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4 MARKUP OF H.R. 1797, THE DISTRICT OF COLUMBIA PAIN-CAPABLE

5 UNBORN CHILD PROTECTION ACT; AND

6 H.R. 1944, THE PRIVATE PROPERTY RIGHTS PROTECTION ACT OF

7 2013

8 Tuesday, June 4, 2013

9 House of Representatives

10 Subcommittee on the Constitution and Civil Justice

11 Committee on the Judiciary

12 Washington, D.C.

13 The subcommittee met, pursuant to call, at 1:02 p.m., in

14 Room 2141, Rayburn Office Building, Hon. Trent Franks

15 [chairman of the subcommittee] presiding.

16 Present: Representatives Franks, Chabot, Forbes, King,

17 Gohmert, Jordan, DeSantis, Nadler, Conyers, Scott, and  
18 Deutch.

19 Staff present: Paul Taylor, Majority Counsel; Zach  
20 Somers, Majority Counsel; Allison Halataei, Majority  
21 Parliamentarian; Kelsey Deterding, Majority Clerk; David  
22 Lachmann, Minority Counsel; and Danielle Brown, Minority  
23 Parliamentarian.

24

25           Mr. Franks. The Subcommittee on the Constitution and  
26 Civil Justice will come to order.

27           Without objection, the chair is authorized to declare a  
28 recess at any time, and we will do our best to get through  
29 the markup of these two bills before the votes. If not, we  
30 will try to come back after the votes, immediately after the  
31 votes.

32           Pursuant to notice, I now call up H.R. 1797 for purposes  
33 of markup. The clerk will report the bill.

34           Ms. Deterding. H.R. 1797, to amend Title 18, United  
35 States Code, to protect pain-capable unborn children in the  
36 District Court and for other purposes.

37           Mr. Franks. Without objection, the bill is considered  
38 as read and open for amendment at any point.

39           [The information follows:]

40

41           Mr. Franks. I will begin by recognizing myself and the  
42 ranking member for an opening statement.

43           Abraham Lincoln called upon all of us to remember  
44 America's founding fathers and their "enlightened belief  
45 that nothing stamped with the divine image and likeness was  
46 sent into the world to be trodden on or degraded and  
47 imbruted by its fellows." He reminded those he called  
48 posterity that, "When in the distant future, some man, some  
49 factions, some interests should set up a doctrine that some  
50 were not entitled to life, liberty, and the pursuit of  
51 happiness, that their posterity" -- ladies and gentlemen,  
52 that is us -- "their posterity might look up again to the  
53 Declaration of Independence and take courage to renew the  
54 battle which their fathers began."

55           Today we consider H.R. 1797, the District of Columbia  
56 Pain-Capable Unborn Child Protection Act. This bipartisan  
57 measure has more than 130 sponsors in the House of  
58 Representatives. It protects unborn children who can feel  
59 pain from being subjected to inhumane, torturous late  
60 abortions in our Nation's capital.

61           The gruesome late-term abortions of unborn children who

62 can feel pain is, in my opinion, the greatest human rights  
63 atrocity in the United States today. Indeed, in light of  
64 the horrors exposed by the trial of Dr. Kermit Gosnell and  
65 the reports of similar atrocities across the country, I will  
66 soon offer a manager's amendment to broaden the coverage of  
67 this legislation so that its provisions will apply  
68 nationwide.

69 Medical science regarding the development of unborn  
70 babies in their capacity at various stages of growth has  
71 advanced very dramatically, demonstrating clearly that  
72 unborn children indeed experience pain. The biggest single  
73 hurdle to legislation like H.R. 1797 is that opponents deny  
74 unborn babies feel pain at all, as if somehow the ability to  
75 feel pain magically develops instantaneously as the child  
76 passes through the birth canal.

77 This level of understanding might have been excused in  
78 earlier eras of human history, but the evidence available to  
79 us today is overwhelming. Unborn children have the capacity  
80 to experience pain at least by 20 weeks, and very likely  
81 substantially earlier.

82 I will now enter into the record a 33-page summary of

83 the dozens of studies worldwide confirming that unborn  
84 children feel pain by at least 20 weeks post-fertilization.  
85 This information is available at [www.doctorsonfetalpain.org](http://www.doctorsonfetalpain.org).

86 [The information follows:]

87

88           Mr. Franks. And I would recommend that all the  
89 committee members, their staff, and members of the press  
90 review this site to get the most current evidence on unborn  
91 pain.

92           H.R. 1797 regulates all forms of late abortions, each of  
93 them gruesome and painful. Babies are dismembered or they  
94 are chemically burned alive through saline abortions or some  
95 other painful and inhumane method. Most Americans think  
96 that late abortions are rare, but, in fact, they make up  
97 about 10 percent of abortions annually.

98           The Gosnell grand jury reports that at just Dr.  
99 Gosnell's clinic alone, "Over the years there were hundreds  
100 of snippings that murdered late-term babies." With an  
101 average of greater than 1.2 million abortions nationwide  
102 each year, there are about 120,000 late-term abortions  
103 annually, or more than 325 late-term abortions every day in  
104 America, the land of the free and the home of the brave.

105           H.R. 1797 would protect unborn children who have reached  
106 20 weeks' development from abortions on the basis that such  
107 unborn children feel pain, providing for a limited exception  
108 when an abortion is necessary to save the life of the

109 mother. There is no standard rule to provide that an unborn  
110 child receive anesthesia, and so in that respect, unborn  
111 children receive less legal protection from unnecessary  
112 cruelty than farm animals, which are protected under the  
113 Federal Humane Slaughter Act.

114 I would urge all my colleagues to join me in supporting  
115 H.R. 1797 here today. In the name of humanity, I would hope  
116 we could at least agree that pain-capable unborn children  
117 must be protected from these torturous deaths nationwide.

118 I would now recognize our ranking member of the  
119 Subcommittee on the Constitution and Civil Justice, Mr.  
120 Nadler of New York, for his opening statement.

121 Mr. Nadler. Thank you, Mr. Chairman. We are back again  
122 today considering legislation that would curtail women's  
123 reproductive rights. I understand how personally important  
124 this is to some of my colleagues, and they are certainly  
125 entitled to their beliefs. But the many Americans who see  
126 the world very differently, including millions of women who  
127 value their personal autonomy, can be forgiven if this looks  
128 like just another battle in the perpetual Republican war on  
129 women.

130 I accept that on this one we are going to have to agree  
131 to disagree. In this case, my colleagues appear, through  
132 the operation of the Criminal Code, to be trying to settle a  
133 scientific question of which there is real disagreement  
134 within the scientific field. That is an exercise of raw  
135 political power and not a dispassionate fact finding.  
136 Apparently fetuses feel pain at 20 weeks because Congress  
137 says so, not because the scientists have discovered so.

138 At our hearing, we heard views from professionals that  
139 are, in fact, viewed by many in the field as outliers, not  
140 mainstream scientific thought. It is unfortunate that in  
141 this committee we do not have more complete hearings where  
142 different views on these important scientific public health  
143 and human questions can be aired. But with hearings having  
144 2 or 3 majority witnesses and the minority having only one,  
145 the record must remain incomplete and very distorted.

146 This is not a problem peculiar to this legislation or to  
147 this subcommittee, but the complexity of the issues and the  
148 way in which mainstream science again has been shunted aside  
149 and distorted speaks volumes.

