

1 ALDERSON REPORTING COMPANY

2 SARAH JURA

3 HJU163000

4 MARKUP OF H.R. 1797, THE DISTRICT OF COLUMBIA PAIN-CAPABLE
5 UNBORN CHILD PROTECTION ACT, AS AMENDED AND REPORTED TO THE
6 FULL COMMITTEE BY THE SUBCOMMITTEE ON THE CONSTITUTION AND
7 CIVIL JUSTICE; AND

8 H.R. 1944, THE PRIVATE PROPERTY RIGHTS PROTECTION ACT OF
9 2013

10 Wednesday, June 12, 2013

11 House of Representatives

12 Committee on the Judiciary

13 Washington, D.C.

14 The committee met, pursuant to call, at 10:29 a.m., in
15 Room 2141, Rayburn House Office Building, Hon. Bob Goodlatte
16 [chairman of the committee] presiding.

17 Present: Representatives Goodlatte, Sensenbrenner,
18 Coble, Smith of Texas, Chabot, Bachus, Issa, Forbes, King,
19 Franks, Gohmert, Jordan, Poe, Chaffetz, Marino, Gowdy,
20 Labrador, Farenthold, Holding, Collins, DeSantis, Smith of
21 Missouri, Conyers, Nadler, Scott, Watt, Lofgren, Jackson
22 Lee, Cohen, Johnson, Pierluisi, Deutch, Gutierrez, Bass,
23 Richmond, DelBene, Garcia, and Jeffries.

24 Staff Present: Shelley Husband, Majority Staff
25 Director; Branden Ritchie, Majority Deputy Staff
26 Director/Chief Counsel; Allison Halataei, Majority
27 Parliamentarian, Kelsey Deterding, Clerk; Paul Taylor,
28 Majority Counsel; Zachary Somers, Majority Counsel; Perry
29 Apelbaum, Minority Staff Director; Danielle Brown, Minority
30 Parliamentarian; and David Lachmann, Minority Counsel.

31

32 Chairman Goodlatte. Good morning. The Committee on the
33 Judiciary will come to order.

34 And without objection, the chair is authorized to
35 declare a recess at any time.

36 The first item on our agenda is H.R. 1797, the Pain-
37 Capable Unborn Child Protection Act. The chair recognizes
38 the gentleman from Arizona, Mr. Franks, chairman of the
39 Subcommittee on Constitution and Civil Justice.

40 Mr. Franks. Mr. Chairman, on behalf of the Subcommittee
41 on Constitution and civil Justice, I would like to report
42 favorably on the bill H.R. 1797, with a single amendment in
43 the nature of a substitute, and move its favorable
44 recommendation to the full House.

45 Chairman Goodlatte. The clerk will report.

46 Ms. Deterding. Subcommittee amendment in the nature of
47 a substitute to H.R. 1797 --

48 Chairman Goodlatte. Without objection, the bill will be
49 considered as read and open for amendment at any point.

50 [The information follows:]

51

52 Chairman Goodlatte. And the subcommittee amendment in
53 the nature of a substitute, which the Members have before
54 them will be considered as read, considered as the original
55 text for purposes of amendment, and open for amendment at
56 any point.

57 [The information follows:]

58

59 Chairman Goodlatte. I will begin by recognizing myself
60 and the ranking member for opening statements.

61 Since the Supreme Court's controversial decision in Roe
62 v. Wade in 1973, medical knowledge regarding the development
63 of unborn babies and their capacities at various stages of
64 growth has advanced dramatically. Even the New York Times
65 has reported on the latest research on unborn pain, focusing
66 in particular on the research of Dr. Sunny Anand, an Oxford-
67 trained neonatal pediatrician who has held appointments at
68 Harvard Medical School and other distinguished institutions.

69 According to the New York Times, 25 years ago, doctors
70 were convinced that newborns' nervous systems were too
71 immature to sense pain. Anand resolved to find out if this
72 was true.

73 In a series of clinical trials, he demonstrated that
74 operations performed under minimal or no anesthesia produced
75 a massive stress response in newborn babies, releasing a
76 flood of fight or flight hormones like adrenaline and
77 cortisol. Potent anesthesia, he found, could significantly
78 reduce this reaction. But Anand was not through with making
79 observations. He noticed that even the most premature

80 babies grimaced when pricked by a needle.

81 New evidence, however, has persuaded him that fetuses
82 can feel pain by 20 weeks gestation and possibly earlier.
83 As Dr. Anand would later testify, "If the fetus is beyond 20
84 weeks of gestation, I would assume that there will be pain
85 caused to the fetus, and I believe it will be severe and
86 excruciating pain."

87 Congress has the power to acknowledge these developments
88 prohibiting abortions after the point at which scientific
89 evidence shows the unborn can feel pain with limited
90 exceptions. H.R. 1797 does just that. It also includes
91 provisions to protect the life of the mother.

92 The terrifying facts uncovered during the course of the
93 trial of late-term abortionist Kermit Gosnell and successive
94 reports of similar atrocities committed across the country
95 remind us how an atmosphere of insensitivity can lead to
96 horrific brutality.

97 The grand jury report in the Gosnell case itself
98 contains references to a neonatal expert who reported that
99 the cutting of the spinal cords of babies intended to be
100 late-term aborted would cause them, and I quote, "a

101 tremendous amount of pain." These facts and others justify
102 expanding the application of this bill nationwide, as was
103 done when the Subcommittee on the Constitution and Civil
104 Justice adopted Chairman Franks' manager's amendment.

105 Indeed, the Polling Company recently found that 64
106 percent of Americans would support a law such as the Pain-
107 Capable Unborn Child Protection Act. Only 30 percent would
108 oppose it. And supporters include 47 percent of those who
109 identified themselves as pro choice in the poll, as well as
110 63 percent of women.

111 In the 2007 case of *Gonzalez v. Carhart*, the Supreme
112 Court made clear that, and I quote, "The Government may use
113 its voice and its regulatory authority to show its profound
114 respect for the life within the woman and that Congress may
115 show such respect for the unborn through specific regulation
116 because it implicates additional ethical and moral concerns
117 that justify a special prohibition."

118 Justice Kennedy, who wrote the majority opinion in the
119 *Carhart* case, also wrote that the Government has "an
120 interest in forbidding medical procedures, which, in the
121 Government's reasonable determination, might cause the

122 medical profession or society as a whole to become
123 insensitive, even disdainful to life, including life in the
124 human fetus, even life which cannot survive without the
125 assistance of others."

