there is no dispute, and one could easily win.

Mr. WEINER. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from New York.

Mr. WEINER. Mr. Chairman, we seem to have a problem about the premise. The gentleman seems to believe that the premise of civil asset forfeiture is always to be punitive, to penalize someone. In fact, the way it is most often used, as I described in the examples, is if there is a crack house in the middle of a block that is by being there, that is by its very existence, because someone fails to take action, what the Fed, in cooperation with the city and State authorities, are seeking to do, is take that crack house out of circulation.

Mr. FRANK of Massachusetts. Mr. Chairman, reclaiming my time, the gentleman is off the point, and I am not going to let him get off the point in my time.

The question was, should they have to meet the standard of clear and convincing or beyond reasonable doubt. I was quoting the gentleman where he said, in 85 percent of the cases they are uncontested. And my point, which I thought would be uncontested, is that an uncontested case, it is not that hard to meet the standard of clear and convincing, so the gentleman's crack houses would, in fact, be closed down.

But the notion that it is not punitive I would have to reject. It is always punitive for the government to come and take away one's property. The notion that there is this nonpunitive confiscation is what is at the heart of this. The notion that one is found by the government to have done something terrible, and, as a result of that, one is going to lose one's property, and one is, therefore, not punished does not make any sense.

There are a couple of other arguments I want to make. One, the gentleman said that he dislikes this because it covers pending cases. If the gentleman agrees that the current system is unfair, as they say they have, why do we not want to cover pending cases? Is the government entitled to a remaining quota of unfairness? How can one agree that the current system is wrong and needs changing and then

say, oh, but all of the poor guys who got caught in this current one, we do not help them. I would think that is a rather contradictory argument.

The final point is the business about a lawyer. Again, we ought to stress, opponents of the bill, supporters of the amendment keep talking about the drug dealer. We are not here talking about drug dealers. We are talking about people who have been accused either of being drug dealers or of not stopping other people from being drug dealers. And the question is not how do we punish acknowledged drug dealers, the question is, by what procedure does the government determine whether or not one is a drug dealer or someone who aided a drug dealer. That is why the underlying bill is so much better than the amendment.

Mr. SWEENEY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in strong support of the Hutchinson–Weiner-Sweeney substitute. This substitute will provide meaningful reform to asset forfeiture without removing the teeth from the most valuable tool in what seems to be a losing war against drugs.

I have been here most of the afternoon listening to the debate, and I recognize that well-meaning people on both sides of this issue, including our chairman, the gentleman from Massachusetts (Mr. FRANK), and the gentleman from Michigan (Mr. CONYERS), have attempted to define and seek what is the balance between protecting the private property rights of innocent individuals, and also, at the same time, give law enforcement the tools they need to combat criminal enterprises.

What we seek in offering this substitute is to define and find those fine points, because we recognize that we are losing ground on the war on drugs, and now, I believe, unfortunately, H.R. 1658 will take us a step backwards when we really should be moving forward, Mr. Chairman.

H.R. 1658, while it protects the rights of law-abiding property owners, and that is its intention, and that is in part what it does do, it also protects lawbreaking property owners as well. Is this what we want in the crosshairs in the middle of the battle on drugs? I do not think so.

Mr. Chairman, H.R. 1658 rewards criminals by allowing them to challenge every forfeiture action, regardless of merit, and provides a free lawyer to do so, inundating the already overburdened Federal court system with frivolous claims. I have heard the Chairman argue that these folks are not criminals because they have not been proven guilty, but as the gentleman from New York (Mr. WEINER) pointed out, in 85 percent of the cases, claims are not made. The Supreme Court has ruled on 11 different forfeiture cases upholding virtually in every one that the constitutional rights of individuals that have broad claims have not been violated.

We seek balance here. Can we not strike a balance between free enterprise and criminal enterprise? I think we can, and I think this substitute achieves that.

The Hutchinson–Weiner-Sweeney substitute is a rational alternative providing rational reform and uniform standards without crippling and tying the hands of law enforcement in the war against drugs.

Now, moving from the rational to the excessive, the most outrageous aspect, in my view, of H.R. 1658 is a provision that allows heirs to inherit drug fortunes. We have a hard enough time as it is in this country allowing legitimate estates to pass to legitimate heirs without making it easier for criminals to literally take the money and run, and that is what we attempt to close here in this substitute.

The loophole in H.R. 1658 would allow drug kingpins and other criminals who have amassed illegal fortunes to pass their wealth to their heirs, not just wives and children, but also friends, mistresses and business associates.

Mr. Chairman, this substitute protects legitimate, innocent owners such as bona fide purchasers, or parents who have no involvement in or knowledge of criminal activity, without undercutting the ability of law enforcement to forfeit property from drug dealers, terrorists, alien smugglers and other criminals.

At a time when the street price of heroin has dropped dramatically and the supply has increased, we must not weaken law enforcement's ability to fight drugs. I rise, therefore, in strong support of this substitute because it brings about balanced reforms to civil asset forfeiture without compromising law enforcement's ability to seize the assets of drug dealers and racketeers. When the heroin market rivals the stock market, why would we want to scale back the efforts of our police?

□ 1545

Law enforcement officers risk their lives every day to keep our neighborhoods safe. They patrol the dark ally, raid the drug dens and meth labs, and they patrol the borders in the dark of night. Many men and women do these things every day, risking their lives to make our neighborhoods safer.

I am not prepared to undercut the good work of law enforcement, Mr. Chairman. That is why I support this substitute, and strongly urge my colleagues to do the same.

If Members seek safer streets, support this substitute. If they believe that we ought to be tougher on criminals than on innocent people, support the Hutchinson–Weiner-Sweeney substitute. If Members support the good work of law enforcement, they should support this substitute. If they seek to do the right thing for America, support this substitute.

Mr. Chairman, I urge my colleagues to do that.

AMENDMENT NO. 15 IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. PAUL AS A SUBSTITUTE FOR AMENDMENT NO. 25 IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. HUTCHINSON

Mr. PAUL. Mr. Chairman, I offer an amendment in the nature of a substiute as a substitute for amendment the in the nature of a substitute.

The Clerk read as follows:

Amendment No. 15 in the nature of a substitute offered by Mr. PAUL as a substitute for amendment No. 25 in the nature of a substitute offered by Mr. HUTCHINSON:

Strike all after the enacting clause and insert the following:

SECTION 1. FORFEITURE CONDITION.

No property may be forfeited under any civil asset forfeiture law unless the property's owner has first been convicted of the criminal offense that makes the property subject to forfeiture. The term ''civil forfeiture law'' refers to any provision of Federal law (other than the Tariff Act of 1930 or the Internal Revenue Code of 1986) providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense.

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

Mr. PAUL. Mr. Chairman, I rise to offer a substitute amendment for the Hutchinson amendment. My understanding is that the Hyde amendment would improve current situations very much when it comes to seizure and forfeiture, and I strongly endorse the motivation of the gentleman from Illinois (Mr. HYDE) in his bill. I have a suggestion in my amendment to make this somewhat better.

But I rise in strong opposition to the Hutchinson amendment, because not only do I believe that the Hutchinson amendment would undo everything that the gentleman from Illinois (Mr. HYDE) is trying to do, but I sincerely believe that the Hutchinson amendment would make current law worse. I think it is very important that we make a decision here on whether or not we want to continue the effort to build an armed police force out of Washington, D.C.

The trends have been very negative over the last 20 or 30 years. It has to do a lot with the exuberance we show with our drug laws. I know they are all well-intended, but since 1976, when I recall the first criminal law that we passed here, they always pass nearly unanimously. Everyone is for law and order. But I think this is a perfect example of unintended consequences, the problems that we are dealing with today, because it is not the guilty that suffer. So often it is the innocent who suffer.

I guess if Members are for a powerful national police and they want to be casual about the civil liberties of innocent people, I imagine they could go along and ruin this bill by passing the Hutchinson amendment.

I think it is very important to consider another alternative. Mine addresses this, because in spite of how the gentleman from Illinois (Mr. HYDE) addresses this, which is in a very positive way, I really would like to go one step further. My bill, my substitute

amendment, says this: ''No property may be forfeited under any Federal civil asset forfeiture law unless the property owner has first been convicted of the criminal offense that makes the property subject to forfeiture.''

