



FEDERAL BUREAU OF INVESTIGATION AGENTS ASSOCIATION

The Honorable Jim Jordan
Chairman
Judiciary Committee
U.S. House of Representatives
2138 Rayburn House Building
Washington, DC 20515

Dear Chairman Jordan,

As President of the FBI Agents Association (FBIAA) and on behalf of our over 14,000 active duty and retired Special Agent members, I write today to share FBIAA's ongoing concerns about H.R. 5736, the *Federal Accountability in Interviews Act Reform* (the "FAIR Act"). H.R. 5736 has not been subjected to sufficient scrutiny, Congress has not held hearings on the issue to receive input from law enforcement experts, and the legislation should not be approved by your committee because adoption of this legislation would create obstacles to successful criminal prosecutions. Most importantly, it would make it more difficult for federal law enforcement officers to protect the people of our country from criminals and terrorists.

First, the FAIR Act would undermine federal law enforcement by making it more difficult to successfully prosecute crimes.

- The FAIR act would make all "information or statements" obtained during an interview inadmissible in federal courts unless it complies with the bill's onerous recording requirements. This sets a broad new standard for evidence that will make it more difficult for prosecutors to successfully hold criminals accountable, as it will bar testimony about information from interviews even when it was impossible to record that information because it was non-verbal (such as observations of interviewees made by Special Agents during an interview) or because there was a technical or transcription error.
- This new mandate creates a loophole that will be used by criminal defendants to exclude evidence of their culpability and escape responsibility for their crimes. Giving this tool to criminal defendants is unnecessary because Special Agents serve as important and credible witnesses, and reducing all their testimony to recorded interviews can only undermine the effective administration of justice.

Second, The FAIR Act interferes with effective interviews, which are essential to successful investigations.

- Special Agents must carefully build relationships and conduct interviews delicately to obtain important information, and it is unnecessary to impose a rigid mandate for all interviews. In fact, interviews often occur in informal locations like restaurants to build rapport. Requiring that all interviews be recorded threatens to undermine rapport by making interviewees suspicious of the recording tools or the use of the recording, making it more difficult to obtain information that can



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help solve crimes and save lives. In fact, the belief that they are being recorded may lead to an increase in the number of witnesses who decline any interview at all—depriving law enforcement of essential information.

Third, the FAIR Act delays uncertainties that undermine law enforcement.

- Special Agents often learn information in interviews that requires immediate investigative action. There are inherent delays involved in recording, cataloging, and transcribing interviews. Barring federal courts from considering non-recorded evidence from Special Agents could undermine the ability for Special Agents to secure search warrants in a timely manner, and administrative delays in producing or transcribing interviews could also limit the availability of evidence in trials and undermine the effective prosecution of criminals.

Finally, the FAIR Act creates extraordinary new administrative burdens on federal law enforcement.

- Interviews are a regular part of the investigative work done by Special Agents, and the ability for Special Agents to efficiently conduct and act upon interviews is vital to their ongoing investigations. Requiring that all interviews involving Bureau employees, both custodial and non-custodial and at the state, local, and federal levels, be recorded and stored creates new administrative obstacles that will make it more difficult for Special Agents to do their work because they will now need to dedicate scarce time to ensuring they have recording equipment, that the equipment is functional, and that the presence of recording equipment does not undermine the productivity of the interview. Additionally, accurately transcribing and verifying interviews is a time-consuming process that will require the dedication of significant time and resources that do not currently exist in the Bureau. These new and unnecessary burdens will only undermine the efficiency and effectiveness of ongoing investigations.

The FAIR Act would put the people of our country at greater risk of criminals by undermining the ability of prosecutors to rely on information collected by federal law enforcement officers and by creating new and unnecessary delays and administrative burdens. The FAIR Act should not be approved by your committee.

We appreciate your consideration of the FBIAA's perspective on this important issue.

Sincerely,

Natalie Bara

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President