To restore the integrity of the Fifth Amendment to the Constitution of the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. PAUL introduced the following bill; which was read twice and referred to the Committee on ________________

A BILL

To restore the integrity of the Fifth Amendment to the Constitution of the United States, and for other purposes.

Be it enacted by the Senate and House of Representa-

tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Fifth Amendment In-
tegrity Restoration Act of 2020” or the “FAIR Act”.

SEC. 2. CIVIL FORFEITURE PROCEEDINGS.

Section 983 of title 18, United States Code, is amended—

(1) in subsection (b)(2)(A)—
(A) by striking “, and the property subject to forfeiture is real property that is being used by the person as a primary residence,”; and

(B) by striking “, at the request of the person, shall insure” and inserting “shall ensure”;

(2) in subsection (e)—

(A) in paragraph (1), by striking “a preponderance of the evidence” and inserting “clear and convincing evidence”;

(B) in paragraph (2), by striking “a preponderance of the evidence” and inserting “clear and convincing evidence”; and

(C) by striking paragraph (3) and inserting the following:

“(3) if the Government’s theory of forfeiture is that the property was used to commit or facilitate the commission of a criminal offense, or was involved in the commission of a criminal offense, the Government shall establish, by clear and convincing evidence, that—

“(A) there was a substantial connection between the property and the offense; and

“(B) the owner of any interest in the seized property—
“(i) used the property with intent to facilitate the offense; or
“(ii) knowingly consented or was willfully blind to the use of the property by another in connection with the offense.”;
(3) in subsection (d)(2)(A), by striking “an owner who” and all that follows through “upon learning” and inserting “an owner who, upon learning”;
(4) in subsection (f)(6), in the matter preceding paragraph (7), by inserting “, and shall award to the claimant an amount equal to 3 times the value of the property seized and a reasonable attorney’s fee” before the period at the end; and
(5) in subsection (i)—
(A) by striking subparagraphs (A) and (B); and
(B) by redesignating subparagraphs (C) through (E) as subparagraphs (A) through (C), respectively.

SEC. 3. DISPOSITION OF FORFEITED PROPERTY.

(a) Revisions to Controlled Substances Act.—Section 511(e) of the Controlled Substances Act (21 U.S.C. 881(e)) is amended—
(1) in paragraph (1)—
(A) in the matter preceding subparagraph (A), by striking “civilly or”;
(B) by striking subparagraph (A); and
(C) by redesignating subparagraphs (B) through (E) as subparagraphs (A) through (D), respectively;
(2) in paragraph (2)—
(A) in subparagraph (A), in the matter preceding clause (i), by striking “subparagraph (B) of paragraph (1)” and inserting “paragraph (1)(A)”;
(B) in subparagraph (B), by striking “ac-
cordance with section 524(c) of title 28,” and inserting “the General Fund of the Treasury of the United States”; 
(3) by striking paragraph (3);
(4) by redesignating paragraph (4) as para-
graph (3); and
(5) in paragraph (3), as redesignated—
(A) in subparagraph (A), by striking “paragraph (1)(B)” and inserting “paragraph (1)(A)”;
and
(B) in subparagraph (B), in the matter preceding clause (i), by striking “paragraph
(1)(B) that is civilly or” and inserting paragraph “(1)(A) that is”.

(b) REVISIONS TO TITLE 18.—Chapter 46 of title 18, United States Code, is amended—

(1) in section 981(e)—

(A) by striking “is authorized” and all that follows through “or forfeiture of the property;” and inserting “shall forward to the Treasurer of the United States any proceeds of property forfeited pursuant to this section for deposit in the General Fund of the Treasury or transfer such property on such terms and conditions as such officer may determine—”;

(B) by redesignating paragraphs (3), (4), (5), (6), and (7) as paragraphs (1), (2), (3), (4), and (5), respectively; and

(C) in the matter following paragraph (5), as so redesignated—

(i) by striking the first, second, third, sixth, and eighth sentences; and

(ii) by striking “paragraphs (3), (4), and (5)” and inserting “paragraphs (1), (2), and (3)”;

(2) in section 983(g)—
(A) in paragraph (3), by striking “grossly”; and

(B) in paragraph (4), by striking “grossly”.