Is that too much to ask in America, that we do not take people's property if they are not even convicted of a crime? That seems to be a rather modest request. That is the way it used to be. We used to never even deal with laws like this at the national level. It is only recently that we decided we had to take away the State's right and obligation to enforce criminal law.

I think it is time we thought about going in another direction. That is why I am very, very pleased with this bill on the floor today in moving in this direction. I do not think we should have a nationalized police force. I think that we should be very cautious in everything that we do as we promote law.

This bill of the gentleman from Illinois (Mr. HYDE) could be strengthened with my amendment by saying that no forfeiture should occur, but the Hutchinson amendment makes it just the preponderance of evidence that they can take property. This is not right. This is not what America is all about. We are supposed to be innocent until proven guilty, but property is being taken from the American people with no charge of crime.

They lose their property and they never get it back. They cannot afford to fight the courts, and there is a lot of frustration in this country today over this. This is why this bill is on this floor today. I am delighted it is here on this floor.

I ask people to vote for my amendment, which would even make this a better bill, but certainly I think it would be wise not to vote for the Hutchinson amendment to make it much worse. I certainly think that on final passage, we certainly should support the Hyde bill.

Mr. FRANK of Massachusetts. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I appreciate the spirit of the gentleman from Texas. I think it goes further than it ought to. I do not think we ought to restrict this only to cases where there was a criminal conviction, but the gentleman does highlight once again the importance of fundamental reform.

There is one aspect of the issue that I wanted to go into further. That is, in the substitute offered by the gentleman from Arkansas and the two gentlemen from New York, one of the things that seems to me most egregious was this notion that yes, we will appoint you a lawyer, but before we will appoint you a lawyer our lawyer gets to question you. It really is quite an extraordinary notion.

The current situation is one in which people, in some cases who have been convicted of nothing whatsoever, and who may, remember, only be accused, and again, let us be clear about this because of the innocent owner issue, they may be accused not of doing anything wrong, but of not sufficiently working to stop someone else. The someone else may be a very dangerous person.

So one of the things we need to calibrate here is that if other armed people, dangerous people, bad people are doing something wrong and someone knows about it, and maybe they are using their property, you have to calibrate how much risk you have to take to stop it. You may be accused of not having done enough because you may have tried to do something anonymously, and you may not have wanted to acknowledge that.

Mr. HUTCHINSON. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from Arkansas.

Mr. HUTCHINSON. Mr. Chairman, I just wanted to ask the gentleman from Massachusetts, in reference to the statement that you can question a claimant who seeks an appointment of attorney, there is a provision in the substitute that says the testimony of the claimant at such a hearing shall not be admitted in any other proceeding except in accordance with the rules which govern the testimony.

So it is excluded, it would appear to me. That was the intent.

Mr. FRANK of Massachusetts. I understand that. The gentleman is correct. One can only further terrify this unsophisticated and impoverished individual whose property you have taken, and you cannot use that in certain circumstances.

Again, I want to go back to where I was. We are talking about someone here who is not even accused of a crime. We are talking about someone who is accused of not having been sufficiently enterprising in stopping someone else who may have been a very dangerous person or persons from committing a crime.

The person who failed to be enough of an aggressive stopper has property taken. And because that property is taken, and this individual now has to prove that he or she is innocent to get the property back, the person who is accused of not having been vigorous enough in stopping a crime has his or her property taken. He or she then has to prove that they were innocent and that they really did try to stop it to get the property back. And they cannot afford a lawyer, and probably because the property which they maybe would have used to pay a lawyer has been seized and is held by the government, to get the property back, first of all they have to prove that the property that was seized is worth enough compared to what a lawyer might cost. That seems to me outrageous.

Secondly, they can then be questioned by the people who seized their property. So they set up this extraordinarily intimidating situation and say, do not worry, we took your property because we did not think you worked hard enough to stop somebody dangerous from doing something bad, and we know you cannot afford a lawyer. Maybe we will appoint you a lawyer, but first, the people who took your property are going to question you about things. But do not worry, they will not use it against you.

That is a statement that is less likely to be believed, and we can in fact chill people out of the effective exercise of their rights.

Mr. HUTCHINSON. If the gentleman will yield further, Mr. Chairman, the gentleman made the statement that this person would not be under indictment. A person under indictment could also be subject to a seizure of assets and there could be a hearing. This person very well would be under criminal indictment.

Mr. FRANK of Massachusetts. I would say two things to the gentleman. First of all, I invite him to read the RECORD. I have poor diction, but I never said indictment. I never used that. I don't know where it came from. That is not what I said.

I am talking about someone who would not even be indictable because under the gentleman's innocent owner defense, he is talking about someone, again, and we are making the law for everybody, we are talking about people who are not even accused of a crime. They are accused of, and my friend, the gentleman from New York, cited these people, they own a piece of property that was being used by someone else for a crime, and the people using it might not be the nicest people in the world. They might be people who are a little intimidating. You could lose your property if you were not sufficiently vigorous in trying to stop them.

What if you tried to stop them through an anonymous phone call because you did not want to have your name used, and they did not know you made the anonymous phone call? You would then have this difficult situation.

Mr. RAMSTAD. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the substitute amendment offered by my colleague, the gentleman from Arkansas (Mr. HUTCHINSON).

Let me say first that I have the deepest respect and admiration for the author of the underlying bill, the gentleman from Illinois (Chairman HYDE). During my 4 years on the Committee on the Judiciary, I saw firsthand his absolute integrity and effective leadership, and as I have said hundreds of times before, nobody in this body represents more integrity or greater character than our beloved gentleman from Illinois (Chairman HYDE).

However, that does not mean he is always right. As chair of the House Law Enforcement Caucus, I have serious concerns about the effect that the Civil Asset Forfeiture Reform Act would have on the law enforcement community's antidrug efforts.

As Hennepin County Sheriff Pat McGowan, Hennapin County in Minnesota, in my district, Sheriff Pat McGowan told me recently, this legislation would absolutely gut the most important tool of law enforcement in the war against drugs. Make no mistake about it, this forfeiture law as it currently exists is the most important tool of law enforcement in fighting the war on drugs on the supply side.

The clear and convincing standard would deprive law enforcement officers of a crucial deterrent, as was explained to me by Sheriff McGowan and others, while the substantial hardship exemption in the underlying bill would let drug dealers hide their assets before trial and allow them to continue dealing drugs pending trial.

Also, frivolous claims would be encouraged by this legislation, and would further damage enforcement of drug laws. According to many law enforcement officers with whom I have spoken about this legislation, the so-called buy money to enforce drug laws would essentially dry up, because much if not most of the buy money comes from forfeiture of these assets.

I think Congress needs to listen to the men and women of the Fraternal Order of Police who put their lives on the line every day in fighting the drug war. We need to help the police and not hurt them by adopting the preponderance of the evidence standard of proof in the Hutchinson amendment, which is eminently reasonable, and eliminating some of the other extreme restrictions on law enforcement in the underlying bill.

As a former Criminal Justice Act attorney, Mr. Speaker, a former adjunct professor of civil rights and liberties, certainly, like every Member of this body, I support individual rights under our Bill of Rights.

However, the current law has consistently been upheld as constitutional. Furthermore, Congress should not aid and abet drug dealers so they can profit from their illegal actions by weakening this important law.

Yes, there have been some abuses under current law. We all know that. But several unfortunate anecdotal experiences do not justify legislation that would turn back the clock in the war against drugs.

Let us be smarter than that. Let us support our police officers and other drug enforcement officers on the front lines every day in this battle. Support the Hutchinson amendment, that represents the original compromise. Let us not tie the hands of law enforcement. Let us not make their difficult and dangerous jobs even harder. Vote for the Hutchinson substitute.

Mr. HYDE. Mr. Chairman, will the gentleman yield?

Mr. RAMSTAD. I yield to the gentleman from Illinois.

Mr. HYDE. Mr. Chairman, I just want to express the fact that I heartily disagree with the statement that we are helping drug dealers. The gentleman is assuming a fact that is not in evidence.