126 As the New York Times story concluded, throughout
127 history, a presumed insensitivity to pain has been used to
128 exclude some from humanity's privileges and protections.
129 Over time, the charmed circle of those considered alive to
130 pain and, therefore, fully human has widened to include
131 members of other religions and races, the poor, the
132 criminal, the mentally ill, and thanks to the work of Sunny
133 Anand and others, the very young.

134 The Gosnell trial reminds us that when newborn babies
135 are cut with scissors, they whimper and cry and flinch from
136 pain. And unborn babies when harmed also whimper and cry
137 and flinch from pain. Delivered or not, babies are babies,
138 and they can feel pain at least by 20 weeks.

139 It is time to welcome young children who can feel pain
140 into the human family, and this bill at last will do just
141 that.

142 I congratulate Chairman Franks on introducing this vital

143 legislation, and I urge all my colleagues to support it.

144 And it is now my pleasure to recognize the gentleman
145 from Michigan, the ranking member of the committee, Mr.
146 Conyers, for his opening statement.

147 Mr. Conyers. Thank you, Chairman Goodlatte.

148 Let us be clear. I cannot completely fathom why we have
149 to pretend to be doctors in the Judiciary Committee or
150 people in the medical community. This clearly is an attack
151 on women's constitutional right to choose and is one of the
152 most far-reaching bans on abortion this committee has ever
153 considered.

154 It is an attack on women, but even that being said, it
155 is unconstitutional. And it ignores the real and very
156 difficult challenges women face during their pregnancy. Let
157 us think about the woman.

158 What this bill does bans legal and safe abortions and
159 ignores science and the good judgment of medical
160 professionals and forces women to be subjected to the
161 reasoning of a panel mostly of men in the Congress.
162 Specifically, 1797 would create a national ban on access to
163 abortion care 20 weeks after fertilization with no

164 exceptions in cases of rape, incest, or fetal anomalies --
165 no exception -- and explicitly bans later abortion care even
166 when there may be a mental health problem or suicidal
167 considerations to take under advisement.

168 For these reasons, the bill is opposed by numerous
169 women's organizations, religious groups of all kind, and
170 medical professional organizations. In a letter to members
171 of the committee, 15 religious organizations national wrote,
172 "The decision to end a pregnancy is best left to a woman in
173 consultation with her family, her doctor, and her faith."

174 What is wrong with that? Why do we have to change it?
175 Why are we even considering this?

176 Our laws support and safeguard a woman's health, not to
177 deny access. And I ask unanimous consent to put into the
178 record the 15 national groups.

179 Chairman Goodlatte. Without objection, the letters will
180 be made a part of the record.

181 [The information follows:]

182

183 Mr. Conyers. Thank you, Mr. Chairman.

184 Now what about constitutionality? That is a
185 consideration the Judiciary Committee has a very big
186 responsibility for. Constitutional law is very clear on the
187 subject. The Supreme Court has required that even after
188 viability any abortion prohibition must include an exception
189 to protect the woman's life and health.

190 Just last month, the United States Court of Appeals
191 Ninth Circuit struck down an Arizona law very similar to the
192 bill under consideration in Isaacson v. Horne. And here is
193 what the court said. It summed it up.

194 "Since Roe v. Wade, the Supreme Court case law
195 concerning the constitutional protection accorded women with
196 respect to the decision whether to undergo an abortion has
197 been unalterably clear regarding one basic point. A woman
198 has a constitutional right to choose to terminate her
199 pregnancy before the fetus is viable. A prohibition on the
200 exercise of that right is, per se, unconstitutional."

201 Now, look, we are mostly lawyers here. That is pretty
202 clear.

203 The court has also held that the Constitution requires

204 that there be an exception to any prohibition to protect a
205 woman's life and health even after viability. And the
206 Supreme Court stated in Roe v. Wade, "With respect to the
207 State's important and legitimate interest in potential life,
208 the compelling point is at viability. This is so because
209 the fetus then presumably has capability of meaningful life
210 outside the mother's womb.

211 "State regulation protective of fetal life after
212 viability thus has both logical and biological
213 justification. If the State is interested in protecting
214 fetal life after viability, it may go as far as to proscribe
215 abortion during that period, except when it is necessary to
216 preserve the life or health of the mother."

217 In direct conflict with these constitutional
218 requirements, the measure before us contains only a very
219 narrow life exception and with no exception at all for the
220 health of a woman. Further, the legislation goes so far as
221 to explicitly state that a risk of suicide is an
222 insufficient cause to allow a woman to end a pregnancy.

223 And so, finally, the bill clearly ignores the real world
224 problems that women face during their pregnancy,

225 disregarding the fact that some pregnancies can be dangerous
226 and that abortion restrictions that lack adequate health
227 exceptions endanger the lives of these women.

228 I have other instances to recount, but that is
229 essentially my opening statement, and I thank the chairman
230 for allowing me to make it.

231 Chairman Goodlatte. I thank the gentleman from
232 Michigan.

233 And the chair is now pleased to recognize the chairman
234 of the Constitution Subcommittee, the gentleman from
235 Arizona, Mr. Franks, for his opening statement.

236 Mr. Franks. Well, thank you, Mr. Chairman.

237 Mr. Chairman, you know, it seems we are never quite so
238 eloquent as when we are decrying the crimes of a past
239 generation, while remaining oftentimes as staggeringly blind
240 as some of our most intellectually sightless predecessors
241 when it comes to facing and rejecting atrocities in our own
242 time.

243 Whether it was slavery or the many human genocides
244 across history, the patterns were the same. Innocent human
245 beings, children of God all, were systematically dehumanized

246 and then subjected to the most horrifying inhumanity. All
247 the while, human society as a whole hardened their hearts
248 and turned away.

249 But, Mr. Chairman, truth and time travel on the same
250 road. And though it was often agonizingly slow, the truth
251 of these tragic inhumanities in our past began to dawn on
252 people of reason and good will. Their hearts first and then
253 their minds began to change.

254 I have often asked myself, Mr. Chairman, what was it
255 that changed their minds? What changed the minds of those
256 who had previously embraced an invincible ignorance to hide
257 from themselves the horror of what was happening to their
258 innocent fellow human beings?

259 I so wish I knew that, Mr. Chairman. Because, you see,
260 today such a conundrum looms before humanity again, the most
261 glaring recent example of which are the gut-wrenching
262 revelations surrounding the trial and conviction in
263 Philadelphia of Dr. Kermit Gosnell.

