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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 2013  
7 Tuesday, June 4, 2013  
8 House of Representatives  
9 Subcommittee on the Constitution and Civil Justice  
10 Committee on the Judiciary  
11 Washington, D.C.

12 The subcommittee met, pursuant to call, at 1:02 p.m., in  
13 Room 2141, Rayburn Office Building, Hon. Trent Franks  
14 [chairman of the subcommittee] presiding.

15 Present: Representatives Franks, Chabot, Forbes, King,  
16 Gohmert, Jordan, DeSantis, Nadler, Conyers, Scott, and  
17 Deutch.

18 Staff present: Paul Taylor, Majority Counsel; Zach  
19 Somers, Majority Counsel; Allison Halataei, Majority  
20 Parliamentarian; Kelsey Deterding, Majority Clerk; David

21 | Lachmann, Minority Counsel; and Danielle Brown, Minority  
22 | Parliamentarian.

23 Mr. FRANKS. The Subcommittee on the Constitution and  
24 Civil Justice will come to order.

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

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

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

35 Mr. FRANKS. Without objection, the bill is considered  
36 as read and open for amendment at any point.

37 [The information follows:]

38 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

39 Mr. FRANKS. I will begin by recognizing myself and the  
40 ranking member for an opening statement.

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

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

59 The gruesome late-term abortions of unborn children who  
60 can feel pain is, in my opinion, the greatest human rights  
61 atrocity in the United States today. Indeed, in light of the  
62 horrors exposed by the trial of Dr. Kermit Gosnell and the  
63 reports of similar atrocities across the country, I will soon

64 offer a manager's amendment to broaden the coverage of this  
65 legislation so that its provisions will apply nationwide.

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

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

79 I will now enter into the record a 33-page summary of  
80 the dozens of studies worldwide confirming that unborn  
81 children feel pain by at least 20 weeks post-fertilization.  
82 This information is available at [www.doctorsonfetalpain.org](http://www.doctorsonfetalpain.org).

83 [The information follows:]

84 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

85 | Mr. FRANKS. And I would recommend that all the  
86 | committee members, their staff, and members of the press  
87 | review this site to get the most current evidence on unborn  
88 | pain.

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

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

102 | H.R. 1797 would protect unborn children who have reached  
103 | 20 weeks' development from abortions on the basis that such  
104 | unborn children feel pain, providing for a limited exception  
105 | when an abortion is necessary to save the life of the mother.

106 | There is no standard rule to provide that an unborn child  
107 | receive anesthesia, and so in that respect, unborn children  
108 | receive less legal protection from unnecessary cruelty than  
109 | farm animals, which are protected under the Federal Humane

110 Slaughter Act.

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

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

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

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

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

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

147 |       The bill as introduced would prohibit nearly all  
148 | abortions beginning at 20 weeks. That, as every first year  
149 | law student will tell you, is facially unconstitutional, but  
150 | who cares about the Constitution in this committee?

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

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

167           I hope that in addition to the many statements of  
168 concern we will hear today for fetuses, we can also hear a  
169 few kind words for women and their families.

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

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

183           This legislation represents an extreme view of the  
184 abortion question and is at odds with the science. That is

185 | why people in many States have firmly rejected it, including  
186 | the people I represent. Just as it is an outrage for  
187 | Congress to impose its will on the people of the District in  
188 | this case, so, too, I will fight any such usurpation of the  
189 | rights of my constituents.

190 | I would also note that this bill only prohibits abortion  
191 | at 20 weeks. It says nothing about the welfare of the woman  
192 | while she is pregnant, her need for extra care in a pregnancy  
193 | with difficulties of the sort our witness, Christie Zink,  
194 | recounted at our hearing, or the need for costly neonatal ICU  
195 | care that our colleague so eloquently and movingly described.

196 | Is it really the position of this committee that once we  
197 | tell the woman no, we are ready to leave her adrift without  
198 | any assistance?

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

208 | I am not going to sit here and debate the question of  
209 | fetal pain, except to note that Dr. Anand, who was cited in

210 | the majority's witness testimony and was called by the  
211 | majority to testify before this subcommittee in 2005 on this  
212 | subject, told us, "I think the evidence against fetal pain is  
213 | very uncertain at the present time. There is consensus in  
214 | the medical and scientific research community that there is  
215 | no possibility of pain perception in the first trimester.  
216 | There is uncertainty in the second trimester."

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

224 |         Are we really going to take sides in this scientific  
225 | debate by jailing and bankrupting people who do not agree,  
226 | because this is what this bill will do? Similarly, the claim  
227 | that an abortion is never necessary to protect a woman's  
228 | health is simply not one that is widely held in the medical  
229 | profession. And the idea that we should be enshrining these  
230 | marginal views into the Criminal Code defies reason. I hope  
231 | that my colleagues here today will at least agree that even  
232 | if they do not want to approve an exception for rape or  
233 | incest, a woman can become pregnant as a result of rape.

234 |         I find it deeply disturbing that when it comes to issues

235 | like this, some people think there is nothing wrong with  
236 | making families in crisis have the courage of members' of  
237 | Congress convictions. That is just wrong.

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

250 |         That bill was not about abortion because it involved  
251 | live births and affirmatively killing a newborn. It was  
252 | about classic murder. Similarly, Dr. Gosnell's practice of  
253 | snipping a newborn's spine following a live birth is clearly  
254 | murder and obviously illegal. That is why he was convicted  
255 | of murder.