□ 1600

The civil asset forfeiture involves no drug dealers. It involves people who are accused of something at the level of probable cause, and it is punishing them before they have been adjudicated guilty by confiscating their property. That is the Soviet Union's way of justice, not America, where one should be, even if one is accused of being a drug dealer, innocent until one is proven guilty. It is quasi criminal. It is punishment. The Supreme Court has said that, and that is why we need clear and convincing rather than preponderance.

Mr. RAMSTAD. Mr. Chairman, reclaiming whatever time might remain, the current law, I am sure the gentleman will agree, has been upheld consistently as constitutional and not violative of the First, Fourth, Fifth, Sixth, Eighth or Fourteenth Amendments, any of the amendments in the Bill of Rights that give us our precious civil rights and liberties.

Virtually every police officer with whom I have spoken, both in Minnesota and nationally, as well as FBI Director Freeh, have stressed the urgency of retaining present law here. That is what I mean by weakening law enforcement's efforts by tying their hands. Let us not do that. Let us accept the Hutchinson amendment.

Mr. BARR of Georgia. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, with regard to the last speaker, I would cite a recent case just in the last year by the Supreme Court, United States versus Bajakhaian, whatever in the heck that is pronounced, B-A-J-A-K-H-A-I-A-N. Its significance lies, not in its spelling, but in holding that there is a specific amendment to the Constitution, the Eighth Amendment, that indeed was the basis just last year in an opinion by Justice Clarence Thomas of the United States Supreme Court that struck down forfeiture on Eighth Amendment excessiveness grounds.

So there is very strong judicial authority for the proposal underlying H.R. 1658 as put forward by myself, the gentleman from Massachusetts (Mr. FRANK), the gentleman from Michigan (Mr. CONYERS), the gentleman from Illinois (Mr. HYDE), and others that, indeed, our civil forfeiture laws do need to be reformed. Reform is what we are trying to do here. But let us again be very clear.

Yes, as the gentleman from Illinois (Mr. HYDE) has stated, if H.R. 1658 is passed by the House, passed by the Senate, and signed by the President, there will be some slight crimping in the style of law enforcement in terms of proceeding civilly against seized assets in order to forfeit them. But it will not in any way, shape, or form stop or take away the important tool that law enforcement has and needs.

H.R. 1658 reforms, it does not eviscerate, it does not kill, it does not repeal, and it will not result in the repeal, the killing, or the gutting of civil asset forfeiture as a tool for Federal prosecutors.

Of course, remember also, Mr. Chairman, that this does not reach State forfeitures. We are only talking about Federal civil asset forfeitures here.

This proposal, H.R. 1658 reforms it. It does not do away with it. If, however, somebody likes civil asset forfeiture reform, then they will love the Hutchinson amendment, because the Hutchinson amendment, in addition to not truly reforming civil asset forfeiture at its core, vastly, vastly, Mr. Chairman, expands the scope of civil asset forfeiture powers of this government.

Let me repeat that. The Hutchinson amendment vastly expands the scope, the jurisdiction, the reach of the Federal Government's current civil asset forfeiture power. The power, the scope currently that the Federal Government enjoys is already extensive. We are not arguing that today. It is extensive. It reaches many different provisions of title 18, which is the Criminal Code.

If, however, one makes even a cursory reading, Mr. Chairman, of the Hutchinson amendment, they will see very readily that it expands exponentially, as the Chairman said previously in his remarks, the scope, the power, the jurisdiction of the Federal Government to civilly seize and forfeit assets.

At pages 772 and 773 of the Federal Criminal Code and Rules, published by the West Group, one can see very clearly, I could hold this up, but the Chairman could not read it, because the writing, the printing of the United States Criminal Code is indeed very small. Yet, the list of the additional predicates or that is base offenses for which civil asset forfeiture rely cover almost two pages, almost two full columns of the United States Criminal Code listing line after line after line after line after line after line of additional offenses for which the government can use civil asset forfeiture powers.

Therefore, let me repeat this, the Hutchinson amendment, for anybody who wishes to reform, reign in, and refocus back to its original purpose, which was an extraordinary remedy for law enforcement, the civil asset forfeiture powers of the government, they must vote against the Hutchinson amendment, because the Hutchinson amendment vastly expands the asset forfeiture power of the government. There is no way getting around that. It is crystal clear on its face, and that is a defect in addition to the others that the Chairman and others have already pointed out reasons why this amendment proposed in the nature of a substitute to H.R. 1658 must be rejected in favor of the underlying bill, H.R. 1658, which does indeed reform, but does not take away the ability of our Federal prosecutors and law enforcement to seize truly those aspects of criminal endeavor, the assets that are truly used in furtherance of criminal activity.

I urge rejection of the proposed amendment in the nature of a substitute, and adoption of the underlying bill, H.R. 1658.

Mr. CANADY of Florida. Mr. Chairman I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the amendment in the nature of a substitute which has been offered by the gentleman from Arkansas (Mr. HUTCHINSON). I want to begin by thanking the gentleman from Illinois (Mr. HYDE) for his outstanding leadership on this important issue. This is the sort of issue that the Committee on the Judiciary should be very much concerned about, and I am very pleased that the Chairman has made this issue a priority.

I also want to thank my constituent, Mr. David Pobjecky, who brought to my attention a case that highlights the need for the legislation of the gentleman from Illinois (Mr. HYDE) and the importance of not weakening the legislation that the gentleman from Illinois (Mr. HYDE) has brought to the floor.

Mr. Pobjecky, my constituent, is an attorney who has represented the Jones family of Glades County, Florida, whose property was seized by the Federal Government. It took that family 6 years to gain control of their property even though they were innocent of any wrongdoing.

In September of 1988, the United States Government seized 4,346 acres of the Jones family ranchland and filed a civil forfeiture action against the ranch based on a plane crash that occurred 2½ years earlier and on property a quarter of a mile from their ranch.

The government alleged that the property was intended to be used as a landing site for cocaine smugglers. The Jones family denied any knowledge, consent, or participation in the alleged wrongful acts.

The case went to trial 5 years later in October of 1993. In May of 1994, the U.S. District Court for the Southern District of Florida found for the owners of the ranch. The court ruled that the case presented by the claimants is so clear, and the response by the United States is sufficiently wanting, that the court has determined that the claimants are, indeed, innocent owners entitled to the remedy and return of their property.

Judge Hoover who wrote for the court noted that fundamental rights of ownership and the loss of those rights were the core of this case and concluded with this caution, ''in the understandable zeal to enforce the criminal laws, constant vigilance must be exercised to protect the rights of all, especially those who may be caught up in a net loosely thrown around those who are guilty.''

The same court subsequently awarded attorneys' fees and costs to the Jones family for their claim filed Under the Equal Access to Justice Act. The court found that the United States did not have a reasonable basis in law or fact for bringing the case to trial and should have concluded that the owners of the ranch could establish an innocent owner defense.

The legislation we are considering today would have ensured that the Jones family would not have suffered this injustice at the hands of the government. The bill would change the standard of proof to be satisfied by the government from probable cause to clear and convincing evidence, as we have been discussing here. The bill would require the government to prove its case and would eliminate the requirement that a property owner prove his innocence.

The seizure of the Jones family ranch never would have been approved if the United States had been required to prove by clear and convincing evidence that the ranch was subject to forfeiture.

In 1994 when he finally decided for the Jones family, Judge Hoover said that it is questionable whether this forfeiture action ever really had a valid basis. That is the kind of cases that are being brought. Those are the kind of cases where people are having their property tied up for year after year after year, and it is not right.

Now, this bill would also allow a property owner who prevails in a forfeiture action to sue the government for any destruction or damage to his property. I go back to the Jones case. The Jones family was unable to maintain their land, more than 4,000 acres of their ranch from September of 1988 to May of 1994. This resulted in significant damage to the property, since ranchland needs to be constantly maintained.

Under current law, the Jones family can sue the United States for damage to their land. The bill before the House today would provide the Jones family with at least the possibility of recovering compensation for resulting damage to their property.