264 In the words of the grand jury report, Gosnell had a
265 simple solution for unwanted babies. He killed them. He
266 didn't call it that. He called it "ensuring fetal demise."

267 The way he ensured fetal demise was by sticking scissors
268 in the back of the baby's neck and cutting the spinal cord.
269 He called that snipping. Over the years, there were
270 hundreds of snippings.

271 When authorities entered the clinic of Dr. Gosnell, they
272 found a torture chamber for little babies that I do not have
273 the words or the stomach to adequately describe. Suffice it
274 to say, Dr. Gosnell ran a systematic practice in his late-
275 term abortion clinic to cut spines of those babies who had
276 survived his attempt to abort them.

277 Ashley Baldwin, one of the employees of Dr. Gosnell,
278 said she saw babies breathing. And she described one as 2
279 feet long that no longer had eyes or a mouth, but in her
280 words was like making this "screeching noise," and it
281 "sounded like a little alien." And for God's sake, Mr.
282 Chairman, I wonder if this is really who we are?

283 If Dr. Gosnell had killed the children he now stands
284 convicted of murdering before they had passed through the
285 birth canal, only a few moments earlier, it would have all
286 been perfectly legal in many of the United States of
287 America. Mr. Chairman, more than 325 late-term babies were

288 torturously killed without anesthesia in America just
289 yesterday. Many of them cried and screamed as they died,
290 but because it was amniotic fluid going over the vocal cords
291 instead of air, we couldn't hear them.

292 All of them had least four things in common. First,
293 they were just -- they were just little babies who had done
294 nothing wrong to anyone on earth, and each one of them died
295 a nameless, lonely, and torturous death. And each one of
296 their mothers was callously abandoned to deal with the
297 emotional results that will inevitably follow. And all the
298 gifts that these children might have brought to humanity are
299 lost forever.

300 So if there is one thing that we must not miss about
301 this unspeakably evil episode, it is that Kermit Gosnell is
302 not an anomaly. He is the face of this murderous Fortune
303 500 enterprise of killing helpless unborn children in the
304 land of the free and the home of the brave.

305 Given the cataclysmic implications for any society who
306 turns a blind eye to such atrocities against the most
307 innocent and helpless of its members, would it be too much
308 to hope for, Mr. Chairman, that Members of this body and

309 Americans in general might research these tragedies and
310 learn the truth for themselves?

311 Because, you see, Mr. Chairman, as we debate here today
312 the Pain-Capable Unborn Child Protection Act, the real
313 question before us is not whether these unborn children
314 entering their sixth month of gestation are capable of
315 feeling pain. The real question is, are we?

316 Mr. Chairman, if our society is to survive with our
317 humanity intact, our moral impulse toward our fellow human
318 beings must first survive. And that is why it is so
319 important for people to see for themselves the humanity of
320 these little victims and the inhumanity of what is being
321 done to them. Now maybe it wouldn't change everyone's mind,
322 but it has changed so many minds. And most of these changed
323 minds share a common thread.

324 They were confronted with the brutal reality of
325 abortion, and something inside them could no longer deny the
326 truth or condone the murder of a defenseless child. I would
327 never suggest that I clearly understand what sparked that
328 change in their hearts, but I am convinced that it is the
329 same spark in the human soul that has turned the tide of

330 blood and tragedy and hatred and inhumanity throughout
331 history. Whatever it is, Mr. Chairman, it is mankind's only
332 hope.

333 And I yield back.

334 Chairman Goodlatte. The chair thanks the gentleman and
335 now recognizes the ranking member of the Subcommittee on the
336 Constitution and Civil Justice, the gentleman from New York,
337 Mr. Nadler, for his opening statement.

338 Mr. Nadler. Yes, Mr. Chairman, before I begin my
339 statement, can I yield for 10 seconds to Mr. Conyers for an
340 announcement?

341 Mr. Conyers. Thank you, sir.

342 Mr. Chairman, the gentlewoman from California Ms. Judy
343 Chu has had a death in her family and will not be able to
344 participate. And our sympathies are with our colleague
345 today, and I thank you for allowing me to make this
346 statement.

347 Chairman Goodlatte. I thank the gentleman for bringing
348 that to our attention, and I hope Members will take the
349 opportunity to express their sympathy to Ms. Chu.

350 The gentleman from New York is recognized.

351 Mr. Nadler. Thank you, Mr. Chairman.

352 Mr. Chairman, we are back again considering legislation
353 that would curtail women's reproductive rights. This
354 legislation is especially dangerous because it is a direct
355 challenge to the Supreme Court's ruling in Roe v. Wade.

356 It contains a nearly total ban on abortions prior to
357 viability, which the Supreme Court says violates women's
358 rights under the Constitution. And perhaps most cruelly, it
359 fails even to provide any exception for a woman's health and
360 an exception for a woman's life that is so narrowly written
361 and so convoluted that even a physician wanting to comply
362 with the law in good faith would have trouble determining
363 when the woman is sufficiently in extremis that it qualifies
364 as "life-endangering physical condition caused by or arising
365 from the pregnancy itself, but not including psychological
366 or emotional conditions," which we are told excludes the
367 risk of suicide.

368 How is a doctor to calculate the precise moment when,
369 for example, a woman with Marfan syndrome is risking death
370 by a dissection of the descending aorta and as opposed to
371 when she might only suffer deterioration in her condition

372 that is not really life-threatening?

373 What is a doctor to do when the woman's physical well-
374 being hangs in the balance on one side and a 5-year stint in
375 prison on the other? Do we really want the care of women
376 with crisis pregnancies to be conducted under those
377 conditions? Is that really pro life?

378 I understand how personally important this is to some of
379 my colleagues, and they are certainly entitled to their
380 beliefs. But the many Americans who see the world very
381 differently, including millions of women who value their
382 personal autonomy, can be forgiven if this looks like just
383 another battle in the Republican war on woman and if they
384 value their right to make their decisions and not be
385 subservient to the members of this committee.

386 I accept that on this one we are going to have to agree
387 to disagree. In this case, my colleagues appear, through
388 the operation of the criminal code, to be trying to settle a
389 scientific question on which there is real disagreement
390 within the field. That is an excuse of raw political power,
391 not of dispassionate fact-finding.

392 The bill, as introduced, would prohibit nearly all

393 abortions beginning at 20 weeks. That, as any first-year
394 law student will tell you, is facially unconstitutional.