256 |         What the Gosnell case does not illustrate, no matter how  
257 | many times activists insist it should, is anything regarding  
258 | the practice abortion generally. The fact that 40 years  
259 | after Roe it is hard to find another practitioner like

260 Gosnell really speaks to the actual state of that practice.  
261 It is a tragedy for these women, and it is a disgrace that  
262 any medical practitioner should have acted in this manner and  
263 should have been allowed to do so for such a long period of  
264 time.

265 I would urge my colleagues to think about the extent to  
266 which he represents the poor quality of health care services  
267 available in poorer communities. We should be working to  
268 provide high quality health care to the uninsured, to make  
269 sure that the full range of health care services, including  
270 family planning services, that are available to people with  
271 money are available to the poor and uninsured as well. If  
272 that means funding a Planned Parenthood clinic in every  
273 neighborhood to put guys like Gosnell out of business, so be  
274 it. If it means closer regulation of the medical profession,  
275 so be it. If it means an end to the constant efforts by my  
276 Republican colleagues to limit the rights of injured payments  
277 to sue, so be it.

278 But let us not pretend this is about the practice of  
279 abortion in American today. If it were, our prisons would be  
280 filled with Gosnells. I do not think any of my colleagues  
281 have stopped going to the dentist because one dentist in  
282 Omaha -- in Oklahoma, rather, was found to have infected  
283 thousands of patients. And I do not think we should outlaw  
284 abortions because a bad actor committed crimes against his

285 | patients. If we started legislating on the basis of the bad  
286 | actors in every medical specialty, then dentistry, podiatry,  
287 | and every other field of medicine would have been outlawed  
288 | long ago.

289 | I urge my colleagues to reject this misguided, clearly  
290 | wrong, clearly injurious to women's health, and clearly  
291 | unconstitutional legislation. I urge my colleagues to  
292 | remember their oath to the Constitution. Anyone who votes  
293 | for this bill today is defying the courts and saying the  
294 | courts are wrong in their interpretation of the Constitution,  
295 | and that is not our prerogative to do unless we propose a  
296 | constitutional amendment.

297 | To vote for a clearly unconstitutional bill is to  
298 | violate our oaths. I hope nobody does that. And I yield  
299 | back the balance of my time.

300 | Mr. FRANKS. Thank you, Mr. Nadler.

301 | I have a manager's amendment at the desk, and the clerk  
302 | will report the amendment.

303 | Ms. DETERDING. Amendment in the nature of a substitute  
304 | to H.R. 1797 --

305 | Mr. FRANKS. Will you suspend, please? I apologize.

306 | Mr. CONYERS. Oh, that is quite all right, Mr. Chairman.

307 | I am happy to be able to put in my comments, even though the  
308 | full chairman of the committee may not be here as well.

309 | I want to join the ranking subcommittee member, Jerry

310 | Nadler, in his comments. And it seems to me that the law and  
311 | science is not on the side of this proposal or the  
312 | subcommittee chairman, with all due respect. There is a big  
313 | problem. Not only do we have Roe v. Wade, but we have  
314 | Planned Parenthood v. Casey. We have the 9th Arizona Circuit  
315 | Court decision issued May 21st, by the way. We have a State  
316 | court decision in Arkansas.

317 |         And the shocking thing about this proposal is that they  
318 | do not even make any exception for rape or incest. Now, this  
319 | is not only patently unconstitutional, but it is also  
320 | inhumane in the extreme.

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

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

335 | America, that it would deny them safe and legal medical care  
336 | and would constitute governmental interference with the  
337 | doctor-patient relationship.

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

344 |         Mr. Chairman, I ask unanimous consent that these two  
345 | letters be made a part of this markup.

346 |         Mr. FRANKS. Without objection.

347 |         [The information follows:]

348 | \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

349 Mr. CONYERS. And I yield back the balance of my time,  
350 sir.

351 Mr. FRANKS. Thank you, Mr. Conyers.

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

354 Ms. DETERDING. Amendment in the nature of a substitute  
355 to H.R. 1797, offered by Mr. Franks of Arizona, strike all  
356 after the enacting clause and insert the following.

357 Mr. FRANKS. Without objection, the manager's amendment  
358 is considered as read.

359 [The amendment of Mr. Franks follows:]

360 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

361 Mr. FRANKS. And I recognize myself to explain the  
362 amendment.

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

365 The case of Kermit Gosnell shocked the sensibilities of  
366 millions of Americans. However, the crushing fact is that  
367 abortions on babies just like the ones killed by Kermit  
368 Gosnell have been happening hundreds of times every single  
369 day for decades in America.

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

377 Let us not forget that had Dr. Kermit Gosnell painfully  
378 dismembered these babies before they had traveled down the  
379 birth canal only moments earlier, he would have in many  
380 places nationwide been performing an entirely legal  
381 procedure. If America truly understands that horrifying  
382 reality, hearts, and minds, and laws, will change. To that  
383 end, this amendment makes technical changes that expand the  
384 coverage of the bill nationwide.

385 At the same time, this manager's amendment simplifies

386 | the bill in several ways, namely by striking the civil  
387 | lawsuit and reporting requirements in the bill. At this  
388 | stage of the public debate, I think it best to keep the bill  
389 | focused on the pain experienced by the unborn children and  
390 | not allow that overriding and tragic reality to be distorted  
391 | by ancillary issues.