The case of the Jones family is only one example of innocent Americans who have had to undergo lengthy and costly battles to regain their property. No one in the United States of America should have to go through a legal nightmare like this. No one in America should be treated this way by the government of the United States. No one in America should be subjected to such an arbitrary and destructive use of governmental power.

Now, I want to conclude by urging the rejection of the substitute offered by the gentleman from Arkansas (Mr. HUTCHINSON). I believe that the gentleman has a proposal here that falls short of solving the problem with current law and in some respects actually makes the problem worse. I understand he is operating under the best of intentions, but I think his proposal does fall short in those respects.

I would also urge the rejection of the amendment offered by the gentleman from Texas (Mr. PAUL). I believe that there is a proper place for civil asset forfeiture, and his amendment should be rejected, and the Hyde proposal should be adopted.

Mr. FRANK of Massachusetts. Mr. Chairman, having consulted with various parties, I ask unanimous consent that debate on this substitute and all amendments thereto end at 4:45 p.m., with the remaining time to be divided equally between the gentleman from Arkansas (Mr. HUTCHINSON) and the gentleman from Illinois (Mr. HYDE), chairman of the committee.

The CHAIRMAN. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

The CHAIRMAN. Under the terms of the unanimous consent agreement, the gentleman from Arkansas (Mr. HUTCHINSON) and the gentleman from Illinois (Mr. HYDE) each will control 15 minutes. Debate will conclude at 4:45 p.m.

Mr. HUTCHINSON. Mr. Chairman, I yield 4 minutes to the gentleman from Florida (Mr. MICA).

Mr. MICA. Mr. Chairman, I thank the gentleman from Arkansas for yielding to me.

Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Texas (Mr. PAUL) in support of the amendment offered by the gentleman from Arkansas (Mr. HUTCHINSON) in opposition to H.R. 1658.

I think the good Lord knows that, any time we have the distinguished gentleman from Illinois (Mr. HYDE), the chairman of the Committee on the Judiciary, as an advocate in alliance with the distinguished gentleman from Massachusetts (Mr. FRANK), and the gentleman from Georgia (Mr. BARR), we have formidable proponents for any proposition. I reluctantly rise in opposition to their proposal, H.R. 1658.

I chair the Subcommittee on Criminal Justice, Drug Policy, and Human Resources dealing with illegal narcotics. I can only say that I have never been so inundated in the past number of months on any issue as much as in opposition to H.R. 1658 than by those in our law enforcement community. So I am reluctant to rise in opposition, but let me make a few comments.

Asset forfeiture is a very critical tool in law enforcement. It allows law enforcement to take the profit out of crime and pay restitution to victims of crime. Forfeiture is a critical element in the fight against drug trafficking, and it literally ensures that crime does not pay.

In the vast majority of cases, the asset forfeiture laws, as we have heard, have been very fairly applied and effectively applied for the benefit of both law enforcement and the public and our citizens. Forfeiture is an essential component on the war on drugs today. Weakening the laws or placing any unnecessary procedural hurdles in the paths of prosecutors could undercut these law enforcement efforts and could provide a windfall to criminal organizations that commit crime for profit.

These are not just my words. This is what is being said about this proposed legislation, H.R. 1658, to me by those in the law enforcement community.

□ 1615

They say that the burden of proof is too high; that H.R. 1658 forces the government to prove its case by clear and convincing evidence. The usual standard for civil enforcement actions involving property is the preponderance of evidence. Thus, 1658 makes the government's burden in drug cases higher than it does in cases involving bank fraud, health care fraud or procurement fraud, giving, in this instance, those who deal in drugs more protection than bankers, doctors and defense contractors.

Again, this is what is being said to me by the law enforcement community.

They also charge that this proposal could encourage the filing of thousands of frivolous claims by criminals, their families, their friends and associates. They also are telling me, again, that H.R. 1658 lets criminals abscond potentially with cash, vehicles and airplanes. The Hutchinson amendment, I might say, addresses each of these concerns that have been raised by the law enforcement community.

Also, they say that H.R. 1658 allows drug dealers to pass drug profits on to their heirs, and this provision is eliminated by the Hutchinson proposal. And, finally, they are telling me that this could provide a windfall to criminals that we should eliminate.

Mr. HYDE. Mr. Chairman, I yield 2 minutes to the gentleman from Massachusetts (Mr. DELAHUNT).

Mr. DELAHUNT. Mr. Chairman, I thank the gentleman for yielding me this time. I think this is important because we continue to hear about the issue of the burden of proof being a preponderance of the evidence. Well, that is true in most civil litigation. But this is not purely civil litigation, and I think it is important that my colleagues and the American public understand that.

In asset forfeiture cases it has been clearly described by the United States Supreme Court as quasi-criminal in nature. This is a decision that was promulgated by the United States Supreme Court. And I daresay to equate the customary civil litigation that is transacted daily in our Federal courts with the kind of proceeding that we are discussing here today on the floor of the House, asset forfeiture, is absolutely incorrect. It is inaccurate. It is quasi-criminal in nature.

To suggest that a standard of proof of clear and convincing is a burden that cannot be met by prosecutors, I daresay, is not an argument that holds water. Because in the vast majority of these cases the seizure of the asset is done in conjunction with a criminal investigation, and hopefully, hopefully, that investigation will produce an indictment which will meet an even higher standard, proof beyond a reasonable doubt.

So I have to conclude that clear and convincing is an acceptable burden of proof in these cases.

Mr. MCCOLLUM. Mr. Chairman, I wish to make just a few points.

First, I want to salute Chairman HYDE's commitment to reforming asset forfeiture. He has long been guided by a principled commitment to civil liberties for all citizens and a genuine concern that our forfeiture laws not be abused. He has been a leader in pursuing needed reforms of our forfeiture laws, and I want to commend his efforts to bring this bill to the floor. I share Chairman HYDE's concerns. We may disagree on some of the specifics, but I support his goal and the core reforms contained in H.R. 1658.

Second, I want to note that H.R. 1658 is actually part of a larger trend to reform asset forfeiture that has been underway for most of this decade. Indeed, over the last 7 years the U.S. Supreme Court has handed down 11 asset forfeiture cases, that, taken together, have led to substantial reforms of our asset forfeiture laws and increased the due process protections afforded individuals. These cases, in turn, have led the Departments of Justice and Treasury to substantially revise their seizure and forfeiture policies.

Because of these shifts over the last 7 years, it is now the case that under current law, property owners have a right to a jury trial in civil forfeiture cases; real property may not be seized without prior notice and a hearing; and all forfeitures must be proportional to the gravity of the underlying criminal offense. In other words: the law has been evolving to reflect more and more the concerns of Mr. HYDE. Changes to the law have anticipated his criticism.

Mr. Chairman, now more than ever, asset forfeiture is a vital law enforcement tool. In my home state of Florida it may well be the single most important weapon that Federal, State and local law enforcement use in their heroic efforts to combat the illegal drug trade.

And that, Mr. Chairman, continues to be my principal concern when we talk about reforming asset forfeiture: Will our ability to effectively combat the flood of illegal drugs into our country be unduly hampered by the proposed reforms?

Heroin and cocaine continue to pour into the United States from abroad, endangering the future of our children and spreading fear through countless neighborhoods and communities. Clandestine methamphetamine labs are now operating throughout the entire country, pumping out their poison that destroys people and pollutes our environment.

Today, on the streets of our country drug quantity is up, drug purity is at all-time highs and the price is down. We shouldn't be surprised then to learn that drug use among our children is skyrocketing. Indeed, there is a drug crisis engulfing our young people today. The numbers are simply shocking. From 1992–1997, drug use among youth aged 12 to 17 has more than doubled. It's up 120%! That's an increase of 27% in the last year alone. For kids aged 12 to 17, first-time heroin use has increased 875% from 1991 to 1996! From 1992 to 1996, marijuana use increased by 253 percent among eighth-graders, 151 percent among tenth-graders, and 84 percent among twelfth-graders. Overall, among kids aged 12 to 17, marijuana smoking has jumped 125% from 1991 to 1997!