150 The bill as introduced would prohibit nearly all

151 abortions beginning at 20 weeks. That, as every first year  
152 law student will tell you, is facially unconstitutional, but  
153 who cares about the Constitution in this committee?

154 Just recently, the U.S. Court of Appeals for the 9th  
155 Circuit struck down an almost identical Arizona statute  
156 saying, "Since *Roe v. Wade*, the Supreme Court case law  
157 concerning the constitutional protection accorded women with  
158 respect to the decision whether to undergo an abortion has  
159 been unalterably clear regarding one basic point: a woman  
160 has a constitutional right to choose to terminate her  
161 pregnancy before the fetus is viable. A prohibition on the  
162 exercise of that right is *per se* unconstitutional."

163 Nonetheless, this bill would prohibit nearly all  
164 abortions, including those involving threats to a woman's  
165 health, those involved in cases of rape or incest, and where  
166 the woman may have become suicidal. Exceptions to protect  
167 the woman where her life and health are at risk are required  
168 throughout pregnancy, even post-viability, if the bill is to  
169 be constitutional, but are not provided for in this bill.

170 I hope that in addition to the many statements of  
171 concern we will hear today for fetuses, we can also hear a

172 few kind words for women and their families.

173       The bill as introduced would, as was the case in the  
174 last Congress, apply only to the residents of the District  
175 of Columbia. Today the chairman will offer an amendment to  
176 expand it to the entire country. While I previously  
177 objected to the singling out of the people of the District  
178 of Columbia, who are taxpaying Americans, who serve in our  
179 military, respond when one of us has an emergency requiring  
180 police, fire, or EMT services, and the congressional staff  
181 who make our work possible, I must now send my objections on  
182 behalf of my constituents and the entire country.

183       The amendment will also more than double the prison  
184 sentence from 2 to 5 years. That should teach anyone not to  
185 disagree with members of Congress on questions of science.

186       This legislation represents an extreme view of the  
187 abortion question and is at odds with the science. That is  
188 why people in many States have firmly rejected it, including  
189 the people I represent. Just as it is an outrage for  
190 Congress to impose its will on the people of the District in  
191 this case, so, too, I will fight any such usurpation of the  
192 rights of my constituents.

193 I would also note that this bill only prohibits abortion  
194 at 20 weeks. It says nothing about the welfare of the woman  
195 while she is pregnant, her need for extra care in a  
196 pregnancy with difficulties of the sort our witness,  
197 Christie Zink, recounted at our hearing, or the need for  
198 costly neonatal ICU care that our colleague so eloquently  
199 and movingly described. Is it really the position of this  
200 committee that once we tell the woman no, we are ready to  
201 leave her adrift without any assistance?

202 I wonder whether I could ask the sponsor of this bill to  
203 co-sponsor my bill, H.R. 1975, the Pregnant Workers Fairness  
204 Act, which has been referred to our committee. Perhaps we  
205 could even hold a hearing to see how we can stop employers  
206 from mistreating pregnant women and taking away their  
207 livelihoods or putting their pregnancies at risk while they  
208 are pregnant. I hope that caring for the fetus does not end  
209 with the Criminal Code. I hope the sponsors of this bill  
210 will not desert these women when they need our help.

211 I am not going to sit here and debate the question of  
212 fetal pain, except to note that Dr. Anand, who was cited in  
213 the majority's witness testimony and was called by the

214 majority to testify before this subcommittee in 2005 on this  
215 subject, told us, "I think the evidence against fetal pain  
216 is very uncertain at the present time. There is consensus  
217 in the medical and scientific research community that there  
218 is no possibility of pain perception in the first trimester.  
219 There is uncertainty in the second trimester."

220       The *Journal of the American Medical Association*  
221 concluded that, "Evidence regarding the capacity for fetal  
222 pain is limited, but indicates that fetal perception of pain  
223 is unlikely before the third trimester." The Royal Academy  
224 of Obstetricians and Gynecologists concluded, "It can be  
225 concluded that the fetus cannot experience pain in any sense  
226 prior to 24 weeks' gestation."

227       Are we really going to take sides in this scientific  
228 debate by jailing and bankrupting people who do not agree,  
229 because this is what this bill will do? Similarly, the  
230 claim that an abortion is never necessary to protect a  
231 woman's health is simply not one that is widely held in the  
232 medical profession. And the idea that we should be  
233 enshrining these marginal views into the Criminal Code  
234 defies reason. I hope that my colleagues here today will at

235 least agree that even if they do not want to approve an  
236 exception for rape or incest, a woman can become pregnant as  
237 a result of rape.

238 I find it deeply disturbing that when it comes to issues  
239 like this, some people think there is nothing wrong with  
240 making families in crisis have the courage of members' of  
241 Congress convictions. That is just wrong.

242 We have heard a lot about the Gosnell case, and I would  
243 like to address it at the outset. Dr. Gosnell is a  
244 criminal. He is going to jail, and deservedly so.  
245 Colleagues who were here at the time may recall that I  
246 actively supported passage of the Born Alive Infants  
247 Protection Act, which made it a crime to kill an infant once  
248 it is born alive. And I said at the time killing an infant  
249 was already illegal everywhere, and even if the bill was  
250 duplicative and added nothing to the law, we supported it  
251 just to deny anyone the ability to lie and to imply that  
252 supporters of a right to choose an abortion support  
253 infanticide. But, of course, they do lie and they do imply  
254 that anyway.

255 That bill was not about abortion because it involved

256 live births and affirmatively killing a newborn. It was  
257 about classic murder. Similarly, Dr. Gosnell's practice of  
258 snipping a newborn's spine following a live birth is clearly  
259 murder and obviously illegal. That is why he was convicted  
260 of murder.

261 What the Gosnell case does not illustrate, no matter how  
262 many times activists insist it should, is anything regarding  
263 the practice abortion generally. The fact that 40 years  
264 after Roe it is hard to find another practitioner like  
265 Gosnell really speaks to the actual state of that practice.  
266 It is a tragedy for these women, and it is a disgrace that  
267 any medical practitioner should have acted in this manner  
268 and should have been allowed to do so for such a long period  
269 of time.

270 I would urge my colleagues to think about the extent to  
271 which he represents the poor quality of health care services  
272 available in poorer communities. We should be working to  
273 provide high quality health care to the uninsured, to make  
274 sure that the full range of health care services, including  
275 family planning services, that are available to people with  
276 money are available to the poor and uninsured as well. If

277 that means funding a Planned Parenthood clinic in every  
278 neighborhood to put guys like Gosnell out of business, so be  
279 it. If it means closer regulation of the medical  
280 profession, so be it. If it means an end to the constant  
281 efforts by my Republican colleagues to limit the rights of  
282 injured payments to sue, so be it.

283 But let us not pretend this is about the practice of  
284 abortion in American today. If it were, our prisons would  
285 be filled with Gosnells. I do not think any of my  
286 colleagues have stopped going to the dentist because one  
287 dentist in Omaha -- in Oklahoma, rather, was found to have  
288 infected thousands of patients. And I do not think we  
289 should outlaw abortions because a bad actor committed crimes  
290 against his patients. If we started legislating on the  
291 basis of the bad actors in every medical specialty, then  
292 dentistry, podiatry, and every other field of medicine would  
293 have been outlawed long ago.