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

404 |         And I would urge all my colleagues to support this  
405 | manager's amendment.

406 |         Are there any amendments to the amendment?

407 |         Mr. NADLER. Mr. Chairman?

408 |         Mr. FRANKS. Mr. Nadler?

409 |         Mr. NADLER. I do not have any amendments, but I would  
410 | like to strike the last word.

411 Mr. FRANKS. The gentleman is recognized for 5 minutes.

412 Mr. NADLER. Thank you, Mr. Chairman. I have a number  
413 of comments on this amendment, but, first, let me comment on  
414 some of what I just heard.

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

417 Mr. FRANKS. No, correction, her child.

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

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

432 Let me go further. I oppose the substitute amendment.  
433 It expands the application of the bill from just the District  
434 of Columbia to the entire country. It was insulting to the  
435 District of Columbia to pick them out, but it is worse to

436 | subject the women of this country -- the entire country -- to  
437 | this terrible, terrible bill that removes from them the  
438 | ability to do what some of them think they must do, and  
439 | substitutes our judgment for theirs.

440 |         The amendment more than doubles the prison sentence from  
441 | 2 to 5 years. That is also a bad thing.

442 |         The bill relies on the commerce clause. The majority  
443 | has made a fetish of saying we have to say for every bill  
444 | what constitutional clause Congress' power relies on. I  
445 | thought that my colleagues on the other side rejected the  
446 | notion that the Federal government could regulate health care  
447 | via the commerce clause. I think I recall something about  
448 | that when we debated the Affordable Care Act. I think I  
449 | recall them saying that in front of the Supreme Court.

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

456 |         Personally, I believe that the commerce clause does give  
457 | Congress the authority to intervene in the health care. I  
458 | have always believed that. And while I think that this bill  
459 | is a misguided use of that power, I hope it portends a new  
460 | understanding of the Constitution by my colleagues. I hope

461 | so, but I do not believe so.

462 | I commend the chairman for removing the private right of  
463 | action from this bill with this amendment. We have debated  
464 | this provision and provisions like it for many years and in  
465 | many different pieces of legislation. The idea that someone  
466 | other than the woman, someone who may have no interest in  
467 | providing the kind of medical assistance to the woman if she  
468 | must carry the pregnancy to term may sue to impose his will  
469 | on her is outrageous.

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

481 | This bill makes no provision for the kind of care the  
482 | woman might require, especially if there is a live birth.  
483 | The interest and obligation in the woman's State or that of  
484 | the child she is carrying appear to extend no farther than  
485 | prohibiting an abortion.

486           Critical care in a prenatal ICU, long term care for the  
487 child, care for the woman, whether or not there is a live  
488 birth, there is nothing in this bill. Once Congress says no,  
489 she is on her own.

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

496           I yield back.

497           Mr. FRANKS. I thank the gentleman. Who else seeks  
498 recognition?

499           Mr. CONYERS. Mr. Chairman?

500           Mr. FRANKS. Mr. Nadler? I am sorry, Mr. Conyers.  
501 Forgive me.

502           Mr. CONYERS. Mr. Chairman, I rise, of course, in  
503 opposition of extending a bill that we, I thought,  
504 effectively approved should not apply to the citizens of the  
505 District of Columbia. And now at the next meeting, we find  
506 ourselves discussing a proposal that would apply it to every  
507 woman in the United States of America. I find this  
508 unreasonable, and, of course, it only magnifies the  
509 opposition that I had to it when it was meant to apply to the  
510 women of the District of Columbia.

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

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

527 And so I refer us back to a case in Arizona, Isaacson v.  
528 Horne, which just said this. We do have lawyers and people  
529 concerned with lawmaking here, and here is what it says.  
530 "Since Roe v. Wade, the Supreme Court case concerning the  
531 constitutional protection accorded women with respect to the  
532 decision whether to undergo an abortion, has been unalterably  
533 clear regarding one basic point: a woman has a  
534 constitutional right to choose to terminate her pregnancy  
535 before the fetus is viable. A prohibition on the exercise of

536 | that right is per se unconstitutional."

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

547 |       If the State is interested in protecting fetal life  
548 | after viability, it may go as far as to proscribe abortion  
549 | during that period, except when it is necessary to preserve  
550 | the life and health of the mother. But H.R. 1797 goes so far  
551 | as to explicitly state that even a risk of suicide is  
552 | insufficient cause to allow a woman to end a pregnancy.

553 |       I thank you, and I return any time that may be  
554 | remaining.

555 |       Mr. FRANKS. Thank you, Mr. Conyers.

556 |       I now recognize Mr. Jordan.

557 |       Mr. JORDAN. Thank you, Mr. Chairman. I appreciate you  
558 | bringing this bill forward, and, frankly, strongly support  
559 | the manager's amendment that you have offered.

560 |       And I will be brief just in response to the ranking

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

568 But I think it is important to remember one of the last  
569 big things we did on the life issue was the partial birth  
570 abortion bill where every Federal court that heard that case  
571 said it was unconstitutional until it got to the Supreme  
572 Court where they said, no, it is constitutional to explicitly  
573 state, to use the former chairman's language, that this  
574 procedure is wrong and should not be allowed.

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

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

582 Mr. FRANKS. Thank you, Mr. Jordan. Any others seek to  
583 strike the last word?

584 If not, the question occurs on the amendment. Those in  
585 favor, say aye.

586 | Those opposed, no.