395 Just recently, the U.S. Court of Appeals for the Ninth
396 Circuit struck down a nearly identical Arizona statute,
397 saying, "Since Roe v. Wade, the Supreme Court case law
398 concerning the constitutional protection accorded women with
399 respect to the decision whether to undergo an abortion has
400 been unalterably clear regarding one basic point. A woman
401 has a constitutional right to choose to terminate her
402 pregnancy before the fetus is viable. A prohibition on the
403 exercise of that right is, per se, unconstitutional."

404 Nonetheless, this bill would prohibit nearly all
405 abortions, including those involving threats to a woman's
406 health, including those resulting from rape or incest and
407 where the woman may have become suicidal.

408 Exceptions to protect the woman where her life and
409 health are at risk are required throughout pregnancy, even
410 post viability, if the law is to be constitutional but are
411 not provided for in this bill. I hope that in addition to
412 the many statements of concern we will hear today for
413 fetuses, we may hear a few kind words for women and their

414 families.

415 This prison sentence in the bill has been more than
416 doubled from 2 to 5 years. That should teach anyone not to
417 disagree with Members of Congress on questions of science.

418 This legislation represents an extreme view of the
419 abortion question and is at odds with the science. That is
420 why people in many States have firmly rejected it, including
421 the people I represent. Just as it is an outrage for
422 Congress to impose its will on the people of the District of
423 Columbia, in this case, so, too, I will fight any such
424 usurpation of the rights of my constituents.

425 I am not going to sit here and debate the question of
426 fetal pain, except to note that Dr. Anand, who was cited in
427 the majority's witness testimony and a few minutes ago was
428 cited by the chairman, told us, "I think the evidence for
429 and against fetal pain is very uncertain at the present
430 time. There is consensus in the medical and scientific
431 research community that there is no possibility of pain
432 perception in the first trimester. There is uncertainty in
433 the second trimester."

434 The Journal of the American Medical Association

435 concluded that, "Evidence regarding the capacity for fetal
436 pain is limited but indicates that fetal perception of pain
437 is unlikely before the third trimester."

438 The Royal Academy of Obstetricians and Gynecologists
439 concluded, "It can be concluded that the fetus cannot
440 experience pain in any sense prior to 24 weeks gestation."

441 Are we really going to take sides in this scientific
442 debate by jailing and bankrupting people who don't agree
443 because that is what this bill will do.

444 Similarly, the claim that an abortion is never necessary
445 to protect a woman's health is simply not one that is widely
446 held in the medical profession, and the idea that we should
447 be enshrining these marginal views into the criminal code
448 defies reason.

449 I hope that my colleagues here today will at least agree
450 that even if they don't want to approve an exception for
451 rape or incest, a woman can, in fact, become pregnant as a
452 result of rape. That seems to have been in some question in
453 this House.

454 I find it deeply disturbing that when it comes to issues
455 like this, some people think there is nothing wrong with

456 making families in crisis have the courage of legislators'
457 convictions. That is just wrong.

458 This bill is another in a long series of bills that
459 says, in effect, we have to make the decisions regarding
460 abortions for women. Women cannot be allowed to make this
461 very personal decision for themselves because they are too
462 immoral or too stupid to do so. Fortunately, the
463 Constitution has more regard for women than this bill.

464 We have heard a lot about the Gosnell case, and I would
465 like to address it at the outset. Dr. Gosnell is a
466 criminal. He is going to jail, and deservedly so.

467 Colleagues who were here at the time may recall that I
468 actively supported passage of the Born-Alive Infants
469 Protection Act, which made it a crime to kill an infant once
470 it is born alive. As I said at the time, that was already
471 illegal everywhere. It was called murder.

472 And even if the bill was duplicated, we supported it
473 just to deny anyone the pretext of falsely implying that
474 supporters of a right to choose somehow support infanticide.
475 But of course, even though it is patently false, there are
476 people who are perfectly comfortable making that false

477 charge anyway.

478 That bill was not about abortion because it involved
479 live births and affirmatively killing a newborn. It was
480 about classic murder. Similarly, Dr. Gosnell's practice of
481 snipping a newborn's spine following a live birth was
482 clearly murder and obviously illegal. That is why he was
483 convicted.

484 What the Gosnell case does not illustrate, no matter how
485 many times activists insist it should, is anything regarding
486 the practice of abortion generally. The fact that 40 years
487 after Roe, it is hard to find another practitioner like
488 Gosnell really speaks to the actual state of that practice.

489 It is a tragedy for these women, and it is a disgrace
490 that any medical practitioner should have acted in this
491 manner and should have been allowed to do so for such a long
492 period of time.

493 I would urge my colleagues to think about the extent to
494 which he represents the poor quality of healthcare services
495 available in less wealthy communities. We should be working
496 to provide high-quality healthcare to the uninsured, to make
497 sure that the full range of healthcare services, including

498 family planning services, that are available to people with
499 money are available to the poor and uninsured as well.

500 If that means funding a Planned Parenthood clinic in
501 every neighborhood to put guys like Gosnell out of business,
502 so be it. If it means closer regulation of the medical
503 profession, so be it. If it means an end to the constant
504 efforts by my Republican colleagues to limit the rights of
505 injured patients to sue, so be it.

506 But let us not pretend this is about the practice of
507 abortion in America today. If it were, our prisons would be
508 filled with Gosnells. I don't think any of my colleagues
509 have stopped going to the dentist because one dentist in
510 Oklahoma was found to have infected thousands of patients,
511 and I don't think we should outlaw abortions because a bad
512 actor committed crimes against his patients.

513 If we started legislating on the basis of the bad actors
514 in every medical specialty, then dentistry, podiatry, and
515 every other field of medicine would have been outlawed long
516 ago.

517 I would make just one final observation. We all took an
518 oath to support and defend the Constitution of the United

519 States against all enemies, foreign and domestic, and bear
520 true faith and allegiance to the same. I would urge my
521 colleagues to reflect on that oath as we consider this
522 legislation.

523 While some may hope that the Supreme Court will
524 ultimately move in a different direction on these questions,
525 the fact remains that 40 years after Roe v. Wade, even this
526 far more conservative and hostile court has declined every
527 opportunity to do so. The law is clear. This bill is
528 unconstitutional, and we ought to be true to our oath and
529 endeavor to pass legislation only that comports with the
530 clear requirements of the Constitution.

531 I urge my colleagues to reject this misguided, cruel,
532 and unconstitutional legislation, and I yield back the
533 balance of my time.