294 I urge my colleagues to reject this misguided, clearly  
295 wrong, clearly injurious to women's health, and clearly  
296 unconstitutional legislation. I urge my colleagues to  
297 remember their oath to the Constitution. Anyone who votes

298 for this bill today is defying the courts and saying the  
299 courts are wrong in their interpretation of the  
300 Constitution, and that is not our prerogative to do unless  
301 we propose a constitutional amendment.

302 To vote for a clearly unconstitutional bill is to  
303 violate our oaths. I hope nobody does that. And I yield  
304 back the balance of my time.

305 Mr. Franks. Thank you, Mr. Nadler.

306 I have a manager's amendment at the desk, and the clerk  
307 will report the amendment.

308 Ms. Deterding. Amendment in the nature of a substitute  
309 to H.R. 1797 --

310 Mr. Franks. Will you suspend, please? I apologize.

311 Mr. Conyers. Oh, that is quite all right, Mr. Chairman.  
312 I am happy to be able to put in my comments, even though the  
313 full chairman of the committee may not be here as well.

314 I want to join the ranking subcommittee member, Jerry  
315 Nadler, in his comments. And it seems to me that the law  
316 and science is not on the side of this proposal or the  
317 subcommittee chairman, with all due respect. There is a big  
318 problem. Not only do we have *Roe v. Wade*, but we have

319 *Planned Parenthood v. Casey*. We have the 9th Arizona  
320 Circuit Court decision issued May 21st, by the way. We have  
321 a State court decision in Arkansas.

322 And the shocking thing about this proposal is that they  
323 do not even make any exception for rape or incest. Now,  
324 this is not only patently unconstitutional, but it is also  
325 inhumane in the extreme.

326 On the science side, it has not been determined that the  
327 question of pain is certain. It is unresolved in our  
328 scientific community. And so in the absence of any medical  
329 experts that I know of on this committee, it is totally out  
330 of order for us to determine a medical question like this  
331 under the guise of acting as members of the very vital House  
332 Judiciary Committee. No good has ever come from an all-male  
333 committee deciding the law about a woman's body. This is  
334 not appropriate.

335 And I close by citing the letter of 15 doctors, and I  
336 ask that -- oh, no, it is not 15 -- 10 doctors who have  
337 determined that the Franks bill would deny women residing in  
338 the District of Columbia, and now, of all things, we are  
339 going to apply it to every woman in the United States of

340 America, that it would deny them safe and legal medical care  
341 and would constitute governmental interference with the  
342 doctor-patient relationship.

343       And the other letter that I ask unanimous consent to put  
344 in the record is from 15 national religious groups who  
345 oppose this ban on abortion care after 20 weeks. It ranges  
346 from Catholics for Choice, the Methodists, Unitarian  
347 Universalists, the Jewish Council for Public Affairs, and  
348 many others.

349       Mr. Chairman, I ask unanimous consent that these two  
350 letters be made a part of this markup.

351       Mr. Franks. Without objection.

352       [The information follows:]

353

354 Mr. Conyers. And I yield back the balance of my time,  
355 sir.

356 Mr. Franks. Thank you, Mr. Conyers.

357 I have an amendment, a manager's amendment, at the desk,  
358 and the clerk will report the amendment.

359 Ms. Deterding. Amendment in the nature of a substitute  
360 to H.R. 1797, offered by Mr. Franks of Arizona, strike all  
361 after the enacting clause and insert the following.

362 Mr. Franks. Without objection, the manager's amendment  
363 is considered as read.

364 [The amendment of Mr. Franks follows:]

365

366 Mr. Franks. And I recognize myself to explain the  
367 amendment.

368 This manager's amendment expands the bill's coverage  
369 nationally, and also simplifies the bill in several ways.

370 The case of Kermit Gosnell shocked the sensibilities of  
371 millions of Americans. However, the crushing fact is that  
372 abortions on babies just like the ones killed by Kermit  
373 Gosnell have been happening hundreds of times every single  
374 day for decades in America.

375 Those who incomprehensibly call trying to change this a  
376 war on women overlook the fact that roughly half of these  
377 babies that are so tortuously killed each day are just  
378 little tiny women. They also overlook the fact that no one  
379 abandons or has less respect for a woman than one who takes  
380 the life of her child, takes her money, and leaves her with  
381 the inevitable emotional consequences that follow.

382 Let us not forget that had Dr. Kermit Gosnell painfully  
383 dismembered these babies before they had traveled down the  
384 birth canal only moments earlier, he would have in many  
385 places nationwide been performing an entirely legal  
386 procedure. If America truly understands that horrifying

387 reality, hearts, and minds, and laws, will change. To that  
388 end, this amendment makes technical changes that expand the  
389 coverage of the bill nationwide.

390 At the same time, this manager's amendment simplifies  
391 the bill in several ways, namely by striking the civil  
392 lawsuit and reporting requirements in the bill. At this  
393 stage of the public debate, I think it best to keep the bill  
394 focused on the pain experienced by the unborn children and  
395 not allow that overriding and tragic reality to be distorted  
396 by ancillary issues.

397 Beyond that, the manager's amendment increases the  
398 criminal penalty in the bill to up to 5 years in prison for  
399 those who would participate in a late-term abortion. And it  
400 adds one sentence at the end of finding number 5. It also  
401 contains a change to the definition of abortion to make it  
402 clear that it would not prohibit a doctor to induce early  
403 delivery of a viable infant if he does this with the intent  
404 of preserving the life or health of the child after live  
405 birth. This is sometimes done in order to ease health  
406 problems of the mother once the baby has reached the point  
407 at which he or she is capable of extended survival outside

408 the wound.

409 And I would urge all my colleagues to support this  
410 manager's amendment.

411 Are there any amendments to the amendment?

412 Mr. Nadler. Mr. Chairman?

413 Mr. Franks. Mr. Nadler?

414 Mr. Nadler. I do not have any amendments, but I would  
415 like to strike the last word.

416 Mr. Franks. The gentleman is recognized for 5 minutes.

417 Mr. Nadler. Thank you, Mr. Chairman. I have a number  
418 of comments on this amendment, but, first, let me comment on  
419 some of what I just heard.

420 "No one has less respect for a woman than one who kills  
421 her fetus," I think I heard said a moment ago.

422 Mr. Franks. No, correction, her child.

423 Mr. Nadler. All right, that is the quote, "her child,"  
424 when it is unborn. I would disagree. I would say no one  
425 has less respect for a woman than one who thinks she is too  
426 stupid or immature to make the choice for herself in the  
427 often agonizing circumstances that lead to a choice of  
428 whether to terminate a pregnancy.

429           No one has less respect for a woman than those who think  
430 the members of this committee have more intelligence and  
431 more knowledge of her circumstances so that we can make the  
432 decision for her. We know better. We have the moral right  
433 to make the decision, she does not. She is too stupid. She  
434 is too immature. She is too immoral to be trusted with the  
435 judgment. People who hold that opinion have very little  
436 respect for the woman.

437           Let me go further. I oppose the substitute amendment.  
438 It expands the application of the bill from just the  
439 District of Columbia to the entire country. It was  
440 insulting to the District of Columbia to pick them out, but  
441 it is worse to subject the women of this country -- the  
442 entire country -- to this terrible, terrible bill that  
443 removes from them the ability to do what some of them think  
444 they must do, and substitutes our judgment for theirs.