587 | In the opinion of the chair, the ayes have it, and the

588 | amendment --

589 | Mr. NADLER. Recorded vote, please.

590 | Mr. FRANKS. The clerk will call the roll.

591 | Ms. DETERDING. Mr. Franks?

592 | Mr. FRANKS. Aye.

593 | Ms. DETERDING. Mr. Franks votes aye.

594 | Mr. Jordan?

595 | Mr. JORDAN. Yes.

596 | Ms. DETERDING. Mr. Jordan votes aye.

597 | Mr. Chabot?

598 | Mr. CHABOT. Aye.

599 | Ms. DETERDING. Mr. Chabot votes aye.

600 | Mr. Forbes?

601 | [No response.]

602 | Ms. DETERDING. Mr. King?

603 | Mr. KING. Aye.

604 | Ms. DETERDING. Mr. King votes aye.

605 | Mr. Gohmert?

606 | Mr. GOHMERT. Aye.

607 | Ms. DETERDING. Mr. Gohmert votes aye.

608 | Mr. DeSantis?

609 | Mr. DESANTIS. Aye.

610 | Ms. DETERDING. Mr. DeSantis votes aye.

611 Mr. Nadler?

612 Mr. NADLER. No.

613 Ms. DETERDING. Mr. Nadler votes no.

614 Mr. Conyers?

615 Mr. CONYERS. No.

616 Ms. DETERDING. Mr. Conyers votes no.

617 Mr. Scott?

618 Mr. SCOTT. No.

619 Ms. DETERDING. Mr. Scott votes no.

620 Mr. Cohen?

621 [No response.]

622 Ms. DETERDING. Mr. Deutch?

623 Mr. DEUTCH. No.

624 Ms. DETERDING. Mr. Deutch votes no.

625 Mr. FRANKS. The clerk will report.

626 Ms. DETERDING. Mr. Chairman, six members votes aye,  
627 four members voted nay.

628 Mr. FRANKS. The ayes have it, and the amendment is  
629 agreed to.

630 Are there any other amendments?

631 If there are no further amendments to the amendment, and  
632 the question is on the manager's amendment.

633 Mr. GOHMERT. Mr. Chairman? Might I move to strike the  
634 last word?

635 Mr. FRANKS. The gentleman is recognized.

636 Mr. GOHMERT. Thank you, Mr. Chairman, and I do  
637 appreciate the years of efforts you have had on this issue.

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

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

652 There should be no disagreement about this process being  
653 de-constitutional. When you destroy the constitution of a  
654 living being, a living human being, in such a way, it brings  
655 me to appreciate all the more the effort of our chairman.

656 And with that, I will yield back.

657 Mr. FRANKS. Thank you.

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

659 Mr. CHABOT. Mr. Chairman, I move to strike the last  
660 word.

661 Mr. FRANKS. The gentleman is recognized.

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

671 And he said, I asked him the question getting to this  
672 point of rape and health issues, et cetera, how many of those  
673 abortions that he performed were related to rape or health  
674 issues. And he indicated of the 1,200 abortions that he had  
675 done, two were due to a rape. And he estimated about 12 of  
676 the 1,200 were related to health issues, either of the unborn  
677 child or fetus, as some of our colleagues referred to it.  
678 But that is living being that is growing inside the mother,  
679 either her health or his health or the mother's health. So,  
680 12 of 1,200 were because of health issues, and two were  
681 because of rape. The other, if my math is right, about 1,186  
682 of them were performed on perfectly healthy unborn children  
683 and healthy mothers.

684 And so I think a lot of times, the facts out there get  
685 distorted about how prevalent these exceptions that are

686 oftentimes insisted upon as necessary in this legislation are  
687 the case. And that was from someone during a pretty  
688 considerable time in his career who did these things,  
689 horrific things.

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

696 But I just wanted to make clear about how many  
697 exceptions and how many times we are talking about either  
698 rape or health issues. It is miniscule in comparison to the  
699 number of perfectly healthy babies whose lives are snuffed  
700 out every day in this country due to abortion.

701 I yield back.

702 Mr. FRANKS. I thank the gentleman.

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

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

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

715           Number two, the suggestion that, again, that as we sit  
716 here, this group of men, would talk about the perfectly  
717 healthy mothers that are making these decisions without  
718 pausing for a moment to reflect what is so often a  
719 horrifically gut-wrenching decision that these women make.  
720 Let us remember that there are, and I do not know what the  
721 numbers are. I do not have statistics. But I can tell you  
722 that this is never an easy decision, and I can also tell you  
723 that there are so many examples of families -- this is not a  
724 woman's issue. This is a family issue. And those of us who  
725 care about this issue on our side are staunchly pro-family.

726           And for us to take the position that a family, that a  
727 husband and wife who desperately wanted to get pregnant, who  
728 desperately wanted to have a family, find themselves in a  
729 position where having finally tried and having finally been  
730 able to conceive, and having experienced the great joy of  
731 learning that, find themselves in the position where a  
732 doctor's visit shows a deformity, shows organs of the fetus  
733 outside of the fetus, shows the potential risk to the woman,  
734 to discount that, to suggest that this is something that  
735 women just are quick to do is, frankly, as we sit here, this

736 | group of men, it is just too hard for, I think, a lot of  
737 | people who watch this to take.