534 Chairman Goodlatte. The chair thanks the gentleman.

535 And are there any amendments to H.R. 1797?

536 Mr. Conyers. Mr. Chairman? I have an amendment at the
537 desk.

538 Chairman Goodlatte. The chair recognizes the gentleman
539 from Michigan.

540 Mr. Conyers. I have an amendment at the desk, Mr.
541 Chairman.

542 Chairman Goodlatte. The clerk will report the
543 amendment.

544 Ms. Deterding. Amendment to the subcommittee amendment
545 in the nature of a substitute to H.R. 1797 --

546 Chairman Goodlatte. Without objection, the amendment
547 will be considered as read.

548 [The amendment of Mr. Conyers follows:]

549

550 Chairman Goodlatte. And the chair recognizes the
551 gentleman from Michigan for 5 minutes to explain his
552 amendment.

553 Mr. Conyers. Thank you.

554 My amendment makes a simple revision in the prohibition
555 of this bill so that pregnancies resulting from rape and
556 incest are explicitly excluded from this constitutional ban.
557 It would make the bill a little better. It doesn't change
558 my opposition to the bill.

559 Without question, rape and incest are crimes. Yet H.R.
560 1797, absent my amendment, would allow the victims of these
561 crimes to be revictimized by forcing them to bring these
562 pregnancies to term. How could we allow such a travesty?

563 The bill already endangers the health and well-being of
564 women by criminalizing safe and legal abortions with only a
565 limited exception. I am shocked that Congress would
566 abrogate to itself the authority to dictate how a woman who
567 has been brutally savaged by the crime of rape or incest
568 should deal with the consequence of such a crime.

569 Admittedly, my amendment makes a terribly flawed measure
570 somewhat better, and it would still represent an

571 unconstitutional -- the bill would still represent an
572 unconstitutional infringement on a woman's right to choose.
573 So I ask my colleagues on both sides of the aisle to do the
574 right thing, to ensure that women victimized by rape or
575 incest are not further victimized by this measure.

576 Accordingly, I urge support for the amendment and yield
577 back the balance of my time.

578 Chairman Goodlatte. For what purpose does the gentleman
579 from Arizona seek recognition?

580 Mr. Franks. Well, thank you, Mr. Chairman.

581 Mr. Chairman, I must oppose the amendment.

582 Chairman Goodlatte. The chair recognizes the gentleman
583 for 5 minutes.

584 Mr. Franks. Mr. Chairman, the tragedy of rape and
585 incest are almost difficult to articulate. It is an evil
586 that beggars my ability to express. And I think all of us
587 know that here.

588 And I noticed that the rape/incest exception that the
589 gentleman has doesn't have anything about whether it should
590 be reported or not because all of the other rape and incest
591 exceptions do. They said it should be reported within 48

592 hours or so.

593 And yet the difference here is that these babies are
594 going into the sixth month, and the notion that we should
595 wait until the sixth month to report rape or incest is a
596 flawed one. I mean, based on that, why would we have a
597 logical argument not to extend that to 6 months after they
598 were born? I don't think any of us would argue that a child
599 should be killed because of the sins of an evil rapist.

600 What we need to do is be harder on the rapists. I
601 wonder how many of my colleagues on the other side would say
602 that we should suggest a death penalty for the rapist, but
603 they certainly do for the child.

604 So, Mr. Chairman, this is the fundamental opposition
605 here should be predicated on the notion that this child is
606 going into the sixth month of pregnancy, as dated by most
607 OB/GYNs and abortionists and neonatologists. And to say
608 that we wait until then to say that there is a rape or
609 incest involved is waiting too long, and that is why I would
610 oppose the amendment.

611 Mr. Nadler. Would the gentleman yield for a question?

612 Mr. Franks. Yes.

613 Mr. Nadler. Thank you.

614 I am not going to debate the substance of the amendment.
615 The arguments on both sides are, I think, quite well known.
616 But I noticed you asked -- you noted, rather, that the
617 amendment does not make any requirement that the rape or
618 incest be reported.

619 My question is what difference does that make? What is
620 the point of that?

621 Mr. Franks. Well, the point I was trying to make, Mr.
622 Nadler, is that before, when my friends on the left side of
623 the aisle here tried to make rape and incest the subject
624 because the incidence of rape resulting in pregnancy are
625 very low, but when you make that exception, there is usually
626 a requirement to report the rape within 48 hours. And in
627 this case, that is impossible because this is in the sixth
628 month of gestation, and that is what completely negates and
629 eviscerates the purpose for such an amendment.

630 Mr. Nadler. I thank the gentleman.

631 Ms. Lofgren. Mr. Chairman?

632 Mr. Franks. Mr. Chairman, I yield back.

633 Chairman Goodlatte. Who seeks recognition? The

634 gentleman from New York, for what purpose do you seek
635 recognition?

636 Mr. Nadler. Move to strike the last word.

637 Chairman Goodlatte. The gentleman is recognized for 5
638 minutes.

639 Mr. Nadler. Thank you.

640 Mr. Chairman, I will be brief. I just want to observe
641 that the only reason in this context why a reporting
642 requirement is relevant -- and yes, you are right. If you
643 are talking about a rape that occurred 4 or 5 months ago,
644 she may not have reported it. But what is the difference?

645 The only reason is if you are really implying that women
646 would lie about a rape in order to get an abortion.

647 Mr. Gowdy. Would the yield for a question?

648 Mr. Nadler. Sure.

649 Mr. Gowdy. Do you not think it is easier to prosecute
650 the rapist the sooner the rape is reported?

651 Mr. Nadler. Oh, reclaiming my time, I certainly do, and
652 I certainly hope that every rape is reported immediately.
653 But you should know that not every woman reports rape. We
654 should encourage them to do so, obviously.

655 My point is that in a provision in a bill, rather, or an
656 amendment that says that a pregnancy -- that you can get an
657 abortion under certain circumstances, a pregnancy resulting
658 from rape or incest, the reporting requirement there is a
659 condition on getting the abortion, and that doesn't
660 encourage the reporting or that that is simply saying that
661 we don't trust the woman to be truthful about it.

662 In any event, I think that someone -- clearly, again, I
663 think this whole bill is a travesty. But someone clearly
664 whose pregnancy results from rape or incest should not be
665 forced to carry, in effect, a hostile pregnancy to term.