(c) TARIFF ACT OF 1930.—The Tariff Act of 1930 (19 U.S.C. 1304 et seq.) is amended—

(1) in section 613A(a) (19 U.S.C. 1613b(a))—

(A) in paragraph (1)—

(i) in subparagraph (D), by inserting “and” after the semicolon;

(ii) in subparagraph (E), by striking “; and” and inserting a period; and

(iii) by striking subparagraph (F);

and

(B) in paragraph (2)—

(i) by striking “(A) Any payment” and inserting “Any payment”; and

(ii) by striking subparagraph (B); and

(2) in section 616 (19 U.S.C. 1616a)—

(A) in the section heading, by striking “TRANSFER OF FORFEITED PROPERTY” and inserting “DISMISSAL IN FAVOR OF FORFEITURE UNDER STATE LAW”; and

(B) in subsection (a), by striking “(a) The Secretary” and inserting “The Secretary”; and
(C) by striking subsections (b) through (d).

(d) TITLE 31.—Section 9705 of title 31, United States Code, is amended—

(1) in subsection (a)(1)—

(A) by striking subparagraph (G); and

(B) by redesignating subparagraphs (H) through (J) as subparagraphs (G) through (I), respectively; and

(2) in subsection (b)—

(A) by striking paragraphs (2) and (4); and

and

(B) by redesignating paragraphs (3) and (5) as paragraphs (2) and (3), respectively.

SEC. 4. DEPARTMENT OF JUSTICE ASSETS FORFEITURE FUND DEPOSITS.

Section 524(c)(4) of title 28, United States Code, is amended—

(1) by striking subparagraphs (A) and (B); and

(2) by redesignating subparagraphs (C) and (D) as subparagraphs (A) and (B), respectively.

SEC. 5. STRUCTURING TRANSACTIONS TO EVADE REPORTING REQUIREMENT PROHIBITED.

(a) AMENDMENTS TO TITLE 31.—Section 5324 of title 31, United States Code, is amended—
(1) in subsection (a)—
   (A) in the matter preceding paragraph (1), by inserting “knowingly” after “Public Law 91–508”; and
   (B) in paragraph (3), by inserting “of funds not derived from a legitimate source” after “any transaction”; 
(2) in subsection (b), in the matter preceding paragraph (1), by inserting “knowingly” after “such section”; and
(3) in subsection (c), in the matter preceding paragraph (1), by inserting “knowingly” after “sec-
   tion 5316”.

(b) Probable Cause Hearing in Connection With Property Seizures Relating to Certain Monetary Instruments Transactions.—

(1) Amendment.—Section 5317 of title 31, United States Code, is amended by adding at the end the following:

“(d) Probable Cause Hearing in Connection With Property Seizures Relating to Certain Monetary Instruments Transactions.—

“(1) In General.—Not later than 14 days after the date on which notice is provided under paragraph (2)—
“(A) a court of competent jurisdiction shall conduct a hearing on any property seized or restrained under subsection (c)(2) with respect to an alleged violation of section 5324; and

“(B) any property described in subparagraph (A) shall be returned unless the court finds that there is probable cause to believe that there is a violation of section 5324 involving the property.

“(2) NOTICE.—Each person from whom property is seized or restrained under subsection (c)(2) with respect to an alleged violation of section 5324 shall be notified of the right of the person to a hearing under paragraph (1).”.

(2) APPLICABILITY.—The amendment made by paragraph (1) shall apply to property seized or restrained after the date of enactment of this Act.

SEC. 6. PROPORTIONALITY.

Section 983(g)(2) of title 18, United States Code, is amended to read as follows:

“(2) In making this determination, the court shall consider such factors as—

“(A) the seriousness of the offense;

“(B) the extent of the nexus of the property to the offense;
“(C) the range of sentences available for the offense giving rise to forfeiture;

“(D) the fair market value of the property;

and

“(E) the hardship to the property owner and dependents.”.

SEC. 7. REPORTING REQUIREMENTS.

Section 524(c)(6)(i) of title 28, United States Code, is amended by inserting “from each type of forfeiture, and specifically identifying which funds were obtained from including criminal forfeitures and which were obtained from civil forfeitures,” after “deposits”.

SEC. 8. NONJUDICIAL FORFEITURE.

Section 983 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) in the subsection heading, by striking “Claim,”;

(B) in paragraph (1)—

(i) in subparagraph (A)—

(I) in clause (i)—

(aa) by striking “clauses (ii) through (v), in any nonjudicial” and inserting “clause (ii), in any”; and
(bb) by striking “60” and inserting “7”;

(II) by striking clauses (ii) through (iv);

(III) by redesignating clause (v) as clause (ii); and

(IV) by striking clause (ii), as so redesignated, and inserting the following:

“(ii) If the identity or interest of a party is not determined until after the seizure or turnover but is determined before a declaration of forfeiture is entered, the Government shall determine the identity and address of the party or interest within 7 days after the seizure or turnover, and notice shall be sent to such interested party not later than 7 days after the determination by the Government of the identity and address of the party or the party’s interest.”;

(ii) by striking subparagraphs (B) through (D);
(iii) by redesignating subparagraphs (D) through (F) as subparagraphs (B) through (D), respectively; and
(iv) in subparagraph (C), as so redesignated, by striking “nonjudicial”;
(C) by striking paragraph (2);
(D) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively; and
(E) in paragraph (2)(A), as so redesignated—
(i) by striking “90” and inserting “30”; and
(ii) by striking “after a claim has been filed” and inserting “the date of the seizure”;
(2) in subsection (b)—
(A) by striking paragraph (1)(A) and inserting the following:
“(1)(A) If a person with standing to contest the forfeiture of property in a judicial civil forfeiture proceeding under a civil forfeiture statute is—
“(i) financially unable to obtain representation by counsel; or
“(ii) the cost of obtaining representation would exceed the value of the seized property,
the court may authorize or appoint counsel to represent that person with respect to the claim.”;

(B) in subparagraph (1)(B), by inserting “or appoint” after “authorize”; and

(C) in paragraph (2)(A), by inserting “under paragraph (1)” after “counsel”;

(3) in subsection (d)(1), by striking the second sentence;

(4) in subsection (e)—

(A) in paragraph (1), in the matter preceding subparagraph (A)—

(i) by striking “nonjudicial”; and

(ii) by striking “a declaration” and inserting “an order”;

(B) in paragraph (2)—

(i) in subparagraph (A), by striking “declaration” and inserting “order”; and

(ii) by striking subparagraph (B) and inserting the following:

“(B) Any proceeding described in subparagraph (A) shall be commenced within 6 months of the entry of the order granting the motion.”; and

(C) by striking paragraph (5);
(5) in subsection (f)(1), in the matter preceding subparagraph (A), by striking “(a)” and inserting “(a)(3)(A)”;

(6) in subsection (g)(1), by striking “(a)(4)” and inserting “(a)(3)”;

(7) by adding at the end the following:
“(k)(1) Notwithstanding any other provision of law—
“(A) no Federal seizing agency may conduct nonjudicial forfeitures;
“(B) no property may be subject to forfeiture except through judicial process; and
“(C) no order of forfeiture may be entered except by a United States district court.
“(2) In this subsection, the term ‘nonjudicial forfeiture’ means an in rem action that permits the Federal seizing agency to start a forfeiture without judicial involvement.”.

SEC. 9. APPLICABILITY.

The amendments made by this Act shall apply to—

(1) any civil forfeiture proceeding pending on or filed on or after the date of enactment of this Act; and

(2) any amounts received from the forfeiture of property on or after the date of enactment of this Act.