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

750 |         I know that this bill will come through this  
751 | subcommittee, and I know that we will have an opportunity to  
752 | offer amendments in the full committee, and I thank the  
753 | chairman for that. But I just hope that we will remember as  
754 | this goes forward that it is not as simple as it is  
755 | described; that we remember the pain that these families face  
756 | so often when they find themselves forced to make this  
757 | difficult decision, that we respect the role that their  
758 | doctors and their clergy play in helping them to make that  
759 | decision, and that we never take for granted -- never take  
760 | for granted -- that there may only be some number of rapes,

761 | some number of cases where the health of the mother is at  
762 | issue, that every single one of those is relevant.

763 |         And, Mr. Chairman, I appreciate the time. I oppose the  
764 | bill, and I yield back.

765 |         Mr. FRANKS. I thank the gentleman.

766 |         Who else seeks recognition?

767 |         Mr. Scott?

768 |         Mr. SCOTT. Thank you, Mr. Chairman. I yield to the  
769 | gentleman from New York.

770 |         Mr. NADLER. I thank the gentleman for yielding.

771 |         Mr. Chairman, I have already given my opinion as to the  
772 | merits of the bill, and I will not comment on that further.  
773 | But I do want to comment on some of what Mr. Jordan said  
774 | about constitutionality.

775 |         In essence, what he said was regardless of how  
776 | constitutional the bill may look, regardless of the fact that  
777 | it is clearly unconstitutional according to the  
778 | interpretations of the Supreme Court and the other courts up  
779 | to date, you never know. In effect, we should vote for the  
780 | bill if we like it on the merits because maybe the Supreme  
781 | Court will reverse itself. That is essentially what he said.

782 | I just want to say --

783 |         Mr. JORDAN. Will the gentleman yield?

784 |         Mr. NADLER. Yes.

785 |         Mr. JORDAN. What I said is sometimes when we make

786 | predictions that something is unconstitutional, we are not  
787 | always accurate --

788 |       Mr. NADLER. Reclaiming my time.

789 |       Mr. JORDAN. -- evidenced by the fact that every Federal  
790 | court who heard the partial birth abortion law said it was  
791 | unconstitutional.

792 |       Mr. NADLER. Reclaiming my time.

793 |       Mr. JORDAN. But the Supreme Court then said it was.

794 |       Mr. NADLER. Reclaiming my time. I think I paraphrased  
795 | you correctly. The Supreme Court --

796 |       Mr. JORDAN. I think I quoted you correctly.

797 |       Mr. NADLER. I am not saying you did not. The Supreme  
798 | Court doctrine on this is clear. The 9th Circuit articulated  
799 | that. And what people are saying is, in effect, the Supreme  
800 | Court may change, and maybe it will. I doubt it, but maybe  
801 | it will. And we should, relying on that possibility, pass  
802 | the bill if we think it is good on the merits.

803 |       I simply want to say that is very dangerous ground.

804 | People criticize the Administration, the current  
805 | Administration, for not enforcing or for not defending in  
806 | court the Defense of Marriage Act because they think it is  
807 | unconstitutional. They are enforcing it, I think, but they  
808 | are not defending it. If they did not enforce it, the  
809 | criticism would be greater.

810 |       We have an oath to the Constitution, and it is always

811 | possible the Court will change its mind. But where the  
812 | current law is clear, what we are saying, in effect, is we  
813 | should pass this bill. We should impose an obligation, not  
814 | just an obligation, we should impose a jail sentence on  
815 | people for doing acts which are legal under Supreme Court  
816 | interpretation, and expect them to undertake the defense and  
817 | hope that the Supreme Court changes it, in effect,  
818 | retroactively makes it illegal because we say so.

819 |         It is very disturbing in general. I do not have a solid  
820 | answer. I will not say we should never do it, but to pass  
821 | legislation knowing that it is clearly unconstitutional under  
822 | current Supreme Court interpretations, there is no ambiguity,  
823 | but hope that the Supreme Court will change itself is a very  
824 | dangerous thing to do, and a very questionable thing under  
825 | our oath to the Constitution.

826 |         I yield back, and I thank the gentleman for yielding. I  
827 | yield back to the gentleman.

828 |         Mr. SCOTT. I yield back.

829 |         Mr. FRANKS. The gentleman from Iowa is recognized.

830 |         Mr. KING. Mr. Chair, I move to strike the last word.

831 |         Mr. FRANKS. The gentleman is recognized.

832 |         Mr. KING. Thank you, Mr. Chairman. There are a number  
833 | of people here on this panel that were actively involved in  
834 | the partial birth abortion legislation that took a long time  
835 | to get constitutionally resolved. Among them were my friend

836 | from Ohio, Steve Chabot. And I also am among those. I came  
837 | along in the second round of that instead of the first round.

838 | . But here is what I remember. I remember the Supreme  
839 | Court identifying a couple of areas that were a bit vague  
840 | from the statute that prohibited partial birth abortion. We  
841 | defined that act precisely, and congressional findings said  
842 | that the life and the health of the mother were not of  
843 | incident to that heinous gas, that ghastly, and ghoulish, and  
844 | gruesome act.

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

850 | We are all obligated to take an oath to uphold the  
851 | Constitution. The definition of the Constitution and our  
852 | understanding of it does not reside with nine Supreme Court  
853 | justices. It resides within our understanding of our oath  
854 | and our conscience.