666 I yield back.

667 Ms. Lofgren. Would the gentleman yield?

668 Mr. Nadler. Yes, I will yield.

669 Ms. Lofgren. I would just like to express my support
670 for Mr. Conyers' amendment. Obviously, even if the
671 amendment is passed, the bill is not worthy of support.

672 I just find it astonishing to hear a phrase repeated
673 that the incidence of pregnancy from rape is low. That is
674 not -- I mean, there is no scientific basis for that. And
675 the idea that the Republican men on this committee think

676 they can tell the women of America that they have to carry
677 to term the product of a rape is outrageous.

678 And when you talk about incest and reporting, it is well
679 known -- and I know that my colleagues know this -- that the
680 young women who are sexually abused, usually by a father,
681 are oftentimes not in a position to report that abuse.
682 There is a power differential between the raping father.
683 And to tell that young girl that she -- because the
684 Republican men of this committee think it is a good idea
685 that there cannot be a termination of that pregnancy, I just
686 think is incredible.

687 And I think that it is not something that the country
688 supports. I would hope that our colleagues on the other
689 side of the aisle would step back from this really very
690 unfortunate bill, outrageous bill, I would add.

691 And I yield back to Mr. Nadler.

692 Ms. Jackson Lee. Would the gentleman yield?

693 Mr. Nadler. I yield to the gentlelady from Texas.

694 Ms. Jackson Lee. I thank the gentleman.

695 This is something that appears to have occurred in my
696 life in this committee over and over again. This is not

697 said without respect for the positions of those who offered
698 the legislation, but I guess I repeat what I have done over
699 the years and say that this decision is one for the woman,
700 the physician, and her faith leader and family.

701 And to be raped is a statement of experience that only a
702 woman can experience. In certain circumstances, obviously,
703 men have experienced a rape situation. But the question of
704 making and intruding the law in that life of that woman to
705 be able to not have an exception on that basis I think is
706 absurd. And I would say that it shows some lack of
707 sensitivity.

708 I respect the fact that it is a crime what the
709 Pennsylvania doctor did. No one, no one will argue against
710 that. But at least give leeway to someone who has been
711 raped to be able to have an exception under this particular
712 legislation. It is the humane thing to do.

713 I yield back to the gentleman.

714 Chairman Goodlatte. For what purpose --

715 Mr. Nadler. I yield back.

716 Chairman Goodlatte. I thank the gentleman.

717 For what purpose does the gentleman from South Carolina

718 seek recognition?

719 Mr. Gowdy. Move to strike the last word.

720 Chairman Goodlatte. The gentleman is recognized for 5
721 minutes.

722 Mr. Gowdy. Mr. Chairman, I have supported exceptions
723 for rape and incest, and the reason I have done it, the
724 comments of my colleagues on the other side of the aisle
725 notwithstanding, is because I do know what happens when
726 women are raped or become impregnated because of incest
727 because I have prosecuted both kinds of cases, which is why
728 I do support it, which, by the way, is outside -- outside my
729 own party in some instances.

730 And I was looking during this amendment. I was looking
731 for reported within a week, reported within a month,
732 reported within 2 months, and then I was wondering if any of
733 our colleagues who did criminal defense work ever defended
734 someone who was charged with rape. And I wonder if they
735 ever stood in front of a jury and argued that it was a false
736 allegation. I wonder if that has ever happened.

737 If any of my colleagues who have ever defended rape
738 cases have ever stood in front of a jury and argued that it

739 was a false accusation.

740 Mr. Chairman, I prosecuted a case where a woman became
741 pregnant as a result of rape, and she walked from the car in
742 which she was raped nude to a guard shack to report it. I
743 can't imagine the humiliation, the terror, the grief, the
744 humiliation. She became pregnant as a result of the rape.

745 So I know what happens, and that is why I support the
746 exception. But I looked in this bill and I don't see
747 reported within a week, within a month, within 2 months.

748 Mr. Chairman, last night I was thinking about the other
749 end of life, and I couldn't help but note that in this
750 country's history we have executed people by burning, by
751 crushing, by hanging, by firing squad, by electrocution, and
752 now we have moved to lethal injection.

753 Mr. Chairman, do you know why we went from burning and
754 crushing and hanging and firing squads to lethal injection?
755 We did it because we were concerned that people who
756 committed heinous acts might possibly feel some pain as that
757 sentence was carried out.

758 If it is good enough for people who have committed some
759 of the most horrific acts in this country, surely to

760 goodness can we not be concerned a little bit about pain
761 from the most innocent members of society? Is that too much
762 to ask?

763 If we changed the method of execution because we are
764 worried about pain, can we not show a little bit of concern
765 about the beginning of life, the most innocent members of
766 humankind?

767 And my final point is this, because I have heard it
768 twice now, that because Roe v. Wade was decided, it is
769 settled law. I mean, that ignores the fact that every time
770 you appear in appellate court you file notice that you want
771 to argue against precedent.

772 It also ignores this fact, Mr. Chairman. I was there,
773 and you were, too, when the President of the United States
774 in front of the Supreme Court argued to their faces that
775 they were wrong on a point of constitutional law. So the
776 notion that we just have to accept the law because five
777 justices happened to agree on something is legal balderdash.

778 Nothing would ever be overturned if that were true. So
779 we by no means relinquished our right to argue against
780 precedent just because five members or six members happened

781 to have decided something. I listened to the President of
782 the United States tell the Supreme Court to their face in
783 the State of the Union you got it wrong. So I don't think
784 it is too much for Congress to tell the Supreme Court they
785 got it wrong.

786 Chairman Goodlatte. Would the gentleman yield?

787 Mr. Gowdy. Yes, sir.

788 Chairman Goodlatte. I pretty much appreciate the
789 gentleman's very eloquent remarks. I would only add that
790 whether this amendment included a timeframe for notifying
791 the authorities of the rape or incest that by the time a
792 child reaches the period of gestation where it can feel
793 pain, in the fifth or sixth month or beyond of pregnancy, I
794 would no longer support the exception under those
795 circumstances, that given that length of time, there would
796 seem to me to be no justification. Even if you reported it
797 within 48 hours or a week, to wait until 20 weeks to have
798 the abortion performed would seem to me to be absolutely
799 unacceptable.

800 Mr. Gowdy. And that was my point. My point is this has
801 nothing to do about an exception for rape or incest. If

802 that were the case, then they would have included within a
803 week of the act taking place.

804 This amendment has nothing to do with preserving that
805 exception. This amendment is about trying to kill the bill.
806 So I agree with the chairman.

