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July 20, 2023

To: **The Honorable U.S. Senators and Representatives of Wisconsin,**
The Honorable Ron Johnson, United States Senate
The Honorable Tammy Baldwin, United States Senate
The Honorable Bryan Steil, United States House of Representatives (WI-1)
The Honorable Mark Pocan, United States House of Representatives (WI-2)
The Honorable Derrick Van Orden, United States House of Representatives (WI-3)
The Honorable Gwen Moore, United States House of Representatives (WI-4)
The Honorable Scott Fitzgerald, United States House of Representatives (WI-5)
The Honorable Glenn Grothman, United States House of Representatives (WI-6)
The Honorable Tom Tiffany, United States House of Representatives (WI-7)
The Honorable Mike Gallagher, United States House of Representatives (WI-8)

Subject: Support for HR 1525 (118th Congress) — The FAIR Act

Dear U.S. Senators and Representatives of Wisconsin,

On behalf of the Wisconsin Institute for Law & Liberty (WILL), we are writing to express our organization's strong support for HR 1525, the Fifth Amendment Integrity Restoration Act (FAIR Act). As a leading public interest law and policy center dedicated to defending individual liberties and protecting constitutional rights, we believe that reforming civil forfeiture laws is crucial to safeguarding the principles of fairness, due process, and property rights.

Although individuals charged with a crime are granted robust constitutional protections, such as the presumption of innocence and trial by jury, there is one notable exception to this rule: civil asset forfeiture. Under this process, government officials can seize, keep, and then ultimately use property (such as cash or vehicles) merely suspected of being connected to criminal activity, even without charging the property owner with a crime or obtaining a conviction. The vast majority of forfeitures—over 80%—are resolved through an administrative procedure with absolutely no judicial oversight. Bureaucrats in Washington decide whether the government can keep seized property and then decide how to disburse the proceeds. Civil asset forfeiture departs from the fundamental principles that our nation was built upon and erodes trust in our criminal justice system, as individuals can lose their property without due process or a finding of guilt.

In 2017, the Wisconsin Legislature enacted Act 211, an important civil forfeiture reform package that garnered broad bipartisan support. This legislation prohibits law enforcement agencies from seizing assets without a criminal conviction and requires the state to provide clear and convincing evidence to establish forfeiture eligibility. Yet despite this and other similar state-level reforms, the federal "equitable sharing" program persists, enabling local law enforcement to collaborate with federal agencies to bypass state laws. Public records reveal that in almost every case, the value of the property retained by law enforcement far exceeds their costs of

investigation, raising the concern of "policing for profit." The FAIR Act rectifies this issue by ending the "equitable sharing" program and restoring Congress's constitutional power of the purse. Under the FAIR Act, it will be Congress—not unelected bureaucrats—who will decide how to spend the vast amounts of property seized in connection with legitimate law enforcement proceedings.

Recognizing the challenges property owners face within the federal civil asset forfeiture system, the bill also ensures the right to counsel throughout federal civil forfeiture proceedings and mandates that the government prove their case with "clear and convincing evidence"—a heightened evidentiary standard. Additionally, the bill shifts the burden of proof to the government in cases involving criminally used property where the property's owner was innocent. Instead of having to prove their innocence, owners will only need to demonstrate that they were unaware of the unlawful use by the third party and had taken reasonable steps to prevent it.

By supporting the FAIR Act, you will support due process, protect individual property rights, and restore Congress's authority to spend through appropriation—rather than leave major spending power in the hands of bureaucrats.

WILL urges you to endorse this important legislation and vote in favor of its passage.

Thank you for your attention to this matter.

Sincerely,
Kyle Koenen
Policy Director
Wisconsin Institute for Law & Liberty

Dan Lennington
Deputy Counsel
Wisconsin Institute for Law & Liberty