855 | And I would say also that the question that is not being  
856 | raised here is the question that the President of the United  
857 | States refused to answer at Saddleback when he was asked when  
858 | does life begin. The soon to be president said, "That is  
859 | above my pay grade." And in the first weeks of his  
860 | presidency, in fact, the first 48 hours of his presidency, he

861 | decided that it was within his pay grade. And I know that  
862 | the chairman of this subcommittee knows very well that  
863 | decision that was made by the President.

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

868 | I thank the chairman for having the courage to lead  
869 | this.

870 | Mr. CHABOT. Would the gentleman --

871 | Mr. KING. And I would yield to the gentleman from Ohio,  
872 | who has lent so much to this debate and this argument.

873 | Mr. CHABOT. I thank the gentleman for yielding, and  
874 | again, I will be brief. The gentleman mentioned the debate  
875 | on partial birth abortion, and this debate went on for, like,  
876 | 8 years. And as my colleague from Ohio mentioned, we were  
877 | defeated at the Federal district court level on each  
878 | occasion, and then it went to the circuit courts where we  
879 | also were defeated. It went all the way to the U.S. Supreme  
880 | Court, and the Supreme Court reversed the lower courts in a 5  
881 | to 4 vote.

882 | And one of the bases for that reversal and the reason  
883 | they upheld the ban on partial birth abortion was that they  
884 | found, as this committee and ultimately the House of  
885 | Representatives and the Congress of the United States found,

886 | based upon medical testimony at this hearing and this  
887 | particular committee, was that partial birth abortions were  
888 | never medically necessary. And, in fact, not only that, but  
889 | they could be harmful to the mother.

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

902 |         So I would argue that there is clear proof that these  
903 | procedures can be medically dangerous to the woman as well  
904 | always medically dangerous to the unborn child. And,  
905 | therefore, I think there is every reason to believe that this  
906 | may very well ultimately be upheld by the Highest Court in  
907 | this land.

908 |         And I thank the gentleman for yielding. I yield back.

909 |         Mr. KING. And reclaiming my time, I would like to thank  
910 | the gentleman from Ohio for his statement. I completely

911 | associate myself with each word that he has said. And I  
912 | yield back the balance of my time.

913 |         Mr. FRANKS. I thank the gentleman. And are there any  
914 | others who seek recognition?

915 |         If not, a reporting quorum being present, the question  
916 | is on reporting the bill, as amended, favorably to the full  
917 | committee.

918 |         Those in favor, say aye.

919 |         Those opposed?

920 |         The ayes have it, and the bill, as amended, is ordered  
921 | reported favorably to the full committee.

922 |         Mr. NADLER. Recorded vote, please.

923 |         Mr. FRANKS. A recorded vote is requested. The clerk  
924 | will call the roll.

925 |         Ms. DETERDING. Mr. Franks?

926 |         Mr. FRANKS. Aye.

927 |         Ms. DETERDING. Mr. Franks votes aye.

928 |         Mr. Jordan?

929 |         Mr. JORDAN. Yes.

930 |         Ms. DETERDING. Mr. Jordan votes aye.

931 |         Mr. Chabot?

932 |         Mr. CHABOT. Aye.

933 |         Ms. DETERDING. Mr. Chabot votes aye.

934 |         Mr. Forbes?

935 |         [No response.]

936 Ms. DETERDING. Mr. King?  
937 Mr. KING. Aye.  
938 Ms. DETERDING. Mr. King votes aye.  
939 Mr. Gohmert?  
940 Mr. GOHMERT. Aye.  
941 Ms. DETERDING. Mr. Gohmert votes aye.  
942 Mr. DeSantis?  
943 Mr. DESANTIS. Aye.  
944 Ms. DETERDING. Mr. DeSantis votes aye.  
945 Mr. Nadler?  
946 Mr. NADLER. No.  
947 Ms. DETERDING. Mr. Nadler votes no.  
948 Mr. Conyers?  
949 Mr. CONYERS. No.  
950 Ms. DETERDING. Mr. Conyers votes no.  
951 Mr. Scott?  
952 Mr. SCOTT. No.  
953 Ms. DETERDING. Mr. Scott votes no.  
954 Mr. Cohen?  
955 [No response.]  
956 Ms. DETERDING. Mr. Deutch?  
957 Mr. DEUTCH. No.  
958 Ms. DETERDING. Mr. Deutch votes no.  
959 Mr. FRANKS. The clerk will report.  
960 Ms. DETERDING. Mr. Chairman, six members votes aye,

961 | four members voted nay.

962 |         Mr. FRANKS. The ayes have it, and the bill, as amended,  
963 | is reported favorably to the full committee.

964 |         Without objection, the bill will be reported as a single  
965 | amendment in the nature of a substitute incorporating all  
966 | adopted amendments. And staff is authorized to make  
967 | technical and conforming changes.

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

970 |         Ms. DETERDING. H.R. 1944, to protect private property  
971 | rights. Be it enacted by the Senate and the House of  
972 | Representatives of the United States of America and Congress  
973 | assembled, Section 1, short title, this act may be cited as  
974 | the Private Property Rights Protection Act of 2013.

975 |         Section 2, prohibition of --

976 |         Mr. FRANKS. Without objection, the bill is considered  
977 | as read and open for amendment at any point.