807 Chairman Goodlatte. I thank the gentleman.

808 Ms. Jackson Lee. Mr. Chairman?

809 Chairman Goodlatte. Who seeks recognition?

810 Ms. Jackson Lee. Mr. Chairman?

811 Chairman Goodlatte. For what purpose does the
812 gentlewoman from Texas seek recognition?

813 Ms. Jackson Lee. Strike the last word.

814 Chairman Goodlatte. The gentlewoman is recognized for 5
815 minutes.

816 Ms. Jackson Lee. I thank the chairman, and I thank Mr.
817 Gowdy for his analysis.

818 Many of us have been on either side of the aisle, when I
819 say that, in a courtroom as a defense or prosecutor or
820 served as a judge at certain levels. And so, we are
821 understanding of the banter and discourse and prosecution
822 and understand the representations that he has made.

823 And we thank him for considering Mr. Conyers' amendment.
824 However, he is indicating that he does not see a timeframe,
825 and so I take that as an opposition, but at least
826 understanding some sensitivity to an exemption that it has a
827 basis.

828 But I think what is important is no matter how much is
829 spoken by the distinguished gentlemen, plural, I don't think
830 any of them can speak to the question, unless they desire to
831 raise their hand, of being raped. If someone wants to
832 acknowledge that they have been raped and they are speaking
833 from a personal experience, then I think we may have a
834 discussion here.

835 We have already conceded to the fact that the acts of
836 the Pennsylvania doctor were criminal minimally, but heinous
837 and unacceptable to anyone. But I cannot speak for a rape
838 victim, who may, for example, have moved from one location
839 to the next and may have had a number of reasons why this
840 exemption is important.

841 We are, therefore, in essence, shutting down that
842 woman's right to engage with her physician, her family, her
843 faith, the person or the entity she worships, and intruding

844 upon her constitutional rights. This legislation is a
845 redoing of the argument of a decade ago plus of the partial-
846 birth abortion, which had to do, again, with a number of
847 issues.

848 So I just wanted to -- however, this amendment, I rise
849 to support the gentleman's amendment, Mr. Conyers, because I
850 cannot speculate on a rape victim. Can I get inside the
851 person's mind, the woman's mind, and the state that the
852 woman is in at 2 months or 3 months or 4 months, or what
853 would have brought the woman to this point having been
854 raped?

855 The gentleman is simply asking for a merciful amendment
856 because everyone cannot make the argument that they have
857 been raped. Minimally. there is some police report. Some
858 family member or other that has been told. So there is some
859 evidence thereof.

860 But to suggest that it needs to be 1 week or 2 weeks or
861 it doesn't even matter because what we are saying supersedes
862 the rape victim, I find it, my colleagues on both sides of
863 the aisles, particularly challenging because I don't know
864 how anyone sitting here -- I didn't see any hands raised --

865 is going to say that they have had a personal firsthand
866 experience, and therefore, they can speak to the fact that
867 we don't need the rape or incest exemption. I am baffled by
868 that.

869 And I ask for the support of the gentleman's amendment.
870 I yield back my time.

871 Chairman Goodlatte. Who seeks recognition?

872 Mr. Collins. Mr. Chairman?

873 Chairman Goodlatte. For what purpose does the gentleman
874 from Georgia seek recognition?

875 Mr. Collins. Move to strike the last word.

876 Chairman Goodlatte. The gentleman is recognized for 5
877 minutes.

878 Mr. Collins. Thank you, Mr. Chairman.

879 And I rise both to support the underlying bill, but also
880 to oppose the amendment. But I wanted to put it in context
881 because I believe what we are dealing with here is a
882 balance, is a strike. It is a belief that is made in these
883 halls. It is a decision that comes because it does, I
884 believe, affect life and those that are yet to be.

885 In that mode, I would like to thank the gentleman from

886 Arizona for his tireless leadership on this issue. Like
887 you, I speak on behalf of those who do not yet have a voice,
888 the yet to be born daughters and sons of our Nation.

889 We have a sacred responsibility to protect the lives of
890 unborn children. Medical advances in recent decades allow
891 doctors to help preborn babies in ways we never thought
892 possible. Tragically, some ignore these scientific
893 breakthroughs as well as common sense to justify the killing
894 of the unborn.

895 This is an issue that is very personal to me. When my
896 wife Lisa was pregnant with our first child, we learned that
897 our daughter Jordan was affected by spina bifida. We were
898 shocked when people approached us after Jordan's diagnosis,
899 saying we had a choice on whether to keep our daughter or
900 not. We knew that Jordan was a gift from God, and there was
901 a plan and purpose for her life.

902 We believe that fact more strongly than ever today, and
903 we cannot imagine life without our 21-year-old, who
904 graduated high school and is a light to anyone she meets.

905 I know my family is not alone. Many folks have welcomed
906 children into the world in the midst of difficult

907 circumstances not because it was easy, but because it was
908 right. The vast majority of folks in Georgia's Ninth
909 District understand that life is a gift from God that should
910 be protected, not snuffed out when deemed inconvenient or
911 challenging.

912 Last year, I was proud to be part of the effort in the
913 Georgia legislature to pass a similar bill to protect unborn
914 pain-capable children, which was ultimately signed by
915 Governor Nathan Deal. Georgia and other States have laws on
916 the books specifically protecting pain-capable children, and
917 other State legislatures are considering similar bills, even
918 in light of the challenges that have been made.

919 In light of the recent trial of Kermit Gosnell, during
920 which the atrocities of late-term abortion were on full
921 display, there has never been a better time to extend the
922 protections to pain-capable children in our Nation's
923 capital. I support this legislation because I believe
924 preborn babies across the Nation deserve the same protection
925 as those in Georgia.

926 And not only do I support this bill, but I also oppose
927 this amendment for the simple fact that any time we deal

928 here -- and I am very appreciative of the gentleman from
929 Arizona and the work that he has put into this and the
930 comments that we have heard on both sides of the aisle --
931 because I, like the gentlelady from Texas, agree that this
932 is a concern. And you have to find what is balance, but you
933 also have to find in your heart where you believe life is
934 worth protecting.

935 And in this bill, for some of us who believe that
936 abortion is something that we would not like to see at all,
937 this is a bill in which 5 months is allowing for abortion.
938 In fact, it is allowing more time for abortion than it takes
939 issue with abortion. When we think about that, there is
940 multiple arrays and disagreements in this panel. For me, it
941 is personal.