Mr. Chairman, I believe this is unacceptable. We owe our children every effort to rid our streets and schools of drugs and the violence that accompany the drug trade. We must rededicate ourselves to a drug-free America.

And that means we must take care when we seek to reform our forfeiture laws that we do not render them ineffective.

Last Congress, I supported the compromise forfeiture bill that Mr. HYDE steered through the Judiciary Committee by a vote of 26 to 1. That bill contained the core reforms that are in H.R. 1658. It also won the support of the law enforcement community as a balanced set of reforms that left forfeiture a viable tool. I continue to support the provisions from that bill, and for that reason, I will be supporting the Hutchinson amendment which reflects the key provisions of that compromise bill. I believe that H.R. 1658, as amended by the Hutchinson amendment, reforms our forfeiture laws while leaving them still useful in our nation's counter-drug efforts.

Mr. PICKERING. Mr. Chairman, I rise in support of Mr. HUTCHINSON'S substitute to H.R. 1658, the Asset Forfeiture Bill.

We all agree the fundamental principle of fairness should play a central role in asset forfeiture proceedings: the burden of proof should be on the government; the government should not hold property without probable cause; a property owner should have an early opportunity to challenge a seizure of assets and innocent owners should be protected.

These examples of fairness are already important features of current asset forfeiture law, and are advanced in the Hutchinson substitute without undermining the important role asset forfeiture law plays in modern law enforcement.

Today in my district, State and Local Law Enforcement officials confront sophisticated criminals and criminal enterprises in possession of illegal property, and in many circumstances, controlling vast ill-gotten resources. Asset forfeiture law allows State and Local law enforcement officials to separate these criminals and enterprises from their illegal resources, denying them the use of these resources to continue their criminal businesses or defend themselves from personal criminal charges. Any modification in asset forfeiture law should preserve this important effect of asset forfeiture on criminals.

While reform of asset forfeiture law to reduce the already infrequent, occasional unfair outcome for a particular individual is appropriate, criminals should not benefit from the modifications designed to improve and bolster the rights of innocent property owners and law abiding citizens.

The Hutchinson substitute produces this sensible reform without removing from our local law enforcement officials one of their most important and effective tools against criminals and their crack houses, drug money, drug vehicles and the myriad of other resources and property criminals possess.

It is important to remember the focus of asset forfeiture law is the illegal property. The illegal property itself, be it drug money or its proceeds in the form of cars, or planes or houses, is subject to forfeiture because it constitutes the bounty of a criminal enterprise, and thus is illegal. It is illegal in and of itself, like heroin itself, or cocaine, and thus similarly

subject to forfeiture. Insofar as a person unconnected to the criminal enterprise has a legal property interest in the property, he or she may state their claim and reclaim their property.

Under current law, criminals and those with illegal interests in the property are distinguished from those with legal interests by procedures in the law which the Substitute preserves. Unlike the bill advanced by the respected Chairman of the Judiciary Committee, the substitute strengthens this distinction, protecting the innocent while disentitling the criminal. I urge passage of the Hutchinson substitute.

Mr. HYDE. Mr. Chairman, I yield back the balance of my time.

Mr. HUTCHINSON. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment in the nature of a substitute offered by the gentleman from Texas (Mr. PAUL) as a substitute for the amendment in the nature of a substitute offered by the gentleman from Arkansas (Mr. HUTCHINSON).

The amendment in the nature of a substitute offered as a substitute for the amendment in the nature of a substitute was rejected.

The CHAIRMAN. The question is on the amendment in the nature of a substitute offered by the gentleman from Arkansas (Mr. HUTCHINSON).

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. HUTCHINSON. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 155, noes 268, not voting 11, as follows:

[Roll No. 254]

AYES—155

Allen	Edwards	Leach
Andrews	Ehlers	Levin
Bachus	Ehrlich	Lowey
Baird	Etheridge	Luther
Ballenger	Fowler	Maloney (CT)
Barcia	Frelinghuysen	Maloney (NY)
Barrett (WI)	Gekas	McCarthy (NY)
Barton	Gilman	McCollum
Bateman	Gordon	McCrery
Bilbray	Goss	McDermott
Blagojevich	Green (WI)	McHugh
Blumenauer	Greenwood	McIntyre
Blunt	Gutierrez	McNulty
Boehlert	Hayes	Mica
Bonior	Herger	Miller (FL)
Boswell	Hill (IN)	Moore
Boyd	Hilleary	Moran (KS)
Brady (TX)	Hoeffel	Moran (VA)
Bryant	Holden	Morella
Buyer	Holt	Myrick
Calvert	Hooley	Norwood
Capps	Horn	Nussle
Cardin	Houghton	Ose
Castle	Hoyer	Oxley
Chambliss	Hulshof	Pallone
Coburn	Hutchinson	Pascrell
Collins	Inslee	Peterson (MN)
Condit	Isakson	Pickering
Cooksey	John	Pomeroy
Cramer	Johnson (CT)	Porter
Crowley	Jones (NC)	Portman
Cubin	Jones (OH)	Pryce (OH)
Deal	Kildee	Quinn
Deutsch	Kind (WI)	Ramstad
Dickey	Kleczka	Regula
Dixon	Knollenberg	Reyes
Doggett	Kuykendall	Reynolds
Dooley	Larson	Rogers
Dunn	Latham	Ros-Lehtinen
Rothman	Stabenow	Vitter
Roukema	Stearns	Walden
Salmon	Stupak	Walsh
Sanchez	Sweeney	Waxman
Saxton	Taylor (MS)	Weiner
Shaw	Terry	Weldon (FL)
Shays	Thomas	Weldon (PA)
Sherman	Thompson (CA)	Weygand
Shows	Thornberry	Whitfield
Sisisky	Thune	Wolf
Slaughter	Thurman	Wu
Smith (WA)	Turner	Young (FL)
Souder	Visclosky	

NOES—268

Abercrombie	Fossella	Miller, Gary
Ackerman	Frank (MA)	Miller, George
Aderholt	Franks (NJ)	Minge
Archer	Frost	Mink
Armey	Gallegly	Moakley
Baker	Ganske	Murtha
Baldacci	Gejdenson	Nadler
Baldwin	Gephardt	Napolitano
Barr	Gibbons	Neal
Barrett (NE)	Gillmor	Nethercutt
Bartlett	Gonzalez	Ney
Bass	Goode	Northup
Becerra	Goodlatte	Oberstar
Bentsen	Goodling	Obey
Bereuter	Graham	Olver
Berkley	Granger	Ortiz
Berry	Green (TX)	Owens
Biggert	Gutknecht	Pastor
Bilirakis	Hall (OH)	Paul
Bishop	Hall (TX)	Payne
Bliley	Hansen	Pease
Boehner	Hastings (FL)	Pelosi
Bonilla	Hastings (WA)	Peterson (PA)
Bono	Hayworth	Petri
Borski	Hefley	Phelps
Boucher	Hill (MT)	Pickett
Brady (PA)	Hilliard	Pitts
Brown (FL)	Hinchey	Pombo
Brown (OH)	Hinojosa	Price (NC)
Burr	Hobson	Radanovich
Burton	Hoekstra	Rahall
Callahan	Hostettler	Rangel
Camp	Hunter	Riley
Campbell	Hyde	Rivers
Canady	Istook	Rodriguez
Cannon	Jackson (IL)	Roemer
Capuano	Jackson-Lee (TX)	Rogan
Carson	Jefferson	Rohrabacher
Chabot	Jenkins	Roybal-Allard
Chenoweth	Johnson, E. B.	Royce
Clay	Johnson, Sam	Rush
Clayton	Kanjorski	Ryan (WI)
Clement	Kaptur	Ryun (KS)
Clyburn	Kelly	Sabo
Coble	Kennedy	Sanders
Combest	Kilpatrick	Sandlin
Conyers	King (NY)	Sanford
Cook	Kingston	Sawyer
Cox	Klink	Scarborough
Coyne	Kolbe	Schaffer
Crane	Kucinich	Schakowsky
Cummings	LaFalce	Scott
Cunningham	LaHood	Sensenbrenner
Danner	Lampson	Serrano
Davis (FL)	Lantos	Sessions
Davis (IL)	LaTourette	Shadegg
Davis (VA)	Lee	Sherwood
DeFazio	Lewis (CA)	Shimkus
DeGette	Lewis (GA)	Shuster
Delahunt	Lewis (KY)	Simpson
DeLauro	Linder	Skeen
DeLay	Lipinski	Skelton
DeMint	LoBiondo	Smith (MI)
Diaz-Balart	Lofgren	Smith (NJ)
Dicks	Lucas (KY)	Smith (TX)
Dingell	Lucas (OK)	Snyder
Doolittle	Manzullo	Spence
Doyle	Markey	Spratt
Dreier	Martinez	Stark
Duncan	Mascara	Stenholm
Emerson	Matsui	Strickland
Engel	McCarthy (MO)	Stump
English	McGovern	Sununu
Eshoo	McIntosh	Talent
Evans	McKeon	Tancredo
Everett	McKinney	Tanner
Ewing	Meehan	Tauscher
Farr	Meek (FL)	Tauzin
Fattah	Meeks (NY)	Taylor (NC)
Filner	Menendez	Thompson (MS)
Fletcher	Metcalf	Tiahrt
Foley	Millender-McDonald	Tierney
Forbes	Mollohan	Toomey
Ford	Moran (VA)	Towns
Traficant	Wamp	Wexler
Udall (CO)	Waters	Wicker
Udall (NM)	Watkins	Wilson
Upton	Watt (NC)	Woolsey
Velazquez	Watts (OK)	Wynn
Vento	Weller	Young (AK)

NOT VOTING—11

Berman	Kasich	Packard
Brown (CA)	Largent	Wise
Costello	Lazio	
Gilchrest	McInnis	
Kasich	Mollohan	

☐ 1643

Ms. JACKSON-LEE of Texas, Ms. MCKINNEY, and Messrs. LAFALCE, NEY, ROGAN, KINGSTON, BURTON of Indiana, FORBES, HUNTER, and BARTLETT of Maryland changed their vote from ''aye'' to ''no.''

Ms. SLAUGHTER and Messrs. VITTER, BARCIA, BONIOR, EHLERS, WELDON of Pennsylvania, and MORAN of Kansas changed their vote from ''no'' to ''aye.''

So the amendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

Mr. HYDE. Mr. Chairman, I ask unanimous consent that the remainder of the bill be printed in the RECORD and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

The text of the remainder of the committee amendment in the nature of a substitute is as follows:

SEC. 2. CREATION OF GENERAL RULES RELATING TO CIVIL FORFEITURE PROCEEDINGS.

Section 981 of title 18, United States Code, is amended—

(1) by inserting after subsection (i) the following:

''(j)(1)(A) In any nonjudicial civil forfeiture proceeding under a civil forfeiture statute, with respect to which the agency conducting a seizure of property must give written notice to interested parties, such notice shall be given as soon as practicable and in no case more than 60 days after the later of the date of the seizure or the date the identity of the interested party is first known or discovered by the agency, except that the court may extend the period for filing a notice for good cause shown.

''(B) A person entitled to written notice in such proceeding to whom written notice is not given may on motion void the forfeiture with respect to that person's interest in the property, unless the agency shows—

''(i) good cause for the failure to give notice to that person; or

''(ii) that the person otherwise had actual notice of the seizure.

''(C) If the government does not provide notice of a seizure of property in accordance with subparagraph (A), it shall return the property and may not take any further action to effect the forfeiture of such property.

''(2)(A) Any person claiming property seized in a nonjudicial forfeiture proceeding may file a claim with the appropriate official after the seizure.

''(B) A claim under subparagraph (A) may not be filed later than 30 days after—

''(i) the date of final publication of notice of seizure; or

''(ii) in the case of a person entitled to written notice, the date that notice is received.

''(C) The claim shall state the claimant's interest in the property.

''(D) Not later than 90 days after a claim has been filed, the Attorney General shall

file a complaint for forfeiture in the appropriate court or return the property, except that a court in the district in which the complaint will be filed may extend the period for filing a complaint for good cause shown or upon agreement of the parties.

''(E) If the government does not file a complaint for forfeiture of property in accordance with subparagraph (D), it shall return the property and may not take any further action to effect the forfeiture of such property.

''(F) Any person may bring a claim under subparagraph (A) without posting bond with respect to the property which is the subject of the claim.

''(3)(A) In any case where the Government files in the appropriate United States district court a complaint for forfeiture of property, any person claiming an interest in the seized property may file a claim asserting such person's interest in the property within 30 days of service of the Government's complaint or, where applicable, within 30 days of alternative publication notice.

''(B) A person asserting an interest in seized property in accordance with subparagraph (A) shall file an answer to the Government's complaint for forfeiture within 20 days of the filing of the claim.

''(4)(A) If the person filing a claim is financially unable to obtain representation by counsel, the court may appoint counsel to represent that person with respect to the claim.

''(B) In determining whether to appoint counsel to represent the person filing the claim, the court shall take into account such factors as—

''(i) the claimant's standing to contest the forfeiture; and

''(ii) whether the claim appears to be made in good faith or to be frivolous.

''(C) The court shall set the compensation for that representation, which shall be equivalent to that provided for court-appointed representation under section 3006A of this title, and to pay such cost there are authorized to be appropriated such sums as are necessary as an addition to the funds otherwise appropriated for the appointment of counsel under such section.

''(5) In all suits or actions brought under any civil forfeiture statute for the civil forfeiture of any property, the burden of proof is on the United States Government to establish, by clear and convincing evidence, that the property is subject to forfeiture.

''(6)(A) An innocent owner's interest in property shall not be forfeited under any civil forfeiture statute.

''(B) With respect to a property interest in existence at the time the illegal conduct giving rise to forfeiture took place, the term 'innocent owner' means an owner who—

''(i) did not know of the conduct giving rise to forfeiture; or

''(ii) upon learning of the conduct giving rise to the forfeiture, did all that reasonably could be expected under the circumstances to terminate such use of the property.

''(C) With respect to a property interest acquired after the conduct giving rise to the forfeiture has taken place, the term 'innocent owner' means a person who, at the time that person acquired the interest in the property, was—

''(i)(I) a bona fide purchaser or seller for value (including a purchaser or seller of goods or services for value); or

''(II) a person who *acquired* an interest in property through probate *or inheritance*; and

''(ii) at the time of the purchase or *acquisition* reasonably without cause to believe that the property was subject to forfeiture.

''(D) Where the property subject to forfeiture is real property, and the claimant uses the property as the claimant's primary residence and is the spouse or minor child of the person who committed the offense giving rise to the forfeiture, an otherwise valid innocent owner claim shall not be denied on the ground that the claimant acquired the interest in the property—

''(i) in the case of a spouse, through dissolution of marriage or by operation of law, or

''(ii) in the case of a minor child, as an inheritance upon the death of a parent,

and not through a purchase. However, the claimant must establish, in accordance with subparagraph (C), that at the time of the acquisition of the property interest, the claimant was reasonably without cause to believe that the property was subject to forfeiture.

''(7) For the purposes of paragraph (6)—

''(A) ways in which a person may show that such person did all that reasonably can be expected may include demonstrating that such person, to the extent permitted by law—

''(i) gave timely notice to an appropriate law enforcement agency of information that led the person to know the conduct giving rise to a forfeiture would occur or has occurred; and

''(ii) in a timely fashion revoked or attempted to revoke permission for those engaging in such conduct to use the property or took reasonable actions in consultation with a law enforcement agency to discourage or prevent the illegal use of the property; and

''(B) in order to do all that can reasonably be expected, a person is not required to take steps that the person reasonably believes would be likely to subject any person (other than the person whose conduct gave rise to the forfeiture) to physical danger.

''(8) As used in this subsection:

''(1) The term 'civil forfeiture statute' means any provision of Federal law (other than the Tariff Act of 1930 or the Internal Revenue Code of 1986) providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense.