978 |         [The information follows:]

979 | \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

980 Mr. FRANKS. I will begin by recognizing myself and the  
981 ranking member for an opening statement.

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

987 In Justice O'Connor's words, the Kelo decision  
988 pronounced that under "the banner of economic development,  
989 all property is now vulnerable to be taken and transferred to  
990 another private owner, so long as it might be upgraded."  
991 Nothing is to prevent a State from replacing any Motel 6 with  
992 a Ritz Carlton, any home with a shopping center, or any farm  
993 with a factory."

994 The Kelo decision was resoundingly criticized from  
995 across all quarters. In 2005, the House voted to express  
996 grave disapproval of the decision, and overwhelmingly passed  
997 the Private Property Rights Protection Act with 376 members  
998 voting in favor and only 38 members voting against. Last  
999 Congress, the House once again passed this legislation, this  
1000 time by voice vote. Unfortunately, the bill has not been  
1001 taken up by the Senate.

1002 The Private Property Rights Protection Act prohibits  
1003 States and localities that receive Federal economic  
1004 development funds from using eminent domain to take private

1005 | property for economic development purposes. States and  
1006 | localities that use eminent domain for private economic  
1007 | development are ineligible to receive Federal economic  
1008 | development funds for 2 Fiscal Years.

1009 |       Every day, local governments in search of more lucrative  
1010 | tax bases take property from homeowners, small businesses,  
1011 | churches, and farmers, and give it to large corporations for  
1012 | private development. And Federal law currently allows  
1013 | Federal funds to be used to support such condemnations,  
1014 | encouraging this abuse nationwide. This bill will restore  
1015 | Americans' faith in their ability to own, build, and keep  
1016 | their property without fear that the government will take it  
1017 | and give it to someone else. And it will tell commercial  
1018 | developers that they should seek to obtain property through  
1019 | private negotiation, not by government force.

1020 |       Too many Americans have lost homes and small businesses  
1021 | to eminent domain abuse, forced to watch as private  
1022 | developers replace them with luxury condominiums and other  
1023 | "upscale" uses. Family farms have been wiped out by eminent  
1024 | domain to make way for shopping centers and big box stores.  
1025 | And churches generally entitled to tax exempt status are  
1026 | often seized through eminent domain to be replaced by more  
1027 | lucrative private development.

1028 |       Unfortunately, it is usually the most vulnerable who  
1029 | suffer from economic development takings as Justice Thomas

1030 observed in his dissenting opinion in Kelo. "Extending the  
1031 concept of public purpose to encompass any economically  
1032 beneficial goal guarantees that these losses will fall  
1033 disproportionately on poor communities. Those communities  
1034 are not only systematically less likely to put their lands to  
1035 the highest and best social use, but are also the least  
1036 politically powerful. The deferential standard this Court  
1037 has adopted for the public use clause encourages those  
1038 citizens with disproportionate influence and power in the  
1039 political process, including large corporations and  
1040 development firms to victimize the weak."

1041 We must restore the private rights protections that were  
1042 erased from the Constitution by the Kelo decision. John  
1043 Adams wrote over 200 years ago that, "Property must be  
1044 secured or liberty cannot exist." As long as the specter of  
1045 condemnation hangs over all property, our liberty is  
1046 threatened.

1047 I would urge my colleagues to support the Private  
1048 Property Rights Protection Act. And with that, I would now  
1049 recognize the ranking member of the subcommittee.

1050 Mr. NADLER. Mr. Chairman, I would ask that you would  
1051 recognize the ranking member of the full committee first.

1052 Mr. FRANKS. I would now recognize the ranking member of  
1053 the full committee, Mr. Conyers.

1054 Mr. NADLER. Thank you.

1055 Mr. CONYERS. Thank you, Chairman. In the wake of the  
1056 Supreme Court decision in Kelo, I have been concerned that  
1057 States and municipalities could use this decision to expand  
1058 their power of eminent domain, expand their power, whether  
1059 for the benefit of private parties or for public projects to  
1060 the detriment of those who are the least powerful, namely the  
1061 poor, the elderly, and communities of color.

1062 While I believe that the power of eminent domain can and  
1063 has been abused, particularly with respect to those lacking  
1064 such economic or political power, I have come to conclude  
1065 that for the time being, we should allow the States to craft  
1066 responses rather than impose an awkward one-size-fits-all  
1067 Federal legislative response. Why? Because it is important  
1068 to note that in Kelo, the Supreme Court acknowledged that  
1069 States courts may interpret their own eminent domain powers  
1070 in a manner that is more protective of property rights. And  
1071 I am also encouraged that no less than 43 States have  
1072 followed that advice and taken steps to restrict their own  
1073 powers of eminent domain to guard against abuse.

1074 Example: in 2006, Michigan voters approved an amendment  
1075 to Michigan's Constitution to preclude takings for economic  
1076 development or tax enhancement, among a number of other  
1077 protections, for property owners and tenants. Given the fact  
1078 that our system of federalism appears to be working in this  
1079 instance, and that States are in consensus on the need to

1080 prevent abuse, I do not believe that Federal intervention is  
1081 necessary or appropriate at this time.

1082 Also, the bill's enforcement provisions are very  
1083 troubling. For example, a jurisdiction found in violation of  
1084 the measure would be stripped of all Federal economic  
1085 development funds for 2 years, which could possibly bankrupt  
1086 that jurisdiction. Despite that draconian penalty, the  
1087 actual property owner would get nothing. The bill does not  
1088 even give the property owner the right to sue to stop the  
1089 taking in the first place. A suit can only be brought after  
1090 the property is taken.