942 For me, it is about those who have not had a voice yet,
943 but one day may sit right here. And that may be like my
944 daughter, and they will roll in because they weren't born
945 maybe like you and I. And there was a choice, as someone
946 told my wife, "You don't have to go through with this. You
947 have a choice."

948 Every April 1st, I say "Happy birthday, Jordan," because

949 you were the choice for life that we made.

950 And Mr. Chairman, I yield back.

951 Chairman Goodlatte. The chair thanks the gentleman.

952 For what purpose does the gentleman from Tennessee seek
953 recognition?

954 Mr. Cohen. Well, kind of to speak against the bill and
955 kind of to ask a question.

956 Chairman Goodlatte. The gentleman is recognized for 5
957 minutes.

958 Mr. Cohen. Thank you, Mr. Chairman.

959 Kind of what are we doing? We have got differences of
960 opinion, and have in this committee, on when life begins.
961 And the four issues or four facts that Mr. Franks put out
962 about what those fetuses had in common, I think he forgot a
963 fifth one that they all have a mother. And --

964 That was one of the four?

965 Mr. Franks. Number three.

966 Mr. Cohen. I must have zoned out after two. But the
967 reason I zoned out is because the reality is this bill is
968 going nowhere in the Senate. And there are children that
969 came into this country with their parents, no fault of their

970 own, innocent, who we could work on the DREAM Act that the
971 Senate is going to pass in the immigration bill, and we
972 could be working on helping those children have an
973 opportunity to be American citizens and contribute and go to
974 college at reasonable prices, et cetera, et cetera, et
975 cetera.

976 And there were 20 children that died in Newtown who were
977 innocent, and we could be working on background checks, and
978 we could be working on high-capacity magazines and try to
979 figure out some way to keep the children that are alive, and
980 that is going somewhere in the Senate. I believe there is a
981 chance.

982 And yet we are doing this bill and talking about it and
983 all everything everybody says is fine and dandy. We have
984 got difference of opinion. We know this bill is going to
985 pass out of this committee, and it is going nowhere.

986 But if you really want to help some innocent children
987 and do something, we ought to be talking about how to stop
988 children from being murdered by crazies like at Newtown, and
989 that is a bill within this committee's jurisdiction.

990 And also the DREAM Act and children that came to this

991 country with their parents. Those are things we could do
992 and have a deliverable. Instead of having a deliverable, we
993 are having a debatable.

994 We don't need to be having this be a debating society.
995 I am out of law school. I am out of college. I am in the
996 real world. I want to see something accomplished in the
997 113th Congress, and this is not going to be anything that is
998 going to be an accomplishment.

999 I yield back the balance of my time.

1000 Chairman Goodlatte. The question occurs on the
1001 amendment offered by the gentleman from Michigan.

1002 All those in favor, respond by saying aye.

1003 Those opposed, no.

1004 In the opinion of the chair, the noes have it. The
1005 amendment is not agreed to.

1006 Mr. Conyers. Recorded vote, sir?

1007 Chairman Goodlatte. The gentleman requests a recorded
1008 vote, and the clerk will call the roll.

1009 Ms. Deterding. Mr. Goodlatte?

1010 Chairman Goodlatte. No.

1011 Ms. Deterding. Mr. Goodlatte votes no.

1012 Mr. Sensenbrenner?

1013 Mr. Sensenbrenner. No.

1014 Ms. Deterding. Mr. Sensenbrenner votes no.

1015 Mr. Coble?

1016 Mr. Coble. No.

1017 Ms. Deterding. Mr. Coble votes no.

1018 Mr. Smith from Texas?

1019 [No response.]

1020 Ms. Deterding. Mr. Chabot?

1021 Mr. Chabot. No.

1022 Ms. Deterding. Mr. Chabot votes no.

1023 Mr. Bachus?

1024 Mr. Bachus. No.

1025 Ms. Deterding. Mr. Bachus votes no.

1026 Mr. Issa?

1027 [No response.]

1028 Ms. Deterding. Mr. Forbes?

1029 Mr. Forbes. No.

1030 Ms. Deterding. Mr. Forbes votes no.

1031 Mr. King?

1032 Mr. King. No.

1033 Ms. Deterding. Mr. King votes no.
1034 Mr. Franks?
1035 Mr. Franks. No.
1036 Ms. Deterding. Mr. Franks votes no.
1037 Mr. Gohmert?
1038 [No response.]
1039 Ms. Deterding. Mr. Jordan?
1040 [No response.]
1041 Ms. Deterding. Mr. Poe?
1042 Mr. Poe. No.
1043 Ms. Deterding. Mr. Poe votes no.
1044 Mr. Chaffetz?
1045 Mr. Chaffetz. No.
1046 Ms. Deterding. Mr. Chaffetz votes no.
1047 Mr. Marino?
1048 Mr. Marino. No.
1049 Ms. Deterding. Mr. Marino votes no.
1050 Mr. Gowdy?
1051 Mr. Gowdy. No.
1052 Ms. Deterding. Mr. Gowdy votes no.
1053 Mr. Amodei?

1054 [No response.]

1055 Ms. Deterding. Mr. Labrador?

1056 [No response.]

1057 Ms. Deterding. Mr. Farenthold?

1058 Mr. Farenthold. No.

1059 Ms. Deterding. Mr. Farenthold votes no.

1060 Mr. Holding?

1061 Mr. Holding. No.

1062 Ms. Deterding. Mr. Holding votes no.

1063 Mr. Collins?

1064 [No response.]

1065 Ms. Deterding. Mr. DeSantis?

1066 Mr. DeSantis. No.

1067 Ms. Deterding. Mr. DeSantis votes no.

1068 Mr. Conyers?

1069 Mr. Conyers. Aye.

1070 Ms. Deterding. Mr. Conyers votes aye.

1071 Mr. Nadler?

1072 Mr. Nadler. Aye.

1073 Ms. Deterding. Mr. Nadler votes aye.

1074 Mr. Scott?

1075 Mr. Scott. Aye.

1076 Ms. Deterding. Mr. Scott votes aye.

1077 Mr. Watt?

1078 Mr. Watt. Aye.

1079 Ms. Deterding. Mr. Watt votes aye.

1080 Ms. Lofgren?

1081 Ms. Lofgren. Aye.

1082 Ms. Deterding. Ms. Lofgren votes aye.

1083 Ms. Jackson Lee?

1084 [No response.]

1085 Ms. Deterding. Mr. Cohen?

1086 Mr. