



Written by [Jacob Sullum](#) on June 15, 2023

Congress Considers Conditions on the Government's License to Steal

Two years ago, the FBI seized the contents of safe deposit boxes used by hundreds of people at U.S. Private Vaults, a Beverly Hills, California, business that offered secure storage for cash and other valuables. One of those dismayed customers was Linda Martin, a Los Angeles resident whose box contained \$40,200 that she and her husband had saved for a deposit on a new home.

Martin, whose money was seized without any evidence that she was involved in illegal activity, is still trying to get it back. Her predicament is emblematic of the injustice wrought by civil asset forfeiture, a system of legalized larceny that allows law enforcement agencies to pad their budgets by confiscating allegedly crime-tainted property without charging, let alone convicting, the owner.



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A bill that has attracted bipartisan support in Congress aims to address that problem. The Fifth Amendment Integrity Restoration (FAIR) Act includes several substantial reforms that would make it harder for the federal government to take assets from innocent people like Martin.

The FAIR Act, which Reps. Tim Walberg (R-Mich.) and Jamie Raskin (D-Md.) reintroduced in March, would eliminate the perverse financial incentive that encourages agencies like the FBI to seize first and ask questions later (if ever). It would assign forfeiture proceeds to the general fund instead of letting the seizing agency keep the loot.

The bill also would eliminate the “equitable sharing” program that lets state and local agencies keep up to 80% of the revenue from forfeitures they initiate. By authorizing confiscation under federal law, that program invites money-hungry cops to circumvent state reforms that make forfeiture harder or less profitable.

Nearly all federal forfeitures are “administrative,” meaning they are completed without judicial oversight. Instead, the agency that wants to keep someone’s property decides whether it can — an obvious conflict of interest that the FAIR Act would eliminate by requiring that federal courts approve forfeitures.

As Martin discovered, challenging a forfeiture is complicated and daunting. Because she filed a “petition for remission,” for example, she inadvertently conceded that her property was subject to forfeiture, meaning she could recover it only if the Justice Department decided that was fair.

This process is very difficult to navigate without a lawyer. Yet owners of seized assets, unlike criminal defendants, have no right to legal representation, and they often find that paying an attorney costs



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more than their property is worth. The FAIR Act would change that by authorizing court-appointed counsel in civil forfeiture cases.

To keep seized property under current federal law, the government has to prove it is more likely than not that it was derived from or facilitated a crime. The FAIR Act raises that burden to “clear and convincing evidence,” and it enhances protections for innocent owners: When another person uses someone’s property to commit a crime, the government would have the burden of proving that the owner “knowingly consented or was willfully blind” to that unlawful use.

The most straightforward way to stop forfeiture abuse would be to require a criminal conviction, a step that several states have taken. The FAIR Act does not go that far, and it would still allow seizures based on “probable cause,” a minimal standard that in practice often amounts to nothing more than a vague, unsubstantiated allegation.

According to a federal lawsuit that the Institute for Justice filed on Martin’s behalf in March, the notice of a pending forfeiture that she received from the FBI “accused her of no crime and stated no facts connecting her to any crime.” Instead, it “alluded to nearly twenty federal forfeiture statutes that broadly incorporate hundreds of federal crimes.”

The complaint notes that “the FBI still has Linda’s property” and wants to keep it but “has not told her why.” That Kafkaesque situation, which innocent Americans across the country experience every year, vividly illustrates the need for reform, and the FAIR Act represents an important step in that direction.

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