445           The amendment more than doubles the prison sentence from  
446 2 to 5 years. That is also a bad thing.

447           The bill relies on the commerce clause. The majority  
448 has made a fetish of saying we have to say for every bill  
449 what constitutional clause Congress' power relies on. I

450 thought that my colleagues on the other side rejected the  
451 notion that the Federal government could regulate health  
452 care via the commerce clause. I think I recall something  
453 about that when we debated the Affordable Care Act. I think  
454 I recall them saying that in front of the Supreme Court.

455 Is it possible that the commerce clause only gives us  
456 the power to take away medical services, but not the power  
457 to provide them to people who need them? What happened to  
458 federalism and states' rights? Is there an exception for  
459 women's health and autonomy? I do not recall reading about  
460 that in the Constitution.

461 Personally, I believe that the commerce clause does give  
462 Congress the authority to intervene in the health care. I  
463 have always believed that. And while I think that this bill  
464 is a misguided use of that power, I hope it portends a new  
465 understanding of the Constitution by my colleagues. I hope  
466 so, but I do not believe so.

467 I commend the chairman for removing the private right of  
468 action from this bill with this amendment. We have debated  
469 this provision and provisions like it for many years and in  
470 many different pieces of legislation. The idea that someone

471 other than the woman, someone who may have no interest in  
472 providing the kind of medical assistance to the woman if she  
473 must carry the pregnancy to term may sue to impose his will  
474 on her is outrageous.

475 The list of people who could go to court to interfere  
476 with the woman's health care decisions was stunning. In  
477 addition to the woman, who presumably has consented to the  
478 procedure or is a victim of kidnapping and assault, any  
479 person who is a spouse, parent, sibling, or guardian, or a  
480 current or former licensed health care provider, that woman  
481 or the U.S. attorney for the District of Columbia could sue.  
482 That means that someone who provided temporary nursing care  
483 to the woman years earlier or a physician who had committed  
484 malpractice upon her would have standing to to go to court  
485 and dictate health care decisions.

486 This bill makes no provision for the kind of care the  
487 woman might require, especially if there is a live birth.  
488 The interest and obligation in the woman's State or that of  
489 the child she is carrying appear to extend no farther than  
490 prohibiting an abortion.

491 Critical care in a prenatal ICU, long term care for the

492 child, care for the woman, whether or not there is a live  
493 birth, there is nothing in this bill. Once Congress says  
494 no, she is on her own.

495 So while I strongly object to the underlying bill, I  
496 welcome this change in the manager's amendment. I hope that  
497 in future legislation we can also dispense with this type of  
498 provision. I must nonetheless oppose the amendment because  
499 it extends the bill to the entire country and to all of the  
500 women who live outside the District of Columbia.

501 I yield back.

502 Mr. Franks. I thank the gentleman. Who else seeks  
503 recognition?

504 Mr. Conyers. Mr. Chairman?

505 Mr. Franks. Mr. Nadler? I am sorry, Mr. Conyers.  
506 Forgive me.

507 Mr. Conyers. Mr. Chairman, I rise, of course, in  
508 opposition of extending a bill that we, I thought,  
509 effectively approved should not apply to the citizens of the  
510 District of Columbia. And now at the next meeting, we find  
511 ourselves discussing a proposal that would apply it to every  
512 woman in the United States of America. I find this

513 unreasonable, and, of course, it only magnifies the  
514 opposition that I had to it when it was meant to apply to  
515 the women of the District of Columbia.

516       And so the subject of abortion is extremely difficult,  
517 especially when recommended or proposed by a physician, but  
518 even a woman in her own conscience, in her own private  
519 philosophy and belief in life makes the decision. It is  
520 extremely difficult. And every pregnancy is unique and  
521 different. Unfortunately, some women must face emotionally  
522 devastating decisions of this nature in the course of their  
523 pregnancy that require them to consider abortion as a health  
524 option.

525       So if this bill were to ever become law, which I have  
526 every confidence that it will not happen, but for us to  
527 merely be considering it in the very, to me, crude way that  
528 we are today and in the previous hearing, it would be the  
529 Congress showing that it is able to impose its will with  
530 respect to one of the greatest tragedies that women and  
531 their families may ever endure.

532       And so I refer us back to a case in Arizona, *Isaacson v.*  
533 *Horne*, which just said this. We do have lawyers and people

534 concerned with lawmaking here, and here is what it says.  
535 "Since *Roe v. Wade*, the Supreme Court case concerning the  
536 constitutional protection accorded women with respect to the  
537 decision whether to undergo an abortion, has been  
538 unalterably clear regarding one basic point: a woman has a  
539 constitutional right to choose to terminate her pregnancy  
540 before the fetus is viable. A prohibition on the exercise  
541 of that right is per se unconstitutional."

542       The Constitution requires that there be an exception to  
543 any prohibition to protect a woman's life and health, even  
544 after viability. As the Supreme Court stated in *Roe*, and  
545 again I quote, "With respect to the State's important and  
546 legitimate interest in potential life, the compelling point  
547 is at viability." This is so because the fetus then  
548 presumably has the capability of meaningful life outside the  
549 mother's womb. State regulation protective of fetal life  
550 after viability thus has both logical and biological  
551 justification.

552       If the State is interested in protecting fetal life  
553 after viability, it may go as far as to proscribe abortion  
554 during that period, except when it is necessary to preserve

555 the life and health of the mother. But H.R. 1797 goes so  
556 far as to explicitly state that even a risk of suicide is  
557 insufficient cause to allow a woman to end a pregnancy.

558 I thank you, and I return any time that may be  
559 remaining.

560 Mr. Franks. Thank you, Mr. Conyers.

561 I now recognize Mr. Jordan.

562 Mr. Jordan. Thank you, Mr. Chairman. I appreciate you  
563 bringing this bill forward, and, frankly, strongly support  
564 the manager's amendment that you have offered.

565 And I will be brief just in response to the ranking  
566 member of the full committee and my friend, the former  
567 chairman from the great State of Michigan, as he was talking  
568 about the 9th Circuit court case. I think it is important  
569 if we get this passed and this ultimately becomes law, of  
570 course it is going to be challenged. Every time we do  
571 anything on the life issue, it is always challenged in  
572 court. We understand how that process works.

573 But I think it is important to remember one of the last  
574 big things we did on the life issue was the partial birth  
575 abortion bill where every Federal court that heard that case

576 said it was unconstitutional until it got to the Supreme  
577 Court where they said, no, it is constitutional to  
578 explicitly state, to use the former chairman's language,  
579 that this procedure is wrong and should not be allowed.

580 And, you know, if we can get this done, we are going to  
581 save a lot of kids, as the chairman has said, but of course  
582 it is going to be challenged. But we do not know ultimately  
583 what the Supreme Court may say. And I think that is  
584 important.

585 And again, I applaud the chairman's efforts on this  
586 legislation and the many years he has worked on this issue.

587 Mr. Franks. Thank you, Mr. Jordan. Any others seek to  
588 strike the last word?

589 If not, the question occurs on the amendment. Those in  
590 favor, say aye.

591 Those opposed, no.

592 In the opinion of the chair, the ayes have it, and the  
593 amendment --

594 Mr. Nadler. Recorded vote, please.

595 Mr. Franks. The clerk will call the roll.

596 Ms. Deterding. Mr. Franks?

597 Mr. Franks. Aye.

598 Ms. Deterding. Mr. Franks votes aye.

599 Mr. Jordan?

600 Mr. Jordan. Yes.

601 Ms. Deterding. Mr. Jordan votes aye.

602 Mr. Chabot?

603 Mr. Chabot. Aye.

604 Ms. Deterding. Mr. Chabot votes aye.

605 Mr. Forbes?

606 [No response.]

607 Ms. Deterding. Mr. King?

608 Mr. King. Aye.

609 Ms. Deterding. Mr. King votes aye.

610 Mr. Gohmert?

611 Mr. Gohmert. Aye.

612 Ms. Deterding. Mr. Gohmert votes aye.

613 Mr. DeSantis?

614 Mr. DeSantis. Aye.

615 Ms. Deterding. Mr. DeSantis votes aye.

616 Mr. Nadler?

617 Mr. Nadler. No.

618 Ms. Deterding. Mr. Nadler votes no.  
619 Mr. Conyers?  
620 Mr. Conyers. No.  
621 Ms. Deterding. Mr. Conyers votes no.  
622 Mr. Scott?  
623 Mr. Scott. No.  
624 Ms. Deterding. Mr. Scott votes no.  
625 Mr. Cohen?  
626 [No response.]  
627 Ms. Deterding. Mr. Deutch?  
628 Mr. Deutch. No.  
629 Ms. Deterding. Mr. Deutch votes no.  
630 Mr. Franks. The clerk will report.  
631 Ms. Deterding. Mr. Chairman, six members votes aye,  
632 four members voted nay.  
633 Mr. Franks. The ayes have it, and the amendment is  
634 agreed to.  
635 Are there any other amendments?  
636 If there are no further amendments to the amendment, and  
637 the question is on the manager's amendment.  
638 Mr. Gohmert. Mr. Chairman? Might I move to strike the

639 last word?

640 Mr. Franks. The gentleman is recognized.

641 Mr. Gohmert. Thank you, Mr. Chairman, and I do  
642 appreciate the years of efforts you have had on this issue.

643 My friend from New York indicated the proposed law is  
644 unconstitutional, and obviously there is disagreement about  
645 that. And I am sure on making it to the Supreme Court,  
646 there would be disagreement on the Supreme Court itself.

647 But what we should not have any disagreement over,  
648 especially after the testimony of a former abortion doctor  
649 about abortions after 20 weeks, and the insertion into the  
650 womb of a clamp that clamps something large known to be a  
651 leg or an arm, and then grips for all he is worth, and then  
652 rips off a leg or an arm, and continues until both arms and  
653 both legs are ripped off of the child. And then eventually  
654 grabs the skull, and when you squeeze hard enough, a gel-  
655 like substance comes, and you know that you have just  
656 crushed the head.

657 There should be no disagreement about this process being  
658 de-constitutional. When you destroy the constitution of a  
659 living being, a living human being, in such a way, it brings

660 me to appreciate all the more the effort of our chairman.

661 And with that, I will yield back.

662 Mr. Franks. Thank you.

663 The gentleman from Ohio is recognized, Mr. Chabot.

664 Mr. Chabot. Mr. Chairman, I move to strike the last  
665 word.

666 Mr. Franks. The gentleman is recognized.

667 Mr. Chabot. Thank you. I will be very brief. A couple  
668 of the gentleman on the other side of the aisle mentioned  
669 health and suicide, a number of other health issues as  
670 needing an exception. I know that a lot of the amendments  
671 will probably be saved for the full committee's debate. But  
672 I just wanted to mention the testimony that we had heard  
673 recently from the New York doctor who had performed 1,200  
674 abortions during the course of his career, Dr. Anthony  
675 Levatino.

676 And he said, I asked him the question getting to this  
677 point of rape and health issues, et cetera, how many of  
678 those abortions that he performed were related to rape or  
679 health issues. And he indicated of the 1,200 abortions that  
680 he had done, two were due to a rape. And he estimated about

681 12 of the 1,200 were related to health issues, either of the  
682 unborn child or fetus, as some of our colleagues referred to  
683 it. But that is living being that is growing inside the  
684 mother, either her health or his health or the mother's  
685 health. So, 12 of 1,200 were because of health issues, and  
686 two were because of rape. The other, if my math is right,  
687 about 1,186 of them were performed on perfectly healthy  
688 unborn children and healthy mothers.

689 And so I think a lot of times, the facts out there get  
690 distorted about how prevalent these exceptions that are  
691 oftentimes insisted upon as necessary in this legislation  
692 are the case. And that was from someone during a pretty  
693 considerable time in his career who did these things,  
694 horrific things.

695 And, you know, I believe in redemption, and I think for  
696 that doctor to come here on more than one occasion and to be  
697 very open about what he did and why he changed his attitude  
698 about it, and why now he is pro-life and opposes abortion is  
699 pretty courageous on his part. So I am certainly going to  
700 give him the benefit of the doubt at this point.

701 But I just wanted to make clear about how many

702 exceptions and how many times we are talking about either  
703 rape or health issues. It is miniscule in comparison to the  
704 number of perfectly healthy babies whose lives are snuffed  
705 out every day in this country due to abortion.

706 I yield back.

707 Mr. Franks. I thank the gentleman.

708 Mr. Deutch, you are recognized now for 5 minutes.

709 Mr. Deutch. Thank you, Mr. Chairman. First, I wonder  
710 whether we are so callous, this group of men sitting up here  
711 working on this legislation, that we would dismiss just two  
712 cases of rape and 12 cases where the health of the mother is  
713 an issue; that this is so seemingly irrelevant to the debate  
714 that there is no need for us to consider it from that one  
715 doctor in one situation.

716 How many other cases of rape, how many other times where  
717 the health of the mother is relevant? I really do not  
718 understand how it is that we can be so dismissive of that.  
719 That is number one.

720 Number two, the suggestion that, again, that as we sit  
721 here, this group of men, would talk about the perfectly  
722 healthy mothers that are making these decisions without

723 pausing for a moment to reflect what is so often a  
724 horrifically gut-wrenching decision that these women make.  
725 Let us remember that there are, and I do not know what the  
726 numbers are. I do not have statistics. But I can tell you  
727 that this is never an easy decision, and I can also tell you  
728 that there are so many examples of families -- this is not a  
729 woman's issue. This is a family issue. And those of us who  
730 care about this issue on our side are staunchly pro-family.

731       And for us to take the position that a family, that a  
732 husband and wife who desperately wanted to get pregnant, who  
733 desperately wanted to have a family, find themselves in a  
734 position where having finally tried and having finally been  
735 able to conceive, and having experienced the great joy of  
736 learning that, find themselves in the position where a  
737 doctor's visit shows a deformity, shows organs of the fetus  
738 outside of the fetus, shows the potential risk to the woman,  
739 to discount that, to suggest that this is something that  
740 women just are quick to do is, frankly, as we sit here, this  
741 group of men, it is just too hard for, I think, a lot of  
742 people who watch this to take.