''(2) The term 'owner' means a person with an ownership interest in the specific property sought to be forfeited, including a leasehold, lien, mortgage, recorded security device, or valid assignment of an ownership interest. Such term does not include—

''(i) a person with only a general unsecured interest in, or claim against, the property or estate of another;

''(ii) a bailee unless the bailor is identified and the bailee shows a colorable legitimate interest in the property seized; or

''(iii) a nominee who exercises no dominion or control over the property.

''(k)(1) A claimant under subsection (j) is entitled to immediate release of seized property if—

''(A) the claimant has a possessory interest in the property;

''(B) the continued possession by the United States Government pending the final disposition of forfeiture proceedings will cause substantial hardship to the claimant, such as preventing the functioning of a business, preventing an individual from working, or leaving an individual homeless; and

''(C) the claimant's likely hardship from the continued possession by the United States Government of the seized property outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is returned to the claimant during the pendency of the proceeding.

''(2) A claimant seeking release of property under this subsection must request possession of the property from the appropriate official, and the request must set forth the basis on which the requirements of paragraph (1) are met.

''(3) If within 10 days after the date of the request the property has not been released, the claimant may file a motion or complaint in any district court that would have jurisdiction of forfeiture proceedings relating to the property setting forth—

''(A) the basis on which the requirements of paragraph (1) are met; and

''(B) the steps the claimant has taken to secure release of the property from the appropriate official.

''(4) If a motion or complaint is filed under paragraph (3), the district court shall order that the property be returned to the claimant, pending completion of proceedings by the United States Government to obtain forfeiture of the property, if the claimant shows that the requirements of paragraph (1) have been met. The court may place such conditions on release of the property as it finds are appropriate to preserve the availability of the property or its equivalent for forfeiture.

''(5) The district court shall render a decision on a motion or complaint filed under paragraph (3) no later than 30 days after the date of the filing, unless such 30-day limitation is extended by consent of the parties or by the court for good cause shown.''; and

(2) by redesignating existing subsection (j) as subsection (l).

SEC. 3. *AMENDMENT* TO THE CONTROLLED SUBSTANCES ACT.

Section 518 of the Controlled Substances Act (21 U.S.C. 888) is repealed.

SEC. 4. COMPENSATION FOR DAMAGE TO SEIZED PROPERTY.

(a) TORT CLAIMS ACT.—Section 2680(c) of title 28, United States Code, is amended—

(1) by striking ''law-enforcement'' and inserting ''law enforcement''; and

(2) by inserting before the period the following: '', except that the provisions of this chapter and section 1346(b) of this title do apply to any claim based on the destruction, injury, or loss of goods, merchandise, or other property, while in the possession of any officer of customs or excise or any other law enforcement officer, if the property was seized for the purpose of forfeiture but the interest of the claimant is not forfeited''.

(b) DEPARTMENT OF JUSTICE.—

(1) IN GENERAL.—With respect to a claim that cannot be settled under chapter 171 of title 28, United States Code, the Attorney General may settle, for not more than $50,000 in any case, a claim for damage to, or loss of, privately owned property caused by an investigative or law enforcement officer (as defined in section 2680(h) of title 28, United States Code) who is employed by the Department of Justice acting within the scope of his or her employment.

(2) LIMITATIONS.—The Attorney General may not pay a claim under paragraph (1) that—

(A) is presented to the Attorney General more than 1 year after it occurs; or

(B) is presented by an officer or employee of the United States Government and arose within the scope of employment.

SEC. 5. PREJUDGMENT AND POSTJUDGMENT INTEREST.

Section 2465 of title 28, United States Code, is amended—

(1) by inserting ''(a)'' before ''Upon''; and

(2) adding at the end the following:

''(b) INTEREST.—

''(1) POST-JUDGMENT.—Upon entry of judgment for the claimant in any proceeding to condemn or forfeit property seized or arrested under any Act of Congress, the United States shall be liable for post-judgment interest as set forth in section 1961 of this title.

''(2) PRE-JUDGMENT.—The United States shall not be liable for prejudgment interest, except that in cases involving currency, other negotiable instruments, or the proceeds of an interlocutory sale, the United States shall disgorge to the claimant any funds representing—

''(A) interest actually paid to the United States from the date of seizure or arrest of the property that resulted from the investment of the property in an interest-bearing account or instrument; and

''(B) for any period during which no interest is actually paid, an imputed amount of interest that such currency, instruments, or proceeds would have earned at the rate described in section 1961.

''(3) LIMITATION ON OTHER PAYMENTS.—The United States shall not be required to disgorge the value of any intangible benefits nor make any other payments to the claimant not specifically authorized by this subsection.''.

SEC. 6. APPLICABILITY.

(a) IN GENERAL.—Unless otherwise specified in this Act, the amendments made by this Act apply with respect to claims, suits, and actions filed on or after the date of the enactment of this Act.

(b) EXCEPTIONS.—

(1) The standard for the required burden of proof set forth in section 981 of title 18, United States Code, as amended by section 2, shall apply in cases pending on the date of the enactment of this Act.

(2) The amendment made by section 5 shall apply to any judgment entered after the date of enactment of this Act.

The CHAIRMAN. The question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

☐ 1645

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. HEFLEY) having assumed the chair, Mr. LAHOOD, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 1658) to provide a more just and uniform procedure for Federal civil forfeitures, and for other purposes, pursuant to House Resolution 216, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on the amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the committee amendment in the nature of a substitute.

The committee amendment in the nature of a substitute was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

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

RECORDED VOTE

Mr. HYDE. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 375, noes 48, not voting 11, as follows:

[Roll No. 255]

AYES—375

Abercrombie
Ackerman
Aderholt
Allen
Archer
Armey
Baird
Baker
Baldacci
Baldwin
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Becerra
Bentsen
Bereuter
Berkley
Berry
Biggert
Bilirakis
Bishop
Blagojevich
Bliley
Blunt
Boehlert
Boehner
Bonilla
Bonior
Bono
Borski
Boucher
Brady (PA)
Brady (TX)
Brown (FL)
Brown (OH)
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cannon
Capps
Capuano
Cardin
Carson
Castle
Chabot
Chenoweth
Clay
Clayton
Clement
Clyburn
Coble
Coburn
Combest
Conyers
Cook
Cooksey
Cox
Coyne
Cramer
Crane
Cummings
Cunningham
Danner
Davis (FL)
Davis (IL)
Davis (VA)
Deal
DeFazio
DeGette
Delahunt
DeLauro
DeLay
DeMint
Diaz-Balart
Dickey
Dicks
Dingell
Dixon
Doggett
Dooley
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
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
Gephardt
Gibbons
Gillmor
Gonzalez
Goode
Goodlatte
Goodling
Gordon
Goss
Graham
Granger
Green (TX)
Green (WI)
Greenwood
Gutierrez
Gutknecht
Hall (OH)
Hall (TX)
Hansen
Hastings (FL)
Hastings (WA)
Hayworth
Hefley
Herger
Hill (MT)
Hilleary
Hilliard
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Hooley
Horn
Hostettler
Hoyer
Hulshof
Hunter
Hyde
Inslee
Isakson
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
Johnson, E. B.
Johnson, Sam
Jones (OH)
Kanjorski
Kaptur
Kelly
Kennedy
Kildee
Kilpatrick
King (NY)
Kingston
Kleczka
Klink
Knollenberg
Kolbe
Kucinich
Kuykendall
LaFalce
LaHood
Lampson
Lantos
Largent
Larson
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Luther
Maloney (NY)
Manzullo
Markey
Martinez
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McHugh
McIntosh
McIntyre
McKeon
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Metcalf
Millender-McDonald
Miller (FL)
Miller, Gary
Miller, George
Minge
Mink
Moakley
Moran (KS)
Moran (VA)
Morella
Murtha
Nadler
Napolitano
Neal
Nethercutt
Ney
Northup
Norwood
Nussle
Oberstar
Obey
Olver
Ortiz
Ose
Owens
Oxley
Pallone
Pastor
Paul
Payne
Pease
Pelosi
Peterson (PA)
Petri
Phelps
Pickett
Pitts
Pombo
Pomeroy
Porter
Price (NC)
Pryce (OH)
Quinn
Radanovich
Rahall
Rangel
Regula
Riley
Rivers
Rodriguez
Roemer
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Rothman
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
Sherman
Sherwood
Shimkus
Shuster
Simpson
Sisisky
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Spence
Spratt
Stabenow
Stark
Stearns
Stenholm
Strickland
Stump
Stupak
Sununu
Talent
Tancredo
Tanner
Tauscher
Tauzin
Taylor (NC)
Terry
Thomas
Thompson (MS)
Thornberry
Thune
Thurman
Tiahrt
Tierney
Toomey
Towns
Traficant
Udall (CO)
Udall (NM)
Upton
Velazquez
Vento
Vitter
Walden
Walsh
Wamp
Watkins
Watt (NC)
Watts (OK)
Waxman
Weldon (PA)
Weller
Wexler
Weygand
Whitfield
Wicker
Wilson
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NOES—48

