

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 law-breaking 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?

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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 substitute 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 be-

cause 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.