1091 The Supreme Court has long held that when Congress  
1092 attaches conditions to a State's acceptance of Federal funds,  
1093 the conditions must be set out unambiguously. This bill,  
1094 however, fails to satisfy this requirement with respect to  
1095 its definition of economic development funds, which would,  
1096 therefore, subject a jurisdiction to its punitive provisions.

1097 The Government Accountability Office testified in the  
1098 last Congress about the difficulty of determining what  
1099 qualifies an economic development program. The GAO also  
1100 warned that the loss of Federal funding to a State and local  
1101 government could encompass highway trust funds, community  
1102 development block grants, and other Department of Housing and  
1103 Urban Development programs intended to assist vulnerable  
1104 communities. The recent sequester has further diminished the

1105 | already shrinking Federal funds that assist State and local  
1106 | governments, given all of the uncertainty that sequestration  
1107 | has cast over the viability of States.

1108 |         And finally, against this backdrop, we need to remember  
1109 | that eminent domain abuse has a long and shameful history of  
1110 | disproportionately impacting minority communities. Any inner  
1111 | city neighborhoods that lacked institutional and political  
1112 | power were often designated as blighted areas slated for  
1113 | redevelopment through urban renewal programs. Properties  
1114 | were condemned and land turned over to private parties.

1115 |         In Detroit, Michigan, neighborhoods such as Poletown  
1116 | have experienced firsthand how eminent domain can destroy  
1117 | neighborhoods, presenting issues to those in Kelo. This  
1118 | underscores why it is important that we continue to monitor  
1119 | the facts on the ground to determine whether Federal action  
1120 | is warranted.

1121 |         I thank you for this opportunity.

1122 |         Mr. JORDAN. [Presiding] I thank the ranking member.

1123 |         The ranking member of the subcommittee is recognized.

1124 |         Mr. NADLER. Mr. Chairman, I see we have a vote on the  
1125 | floor, so I will just ask instead of delivering my opening  
1126 | statement, unanimous consent to insert it in the record.

1127 |         Mr. JORDAN. I thank the gentleman, and without  
1128 | objection, we will put in the record.

1129 |         [The information follows:]

1130

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

1131 Mr. JORDAN. Anyone wishing to make a comment or  
1132 amendment to H.R. 1944?

1133 If not, we will call up the bill for a vote.

1134 All those in favor of H.R. 1944 will signify by saying  
1135 aye.

1136 Those opposed?

1137 In the opinion of the chair, the ayes have it.

1138 Mr. CONYERS. Record vote.

1139 Mr. JORDAN. I have a recorded vote being asked for.  
1140 The clerk will call the roll.

1141 Ms. DETERDING. Mr. Franks?

1142 [No response.]

1143 Ms. DETERDING. Mr. Jordan?

1144 Mr. JORDAN. Yes.

1145 Ms. DETERDING. Mr. Jordan votes aye.

1146 Mr. Chabot?

1147 Mr. CHABOT. Aye.

1148 Ms. DETERDING. Mr. Chabot votes aye.

1149 Mr. Forbes?

1150 [No response.]

1151 Ms. DETERDING. Mr. King?

1152 Mr. KING. Aye.

1153 Ms. DETERDING. Mr. King votes aye.

1154 Mr. Gohmert?

1155 Mr. GOHMERT. Aye.

1156 Ms. DETERDING. Mr. Gohmert votes aye.  
1157 Mr. DeSantis?  
1158 Mr. DESANTIS. Aye.  
1159 Ms. DETERDING. Mr. DeSantis votes aye.  
1160 Mr. Nadler?  
1161 Mr. NADLER. No.  
1162 Ms. DETERDING. Mr. Nadler votes no.  
1163 Mr. Conyers?  
1164 Mr. CONYERS. No.  
1165 Ms. DETERDING. Mr. Conyers votes no.  
1166 Mr. Scott?  
1167 Mr. SCOTT. No.  
1168 Ms. DETERDING. Mr. Scott votes no.  
1169 Mr. Cohen?  
1170 [No response.]  
1171 Ms. DETERDING. Mr. Deutch?  
1172 [No response.]  
1173 Mr. JORDAN. The clerk will give the tally.  
1174 Ms. DETERDING. Mr. Chairman, five members voted aye,  
1175 three members votes nay.  
1176 Mr. JORDAN. All right. The bill has sufficient votes  
1177 to pass.  
1178 Without objection, the bill will be reported as a -- it  
1179 was not amended. The bill will be reported as introduced.  
1180 And staff is authorized to make any technical and

1181 | conforming changes.

1182 |           And with no further business, we are adjourned. Thank

1183 | you.

1184 |           [Whereupon, at 2:09 p.m., the subcommittee was

1185 | adjourned.]

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 SPEAKER LISTING  
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CHABOT.	27	29	30	38	40	50	
CONYERS.	14	17	23	28	41	46	50
	51						
DESANTIS.	27	41	51				
DETERDING.	3	14	17	27	28	40	41
	42	50	51				
DEUTCH.	28	31	41				
FRANKS.	3	4	6	14	16	17	18
	19	20	23	25	26	27	28
	29	30	31	34	36	40	41
	42	43	45				
GOHMERT.	27	28	29	41	50		
JORDAN.	25	27	34	35	40	48	50
	51						
KING.	27	36	38	39	41	50	
NADLER.	7	19	20	27	28	34	35
	40	41	45	48	51		
SCOTT.	28	34	36	41	51		

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