Andrews
Bachus
Barrett (WI)
Bilbray
Blumenauer
Boswell
Boyd
Bryant
Chambliss
Collins
Condit
Crowley
Cubin
Deutsch
Gekas
Gilman
Hayes
Hill (IN)
Houghton
Hutchinson
John
Johnson (CT)
Jones (NC)
Kind (WI)
Latham
Maloney (CT)
McCrery
Mica
Moore
Myrick
Pascrell
Peterson (MN)
Pickering
Portman
Ramstad
Reyes
Reynolds
Roukema
Shays
Shows
Souder
Sweeney
Taylor (MS)
Thompson (CA)
Turner
Visclosky
Weiner
Weldon (FL)

NOT VOTING—11

Berman
Brown (CA)
Costello
Gilchrest
Kasich
Lazio
McInnis
Mollohan
Packard
Waters
Wise

☐ 1705

Mr. HOUGHTON changed his vote from ''aye'' to ''no.''

Mr. ADERHOLT and Mr. HOLT changed their vote from ''no'' to ''aye.''

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. PACKARD. Mr. Speaker, I was unavoidably detained for Rollcall 255, which was final passage of H.R. 1658, the Civil Asset Forfeiture Reform Act. I am a cosponsor of this legislation. Had I been present, I would have voted "aye."

Mr. BERMAN. Mr. Speaker, I was unable to cast a vote on final passage of H.R. 1658, the Civil Asset Forfeiture Reform Act. Had I been present, I would have voted "aye."

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 222 AND H.R. 1145

Mrs. MYRICK. Mr. Speaker, I ask unanimous consent that my name be removed as cosponsor from H.R. 222 and H.R. 1145.

The SPEAKER pro tempore (Mr. HEFLEY). Is there objection to the request of the gentlewoman from North Carolina?

There was no objection.

COMMUNICATION FROM DISTRICT AIDE OF HON. TERRY EVERETT, MEMBER OF CONGRESS

The SPEAKER pro tempore laid before the House the following communication from Joe Williams, District Aide of the Honorable TERRY EVERETT, Member of Congress:

Washington, DC, June 18, 1999.

Hon. DENNIS J. HASTERT,
Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: This is to formally notify you, pursuant to Rule VIII of the Rules of the House of Representatives, that I have been served with a trial subpoena (for testimony) issued by the Circuit Court for Houston County, Alabama in the case of *Floyd* v. *Floyd,* No. DR–1998–000040.

After consultation with the Office of General Counsel, I have determined that compliance with the subpoena is consistent with the precedents and privileges of the House.

Sincerely,

JOE WILLIAMS,
District Aide.

SALUTE TO PAYNE STEWART

(Mr. BLUNT asked and was given permission to address the House for 1 minute.)

Mr. BLUNT. Mr. Speaker, on an evening when our rivalries on the floor are transferred to the baseball diamond, I want to talk for a minute about sports.

Seldom are we allowed to see deep into a person's mind, but last week in Springfield, Missouri, native Payne Stewart let us see deep into his. Standing on the green of the 72nd hole of the U.S. Open, Stewart needed to make a 15 foot putt to win the championship.

Despite the enormous pressure involved and knowing that the world was watching, Stewart stepped to the ball and sank the seemingly impossible putt for the tenth PGA Tour victory of his career. As the rain fell, Stewart and his caddy celebrated with a jumping embrace on the 18th green in Pinehurst, North Carolina. With this win, Stewart also earned himself a spot on the U.S. Ryder Cup team. However Payne Stewart says that no other tournament he ever wins will be bigger than the 1982 Quad Cities Open championship. That was the only tournament victory his father, a golf pro in Springfield who taught him to play golf, ever saw him win. So on Father's Day 1999, with his wife at his side and his children watching from home, Payne Stewart proved not only to be a great golfer, but also someone with strong family values. These are the attributes we should all strive to maintain no matter what profession we choose to pursue.

A hearty congratulations is in order to Payne Stewart for the winning of his second U.S. open and third PGA major of his career. I thank Payne for setting a good example for families across America. Fellow southwest Missourians are proud of him.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 1802, FOSTER CARE INDEPENDENCE ACT OF 1999

Mrs. MYRICK, from the Committee on Rules, submitted a privileged report (Rept. No. 106–199) on the resolution (H. Res. 221) providing for consideration of the bill (H.R. 1802) to amend part E of title IV of the Social Security Act to provide States with more funding and greater flexibility in carrying out programs designed to help children make the transition from foster care to self-sufficiency, and for other purposes, which was referred to the House Calendar and ordered to be printed.

PROTOCOL AMENDING THE AGREEMENT FOR COOPERATION CONCERNING CIVIL USES OF ATOMIC ENERGY BETWEEN THE GOVERNMENT OF THE UNITED STATES AND THE GOVERNMENT OF CANADA—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on International Relations and ordered to be printed:

To the Congress of the United States:

I am pleased to transmit to the Congress, pursuant to sections 123 b. and 123 d. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153 (b) and (d)), the text of a proposed Protocol Amending the Agreement for Cooperation Concerning Civil Uses of Atomic Energy Between the Government of the United States of America and the Government of Canada signed at Washington on June 15, 1955, as amended. I am also pleased to transmit my written approval, authorization, and determination concerning the Protocol, and an unclassified Nuclear Proliferation Assessment Statement (NPAS) concerning the Protocol. (In accordance with section 123 of the Act, as amended by Title XII of the Foreign Affairs Reform and Restructuring Act of 1998 (Public Law 105–277), I have submitted to the Congress under separate cover a classified annex to the NPAS, prepared in consultation with the Director of Central Intelligence, summarizing relevant classified information.) The joint memorandum submitted to me by the Secretary of State and the Secretary of Energy and a letter from the Chairman of the Nuclear Regulatory Commission stating the views of the Commission are also enclosed.

The proposed Protocol has been negotiated in accordance with the Atomic Energy Act of 1954, as amended, and other applicable law. In my judgment, it meets all statutory requirements and will advance the nonproliferation and other foreign policy interests of the United States.

The Protocol amends the Agreement for Cooperation Concerning Civil Uses of Atomic Energy Between the Government of the United States of America and the Government of Canada in two respects:

1. It extends the Agreement, which would otherwise expire by its terms on January 1, 2000, for an additional period of 30 years, with the provision for automatic extensions thereafter in increments of 5 years each unless either Party gives timely notice to terminate the Agreement; and

2. It updates certain provisions of the Agreement relating to the physical protection of materials subject to the Agreement.

The Agreement itself was last amended on April 23, 1980, to bring it into conformity with all requirements of the Atomic Energy Act and the Nuclear Non-Proliferation Act of 1978. As amended by the proposed Protocol, it will continue to meet all requirements of U.S. law.

Canada ranks among the closest and most important U.S. partners in civil nuclear cooperation, with ties dating back to the early days of the Atoms for Peace program. Canada is also in the forefront of countries supporting international efforts to prevent the spread of nuclear weapons to additional countries. It is a party to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and has an agreement with the IAEA for the application of full-scope safeguards to its nuclear program. It also subscribes to the Nuclear Supplier Group (NSG) Guidelines, which set forth standards for the responsible export of nuclear commodities for peaceful use, and to the Zangger (NPT Exporters) Committee Guidelines, which oblige members to require the application of IAEA safeguards on nuclear exports to nonnuclear weapon states. It is a party to the Convention on the