

March 29, 2016

The Honorable Chuck Grassley
Chairman
Senate Judiciary Committee
Washington, DC 20510

The Honorable Patrick Leahy
Ranking Member
Senate Judiciary Committee
Washington, DC 20510

The Honorable Bob Goodlatte
Chairman
House Judiciary Committee
Washington, DC 20515

The Honorable John Conyers, Jr.
Ranking Member
House Judiciary Committee
Washington, DC 20515

RE: Statement of Opposition to S. 2576, Support Our Brave Law Enforcement Act, and Restoration of Equitable Sharing Payments to State and Local Law Enforcement

Dear Chairman Grassley, Ranking Member Leahy, Chairman Goodlatte and Ranking Member Conyers:

On behalf of the 30 undersigned organizations representing the interests of criminal justice reform, civil and human rights, faith, business, and community, we wish to express our opposition to S. 2576, the Support Our Brave Law Enforcement Act. S. 2576 resumes payments from the Department of Justice's Assets Forfeiture Fund to state and local law enforcement under the Equitable Sharing Program. We instead urge this Committee to adopt comprehensive forfeiture reform that would abolish the Equitable Sharing Program. We believe current federal forfeiture laws create a financial incentive to pursue profit over the fair administration of justice, facilitate the circumvention of state laws intended to protect citizens from abuse, encourage the violation of due process and property rights of Americans, and disproportionately impact people of color and those with modest means.

The Equitable Sharing Program allows state and local law enforcement to seize property from individuals without proving criminal wrongdoing and then refer this property to federal authorities to pursue forfeiture. Thus, with federal assistance, state and local law enforcement convert seized property into funding for local law enforcement. This program creates a direct financial incentive for state and local law enforcement to not only seize property, but also circumvent their own state laws that are more protective of property rights and due process than federal laws.

As the Committee knows from its April 15, 2015 hearing on "The Need to Reform Asset Forfeiture," there has been widespread abuse under the Equitable Sharing Program.¹ As authorized by this program, state and local law enforcement have seized over \$2.5 billion in almost 62,000 "highway interdictions" since 2001—all without any warrants or indictments.² And between 2000 and 2013, annual payments to state and local law enforcement through the Equitable Sharing Program more than tripled, generating \$4.7 billion for those agencies.³

¹ *The Need to Reform Asset Forfeiture: Hearing before the Judiciary Comm.*, Testimony of Chuck Canterbury, National President, Grand Lodge, National Fraternal Order of Police, 114th Cong. (2015), <http://www.judiciary.senate.gov/meetings/the-need-to-reform-asset-forfeiture>.

² Sallah, Michael, Robert O'Harrow, Jr., Steven Rich, and Gabe Silverman, *Stop and Seize: Aggressive Police Take Hundreds of Millions of Dollars from Motorists Not Charged with Crimes*, WASH. POST (Sept. 6, 2014), <http://www.washingtonpost.com/sf/investigative/2014/09/06/stop-and-seize/>.

³ Carpenter, Dick M., II, PhD, Lisa Knepper, Angela C. Erickson, and Jennifer McDonald, *Institute for Justice Policing for Profit: The Abuse of Civil Asset Forfeiture*, 25 (2015), <http://ij.org/report/policing-for-profit/>.

What is fueling this explosion was shared at the April 15th hearing. Law enforcement testified that the major concern with federal reform was the potential loss of “hundreds of millions” of dollars for state and local law enforcement.⁴ As Senator Grassley rightly noted, that position “demonstrates the absurdity of a system of justice in which some in law enforcement appear to value funding their own operations over protecting civil rights.”⁵

At that hearing, we were also pleased to hear both the Chairman and Ranking Member insist that reform was urgently needed. Chairman Grassley noted that the Equitable Sharing Program “incentivizes police to seize particular property to obtain a direct financial reward.”⁶ Ranking Member Leahy also acknowledged that “it is clear that some abuses persist” and “innocent Americans deserve protections from abusive asset forfeiture practices.”⁷

The solution is clear: Congress must once and for all end the Equitable Sharing Program and pass comprehensive civil asset forfeiture reform legislation. Congress should not resume equitable-sharing payments as S. 2576 proposes. S. 2576 is a short-sighted response to the Justice Department’s temporary suspension of equitable-sharing payments that completely ignores the systemic flaws of asset forfeiture and the Equitable Sharing Program. Congress must find other means to facilitate cooperation between federal, state and local law enforcement partners on criminal investigations.

