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30 May 2018

The Honorable Jeb Hensarling
Chairman
House Financial Services Committee
United States House of Representatives
2228 Rayburn HOB
Washington, DC 20515

The Honorable Steve Pearce
Chairman
Subcommittee on Terrorism and Illicit Finance
United States House of Representatives
2432 Rayburn HOB
Washington, DC 20515

Dear Mr. Hensarling and Mr. Pearce,

The Antiquities Coalition is grateful for your leadership in combating financial crimes.

Our nonprofit organization unites a diverse group of experts in the fight against the illicit trade in ancient art, which is funding crime, armed conflict, and violent extremism. We are business leaders, former government officials, lawyers, security experts, and other professionals. In this work we join forces with a wide range of partners—including the art world—to strengthen legal markets and trade practices.¹

Given this mission, we are writing to express our strong support for H.R. 5886, which would rightfully remove art and antiquities dealers' current exemption from the Bank Secrecy Act (BSA).

The BSA requires “financial institutions” to assist the U.S. government in detecting and preventing money laundering, terrorist financing, and related crimes.² The need for this law cannot be overstated. Each year, an estimated 3–5% of the global GDP is laundered, totaling some \$2.17–\$3.61 trillion.³ Moreover, as post 9/11 reforms have increasingly closed the formal financial sector to violent extremist organizations, they have turned back to “traditional ways such as... money laundering... to move their funds to finance their terrorist activities.”⁴ Money laundering and terrorist financing go hand in hand, and as the Financial Action Task Force (FATF) warned back in 2013, art and antiquities are particularly vulnerable to each.⁵

¹ Learn more at <https://theantiquitiescoalition.org>.

² Bank Secrecy Act, 31 U.S.C. §§ 5311-5332 (2012).

³ *Anti-Money Laundering / Counter Terrorist Financing*, U.S. Dept. of State, <https://www.state.gov/j/inl/c/crime/c44634.htm> (last visited May 30, 2018).

⁴ *Id.*

⁵ Financial Action Task Force, *National Money Laundering and Terrorist Financing Risk Assessment* (Feb. 2013), available at http://www.fatf-gafi.org/media/fatf/content/images/National_ML_TF_Risk_Assessment.pdf.

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The art market clearly meets the BSA's definitions of a financial institution—that is a business “whose cash transactions have a high degree of usefulness in criminal... matters.”⁶ This is evidenced by the Department of Justice's ongoing prosecution of six individuals and four corporations for a \$50 million dollar money laundering scheme involving a Pablo Picasso painting. One of the defendants told an undercover agent they had originally planned to clean their funds through real estate, but turned to art because it is “the only market that is unregulated.”⁷ Such regulation is especially needed since the United States remains the world's largest such market, valued at a shocking \$26.6 billion, and accounting for 42% of the global total in 2017.⁸

The Department of Treasury's Financial Crimes Enforcement Network (FinCEN) already requires dealers in precious metals, stones, and jewels to establish anti-money laundering programs. Federal law also demands the same from sellers of automobiles, planes, and boats; casinos; pawnbrokers; real estate professionals; and travel agencies. Why should the art world—where a single transaction can value in the hundreds of millions of dollars—continue to be exempt?

The market *itself* has increasingly recognized its own vulnerability to financial crimes. The Basel Art Trade Guidelines warn that, “In comparison with other trade sectors, the art market faces a higher risk of exposure to dubious trade practices” including antiquities trafficking, fraud, and money laundering. They attribute this to “the volume of illegal or legally questionable transactions, which is noticeably higher in this sector than in other globally active markets.”⁹

Industry leaders have called for, and many have implemented, measures similar to H.R. 5886. The *market-led* Geneva Responsible Art Market Initiative¹⁰ and before-mentioned Basel Guidelines go far beyond the bill. In the words of Sullivan & Worcester, a leading law firm representing artists, museums, and market actors: H.R. 5886 will only “impose on art dealers the kind of know your customer (KYC) that banks take for granted, and which honestly should already be part of a prudent business' intake process.”¹¹ Put another way, it will *protect* dealers from unknowingly facilitating crimes, and they should be doing what the law requires under their own codes, practices, and standards.

⁶ Bank Secrecy Act, 31 U.S.C. § 5312(a)(2)(Z) (2012).

⁷ U.S. Atty's Office, E. Dist. N.Y., *Six Individuals and Four Corporate Defendants Indicted in \$50 Million International Securities Fraud and Money Laundering Schemes*, U.S. Dep't of Justice (Mar. 2, 2018), <https://www.justice.gov/usao-edny/pr/six-individuals-and-four-corporate-defendants-indicted-50-million-international>.

⁸ Clare McAndrew, Art Basel & UBS, *The Art Market 2018: An Art Basel & UBS Report* (2018).

⁹ Thomas Christ & Claudia von Sell, *Basel Art Trade Guidelines*, Basel Inst. on Governance (Jan. 2012), https://www.baselgovernance.org/sites/collective.localhost/files/publications/basel_art_trade_guidelines.pdf.

¹⁰ *Guidelines on combatting Money Laundering and Terrorist Financing Responsible Art Market Initiative (RAM)* <http://responsibleartmarket.org/guidelines/guidelines-on-combatting-money-laundering-and-terrorist-financing>

¹¹ Nicholas O'Donnell, *Bill Introduced in U.S. House of Representatives Would Impose Money Laundering Reporting Requirements on Art Dealers*, JDSUPRA (May 24, 2018), <https://www.jdsupra.com/legalnews/bill-introduced-in-u-s-house-of-87003/>.

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Many will also have to do it under the law, as just last year, the European Union passed similar measures to fight money laundering and terrorist financing in its \$14.2 billion art market.¹² As a result, anti-money laundering programs will be required by American dealers operating in Europe, likely a large number given the art market's global nature. Now, if the United States does not take similar action, we run the risk of our own art market becoming a safe haven for financial crimes.

In closing, we are proud to support H.R. 5886, and hope that it will ensure our nation's financial institutions are not misused by criminals and violent extremists. Thank you for your consideration and work on this timely issue. We are happy to answer any questions.

Sincerely,



Deborah Lehr
Chair and Founder



Tess Davis
Executive Director

¹² Rachel A.J. Pownall, European Fine Art Foundation, *TEFAF Art Market Report 2017* 26 (2017).