743       I oppose the legislation, but more than that, I oppose

744 the characterization that those of us who believe so  
745 strongly that the insertion of politics into this  
746 relationship, this most personal decision that families have  
747 to make in consultation with their physician, with their  
748 member of clergy, with the people whose opinions guide them;  
749 that for us to insert a role for politics in all of this in  
750 what is for them, what has gone from perhaps the greatest  
751 exultation they have felt certainly as a married couple, to  
752 the depths of despair learning that they found themselves in  
753 a situation that forced them to make this painful decision,  
754 it is just not what we should be doing.

755 I know that this bill will come through this  
756 subcommittee, and I know that we will have an opportunity to  
757 offer amendments in the full committee, and I thank the  
758 chairman for that. But I just hope that we will remember as  
759 this goes forward that it is not as simple as it is  
760 described; that we remember the pain that these families  
761 face so often when they find themselves forced to make this  
762 difficult decision, that we respect the role that their  
763 doctors and their clergy play in helping them to make that  
764 decision, and that we never take for granted -- never take

765 for granted -- that there may only be some number of rapes,  
766 some number of cases where the health of the mother is at  
767 issue, that every single one of those is relevant.

768 And, Mr. Chairman, I appreciate the time. I oppose the  
769 bill, and I yield back.

770 Mr. Franks. I thank the gentleman.

771 Who else seeks recognition?

772 Mr. Scott?

773 Mr. Scott. Thank you, Mr. Chairman. I yield to the  
774 gentleman from New York.

775 Mr. Nadler. I thank the gentleman for yielding.

776 Mr. Chairman, I have already given my opinion as to the  
777 merits of the bill, and I will not comment on that further.  
778 But I do want to comment on some of what Mr. Jordan said  
779 about constitutionality.

780 In essence, what he said was regardless of how  
781 constitutional the bill may look, regardless of the fact  
782 that it is clearly unconstitutional according to the  
783 interpretations of the Supreme Court and the other courts up  
784 to date, you never know. In effect, we should vote for the  
785 bill if we like it on the merits because maybe the Supreme

786 Court will reverse itself. That is essentially what he  
787 said. I just want to say --

788 Mr. Jordan. Will the gentleman yield?

789 Mr. Nadler. Yes.

790 Mr. Jordan. What I said is sometimes when we make  
791 predictions that something is unconstitutional, we are not  
792 always accurate --

793 Mr. Nadler. Reclaiming my time.

794 Mr. Jordan. -- evidenced by the fact that every Federal  
795 court who heard the partial birth abortion law said it was  
796 unconstitutional.

797 Mr. Nadler. Reclaiming my time.

798 Mr. Jordan. But the Supreme Court then said it was.

799 Mr. Nadler. Reclaiming my time. I think I paraphrased  
800 you correctly. The Supreme Court --

801 Mr. Jordan. I think I quoted you correctly.

802 Mr. Nadler. I am not saying you did not. The Supreme  
803 Court doctrine on this is clear. The 9th Circuit  
804 articulated that. And what people are saying is, in effect,  
805 the Supreme Court may change, and maybe it will. I doubt  
806 it, but maybe it will. And we should, relying on that

807 possibility, pass the bill if we think it is good on the  
808 merits.

809 I simply want to say that is very dangerous ground.  
810 People criticize the Administration, the current  
811 Administration, for not enforcing or for not defending in  
812 court the Defense of Marriage Act because they think it is  
813 unconstitutional. They are enforcing it, I think, but they  
814 are not defending it. If they did not enforce it, the  
815 criticism would be greater.

816 We have an oath to the Constitution, and it is always  
817 possible the Court will change its mind. But where the  
818 current law is clear, what we are saying, in effect, is we  
819 should pass this bill. We should impose an obligation, not  
820 just an obligation, we should impose a jail sentence on  
821 people for doing acts which are legal under Supreme Court  
822 interpretation, and expect them to undertake the defense and  
823 hope that the Supreme Court changes it, in effect,  
824 retroactively makes it illegal because we say so.

825 It is very disturbing in general. I do not have a solid  
826 answer. I will not say we should never do it, but to pass  
827 legislation knowing that it is clearly unconstitutional

828 under current Supreme Court interpretations, there is no  
829 ambiguity, but hope that the Supreme Court will change  
830 itself is a very dangerous thing to do, and a very  
831 questionable thing under our oath to the Constitution.

832 I yield back, and I thank the gentleman for yielding. I  
833 yield back to the gentleman.

834 Mr. Scott. I yield back.

835 Mr. Franks. The gentleman from Iowa is recognized.

836 Mr. King. Mr. Chair, I move to strike the last word.

837 Mr. Franks. The gentleman is recognized.

838 Mr. King. Thank you, Mr. Chairman. There are a number  
839 of people here on this panel that were actively involved in  
840 the partial birth abortion legislation that took a long time  
841 to get constitutionally resolved. Among them were my friend  
842 from Ohio, Steve Chabot. And I also am among those. I came  
843 along in the second round of that instead of the first  
844 round.

845 But here is what I remember. I remember the Supreme  
846 Court identifying a couple of areas that were a bit vague  
847 from the statute that prohibited partial birth abortion. We  
848 defined that act precisely, and congressional findings said

849 that the life and the health of the mother were not of  
850 incident to that heinous gas, that ghastly, and ghoulish,  
851 and gruesome act.

852 Mr. Gohmert has just described this component of the  
853 ghastly, and ghoulish, and gruesome act. And if this is a  
854 stage of protecting innocent unborn human life that the ban  
855 on partial birth abortion constitutionally became, I think I  
856 would identify it as that and say it mirrors the same thing.

857 We are all obligated to take an oath to uphold the  
858 Constitution. The definition of the Constitution and our  
859 understanding of it does not reside with nine Supreme Court  
860 justices. It resides within our understanding of our oath  
861 and our conscience.

862 And I would say also that the question that is not being  
863 raised here is the question that the President of the United  
864 States refused to answer at Saddleback when he was asked  
865 when does life begin. The soon to be president said, "That  
866 is above my pay grade." And in the first weeks of his  
867 presidency, in fact, the first 48 hours of his presidency,  
868 he decided that it was within his pay grade. And I know  
869 that the chairman of this subcommittee knows very well that

870 decision that was made by the President.

871 We have an obligation under equal protection to protect  
872 all persons, and there is a right of the human person that  
873 is being defended here in this hearing. And I look forward  
874 to this process as it moves forward.

875 I thank the chairman for having the courage to lead  
876 this.

877 Mr. Chabot. Would the gentleman --

878 Mr. King. And I would yield to the gentleman from Ohio,  
879 who has lent so much to this debate and this argument.

880 Mr. Chabot. I thank the gentleman for yielding, and  
881 again, I will be brief. The gentleman mentioned the debate  
882 on partial birth abortion, and this debate went on for,  
883 like, 8 years. And as my colleague from Ohio mentioned, we  
884 were defeated at the Federal district court level on each  
885 occasion, and then it went to the circuit courts where we  
886 also were defeated. It went all the way to the U.S. Supreme  
887 Court, and the Supreme Court reversed the lower courts in a  
888 5 to 4 vote.

889 And one of the bases for that reversal and the reason  
890 they upheld the ban on partial birth abortion was that they

891 found, as this committee and ultimately the House of  
892 Representatives and the Congress of the United States found,  
893 based upon medical testimony at this hearing and this  
894 particular committee, was that partial birth abortions were  
895 never medically necessary. And, in fact, not only that, but  
896 they could be harmful to the mother.

897 And I distinctly remember Dr. Anthony Levatino stating,  
898 when he was describing, as our colleague from Texas  
899 described, Mr. Gohmert, before about the gruesomeness of  
900 these procedures, the doctor talking about oftentimes when  
901 they put these instruments in the mother, they are doing it  
902 blindly. They cannot see what is happening, and they are  
903 grabbing arms and legs and ripping them out. I mean,  
904 clearly that is harming that baby who started out alive at  
905 the beginning of that procedure, and is dead by the time it  
906 is through. But they oftentimes perforate the uterus of the  
907 mother and can do serious harm to the woman who is  
908 undergoing that procedure as well.

909 So I would argue that there is clear proof that these  
910 procedures can be medically dangerous to the woman as well  
911 always medically dangerous to the unborn child. And,

912 therefore, I think there is every reason to believe that  
913 this may very well ultimately be upheld by the Highest Court  
914 in this land.

915 And I thank the gentleman for yielding. I yield back.

916 Mr. King. And reclaiming my time, I would like to thank  
917 the gentleman from Ohio for his statement. I completely  
918 associate myself with each word that he has said. And I  
919 yield back the balance of my time.

920 Mr. Franks. I thank the gentleman. And are there any  
921 others who seek recognition?

922 If not, a reporting quorum being present, the question  
923 is on reporting the bill, as amended, favorably to the full  
924 committee.

925 Those in favor, say aye.

926 Those opposed?

927 The ayes have it, and the bill, as amended, is ordered  
928 reported favorably to the full committee.

929 Mr. Nadler. Recorded vote, please.

930 Mr. Franks. A recorded vote is requested. The clerk  
931 will call the roll.

932 Ms. Deterding. Mr. Franks?

933 Mr. Franks. Aye.

934 Ms. Deterding. Mr. Franks votes aye.

935 Mr. Jordan?

936 Mr. Jordan. Yes.

937 Ms. Deterding. Mr. Jordan votes aye.

938 Mr. Chabot?

939 Mr. Chabot. Aye.

940 Ms. Deterding. Mr. Chabot votes aye.

941 Mr. Forbes?

942 [No response.]

943 Ms. Deterding. Mr. King?

944 Mr. King. Aye.

945 Ms. Deterding. Mr. King votes aye.

946 Mr. Gohmert?

947 Mr. Gohmert. Aye.

948 Ms. Deterding. Mr. Gohmert votes aye.

949 Mr. DeSantis?

950 Mr. DeSantis. Aye.

951 Ms. Deterding. Mr. DeSantis votes aye.

952 Mr. Nadler?

953 Mr. Nadler. No.

954 Ms. Deterding. Mr. Nadler votes no.  
955 Mr. Conyers?  
956 Mr. Conyers. No.  
957 Ms. Deterding. Mr. Conyers votes no.  
958 Mr. Scott?  
959 Mr. Scott. No.  
960 Ms. Deterding. Mr. Scott votes no.  
961 Mr. Cohen?  
962 [No response.]  
963 Ms. Deterding. Mr. Deutch?  
964 Mr. Deutch. No.  
965 Ms. Deterding. Mr. Deutch votes no.  
966 Mr. Franks. The clerk will report.  
967 Ms. Deterding. Mr. Chairman, six members votes aye,  
968 four members voted nay.  
969 Mr. Franks. The ayes have it, and the bill, as amended,  
970 is reported favorably to the full committee.  
971 Without objection, the bill will be reported as a single  
972 amendment in the nature of a substitute incorporating all  
973 adopted amendments. And staff is authorized to make  
974 technical and conforming changes.

975 Pursuant to notice, I now call up H.R. 1944 for purposes  
976 of markup. The clerk will report the bill.

977 Ms. Deterding. H.R. 1944, to protect private property  
978 rights. Be it enacted by the Senate and the House of  
979 Representatives of the United States of America and Congress  
980 assembled, Section 1, short title, this act may be cited as  
981 the Private Property Rights Protection Act of 2013.

982 Section 2, prohibition of --

983 Mr. Franks. Without objection, the bill is considered  
984 as read and open for amendment at any point.

985 [The information follows:]

986

987 Mr. Franks. I will begin by recognizing myself and the  
988 ranking member for an opening statement.

989 The Private Property Rights Protection Act is needed to  
990 blunt the negative impact of the Supreme Court's decision in  
991 *Kelo v. City of New London*, which permits the use of eminent  
992 domain to take property from homeowners and small businesses  
993 and transfer it to others for private economic development.

994 In Justice O'Connor's words, the *Kelo* decision  
995 pronounced that under "the banner of economic development,  
996 all property is now vulnerable to be taken and transferred  
997 to another private owner, so long as it might be upgraded."  
998 Nothing is to prevent a State from replacing any Motel 6  
999 with a Ritz Carlton, any home with a shopping center, or any  
1000 farm with a factory."

1001 The *Kelo* decision was resoundingly criticized from  
1002 across all quarters. In 2005, the House voted to express  
1003 grave disapproval of the decision, and overwhelmingly passed  
1004 the Private Property Rights Protection Act with 376 members  
1005 voting in favor and only 38 members voting against. Last  
1006 Congress, the House once again passed this legislation, this  
1007 time by voice vote. Unfortunately, the bill has not been

1008 taken up by the Senate.

1009       The Private Property Rights Protection Act prohibits  
1010 States and localities that receive Federal economic  
1011 development funds from using eminent domain to take private  
1012 property for economic development purposes. States and  
1013 localities that use eminent domain for private economic  
1014 development are ineligible to receive Federal economic  
1015 development funds for 2 Fiscal Years.

1016       Every day, local governments in search of more lucrative  
1017 tax bases take property from homeowners, small businesses,  
1018 churches, and farmers, and give it to large corporations for  
1019 private development. And Federal law currently allows  
1020 Federal funds to be used to support such condemnations,  
1021 encouraging this abuse nationwide. This bill will restore  
1022 Americans' faith in their ability to own, build, and keep  
1023 their property without fear that the government will take it  
1024 and give it to someone else. And it will tell commercial  
1025 developers that they should seek to obtain property through  
1026 private negotiation, not by government force.

1027       Too many Americans have lost homes and small businesses  
1028 to eminent domain abuse, forced to watch as private

1029 developers replace them with luxury condominiums and other  
1030 "upscale" uses. Family farms have been wiped out by eminent  
1031 domain to make way for shopping centers and big box stores.  
1032 And churches generally entitled to tax exempt status are  
1033 often seized through eminent domain to be replaced by more  
1034 lucrative private development.

1035       Unfortunately, it is usually the most vulnerable who  
1036 suffer from economic development takings as Justice Thomas  
1037 observed in his dissenting opinion in *Kelo*. "Extending the  
1038 concept of public purpose to encompass any economically  
1039 beneficial goal guarantees that these losses will fall  
1040 disproportionately on poor communities. Those communities  
1041 are not only systematically less likely to put their lands  
1042 to the highest and best social use, but are also the least  
1043 politically powerful. The deferential standard this Court  
1044 has adopted for the public use clause encourages those  
1045 citizens with disproportionate influence and power in the  
1046 political process, including large corporations and  
1047 development firms to victimize the weak."

1048       We must restore the private rights protections that were  
1049 erased from the Constitution by the *Kelo* decision. John

1050 Adams wrote over 200 years ago that, "Property must be  
1051 secured or liberty cannot exist." As long as the specter of  
1052 condemnation hangs over all property, our liberty is  
1053 threatened.

1054 I would urge my colleagues to support the Private  
1055 Property Rights Protection Act. And with that, I would now  
1056 recognize the ranking member of the subcommittee.

1057 Mr. Nadler. Mr. Chairman, I would ask that you would  
1058 recognize the ranking member of the full committee first.

1059 Mr. Franks. I would now recognize the ranking member of  
1060 the full committee, Mr. Conyers.

1061 Mr. Nadler. Thank you.

1062 Mr. Conyers. Thank you, Chairman. In the wake of the  
1063 Supreme Court decision in *Kelo*, I have been concerned that  
1064 States and municipalities could use this decision to expand  
1065 their power of eminent domain, expand their power, whether  
1066 for the benefit of private parties or for public projects to  
1067 the detriment of those who are the least powerful, namely  
1068 the poor, the elderly, and communities of color.

1069 While I believe that the power of eminent domain can and  
1070 has been abused, particularly with respect to those lacking

1071 such economic or political power, I have come to conclude  
1072 that for the time being, we should allow the States to craft  
1073 responses rather than impose an awkward one-size-fits-all  
1074 Federal legislative response. Why? Because it is important  
1075 to note that in *Kelo*, the Supreme Court acknowledged that  
1076 States courts may interpret their own eminent domain powers  
1077 in a manner that is more protective of property rights. And  
1078 I am also encouraged that no less than 43 States have  
1079 followed that advice and taken steps to restrict their own  
1080 powers of eminent domain to guard against abuse.

1081 Example: in 2006, Michigan voters approved an amendment  
1082 to Michigan's Constitution to preclude takings for economic  
1083 development or tax enhancement, among a number of other  
1084 protections, for property owners and tenants. Given the  
1085 fact that our system of federalism appears to be working in  
1086 this instance, and that States are in consensus on the need  
1087 to prevent abuse, I do not believe that Federal intervention  
1088 is necessary or appropriate at this time.

1089 Also, the bill's enforcement provisions are very  
1090 troubling. For example, a jurisdiction found in violation  
1091 of the measure would be stripped of all Federal economic

1092 development funds for 2 years, which could possibly bankrupt  
1093 that jurisdiction. Despite that draconian penalty, the  
1094 actual property owner would get nothing. The bill does not  
1095 even give the property owner the right to sue to stop the  
1096 taking in the first place. A suit can only be brought after  
1097 the property is taken.

1098       The Supreme Court has long held that when Congress  
1099 attaches conditions to a State's acceptance of Federal  
1100 funds, the conditions must be set out unambiguously. This  
1101 bill, however, fails to satisfy this requirement with  
1102 respect to its definition of economic development funds,  
1103 which would, therefore, subject a jurisdiction to its  
1104 punitive provisions.

1105       The Government Accountability Office testified in the  
1106 last Congress about the difficulty of determining what  
1107 qualifies an economic development program. The GAO also  
1108 warned that the loss of Federal funding to a State and local  
1109 government could encompass highway trust funds, community  
1110 development block grants, and other Department of Housing  
1111 and Urban Development programs intended to assist vulnerable  
1112 communities. The recent sequester has further diminished

1113 the already shrinking Federal funds that assist State and  
1114 local governments, given all of the uncertainty that  
1115 sequestration has cast over the viability of States.

1116 And finally, against this backdrop, we need to remember  
1117 that eminent domain abuse has a long and shameful history of  
1118 disproportionately impacting minority communities. Any  
1119 inner city neighborhoods that lacked institutional and  
1120 political power were often designated as blighted areas  
1121 slated for redevelopment through urban renewal programs.  
1122 Properties were condemned and land turned over to private  
1123 parties.

1124 In Detroit, Michigan, neighborhoods such as Poletown  
1125 have experienced firsthand how eminent domain can destroy  
1126 neighborhoods, presenting issues to those in *Kelo*. This  
1127 underscores why it is important that we continue to monitor  
1128 the facts on the ground to determine whether Federal action  
1129 is warranted.

1130 I thank you for this opportunity.

1131 Mr. Jordan. [Presiding] I thank the ranking member.

1132 The ranking member of the subcommittee is recognized.

1133 Mr. Nadler. Mr. Chairman, I see we have a vote on the

1134 floor, so I will just ask instead of delivering my opening  
1135 statement, unanimous consent to insert it in the record.

1136 Mr. Jordan. I thank the gentleman, and without  
1137 objection, we will put in the record.

1138 [The information follows:]

1139

1140 Mr. Jordan. Anyone wishing to make a comment or  
1141 amendment to H.R. 1944?  
1142 If not, we will call up the bill for a vote.  
1143 All those in favor of H.R. 1944 will signify by saying  
1144 aye.  
1145 Those opposed?  
1146 In the opinion of the chair, the ayes have it.  
1147 Mr. Conyers. Record vote.  
1148 Mr. Jordan. I have a recorded vote being asked for.  
1149 The clerk will call the roll.  
1150 Ms. Deterding. Mr. Franks?  
1151 [No response.]  
1152 Ms. Deterding. Mr. Jordan?  
1153 Mr. Jordan. Yes.  
1154 Ms. Deterding. Mr. Jordan votes aye.  
1155 Mr. Chabot?  
1156 Mr. Chabot. Aye.  
1157 Ms. Deterding. Mr. Chabot votes aye.  
1158 Mr. Forbes?  
1159 [No response.]  
1160 Ms. Deterding. Mr. King?

1161 Mr. King. Aye.

1162 Ms. Deterding. Mr. King votes aye.

1163 Mr. Gohmert?

1164 Mr. Gohmert. Aye.

1165 Ms. Deterding. Mr. Gohmert votes aye.

1166 Mr. DeSantis?

1167 Mr. DeSantis. Aye.

1168 Ms. Deterding. Mr. DeSantis votes aye.

1169 Mr. Nadler?

1170 Mr. Nadler. No.

1171 Ms. Deterding. Mr. Nadler votes no.

1172 Mr. Conyers?

1173 Mr. Conyers. No.

1174 Ms. Deterding. Mr. Conyers votes no.

1175 Mr. Scott?

1176 Mr. Scott. No.

1177 Ms. Deterding. Mr. Scott votes no.

1178 Mr. Cohen?

1179 [No response.]

1180 Ms. Deterding. Mr. Deutch?

1181 [No response.]

1182 Mr. Jordan. The clerk will give the tally.

1183 Ms. Deterding. Mr. Chairman, five members voted aye,  
1184 three members votes nay.

1185 Mr. Jordan. All right. The bill has sufficient votes  
1186 to pass.

1187 Without objection, the bill will be reported as a -- it  
1188 was not amended. The bill will be reported as introduced.

1189 And staff is authorized to make any technical and  
1190 conforming changes.

1191 And with no further business, we are adjourned. Thank  
1192 you.

1193 [Whereupon, at 2:09 p.m., the subcommittee was  
1194 adjourned.]