Unlike appropriated federal programs for state and local law enforcement, the Equitable Sharing Program is not a stable funding mechanism because it relies on the value and type of property that police seize. To the extent that equitable sharing *is* a stable funding mechanism, it relies on encouraging police and prosecutors to seek out and seize property in volume.

The source of law enforcement funding should *not* be tied—either directly or indirectly—to property seized by law enforcement. Congress should not, in the interest of indirectly funding local law enforcement, encourage police to go out and find property to seize. It is never appropriate to give police and prosecutors an *incentive* to seize people’s property. By doing so, equitable sharing violates principles of due process and federalism and threatens the property and civil rights of all Americans.

Thank you for considering our opposition to S. 2576 and request for civil asset forfeiture reform legislation. We stand ready to assist you and your staff, and are available to answer any questions you may have. Please feel free to contact Darpana Sheth, Attorney, Institute for Justice at dsheth@ij.org or 703-682-9320; Kanya Bennett, Legislative Counsel, ACLU at kbennett@aclu.org or 202-715-0808; Grant Smith, Deputy Director, Drug Policy Alliance at gsmith@drugpolicy.org or 202-683-2984; or Sakira Cook, Leadership Conference at cook@civilrights.org or 202-263-2894.

⁴ *The Need to Reform Asset Forfeiture: Hearing before the Judiciary Comm.*, Testimony of Chuck Canterbury, National President, Grand Lodge, National Fraternal Order of Police, 114th Cong. (2015), <http://www.judiciary.senate.gov/meetings/the-need-to-reform-asset-forfeiture> (last visited Mar. 16, 2016).

⁵ Statement of Chuck Grassley (R-IA), Chairman, Senate Judiciary Committee. *Grassley Statement at a Judiciary Committee Hearing on the Need to Reform Asset Forfeiture* (Apr. 15, 2015), <http://www.grassley.senate.gov/news/news-releases/grassley-statement-judiciary-committee-hearing-need-reform-asset-forfeiture> (last visited Mar. 16, 2016).

⁶ *See id.*

⁷ Statement of Senator Patrick Leahy (D-VT), Ranking Member, Senate Judiciary Committee, (Apr. 15, 2015), <http://www.nlc.org/Documents/Influence%20Federal%20Policy/Policy%20Committees/PSCP/04-15-15%20Asset%20Forfeiture%20Hearing%20Testimony.pdf>. (last visited Mar. 16, 2016).

Sincerely,

All Eyes On Africa Communications

American Civil Liberties Union

Americans for Tax Reform

Campaign for Liberty

Church of Scientology National Affairs Office

DKT Liberty Project

Drug Policy Alliance

FedCURE

FreedomWorks

Institute for Justice

LatinoJustice PRLDEF

Law Enforcement Against Prohibition

Lawyers' Committee for Civil Rights Under Law

The Leadership Conference on Civil and Human Rights

Liberty Coalition

Marijuana Policy Project

NAACP

National Association of Criminal Defense Lawyers

National Association of Social Workers

National Center for Transgender Equality

National Lawyers Guild

National LGBTQ Task Force Action Fund

Peace Alliance and Student Peace Alliance

PICO Network LIVE FREE Campaign

Prison Policy Initiative

Smith & Zimmerman, PLLC

StoptheDrugWar.org

T'ruah: The Rabbinic Call for Human Rights

Tampa Bay Center for Community Transformation

United We Dream

Cc: Honorable James Sensenbrenner
Honorable Sheila Jackson Lee
Senate Judiciary Committee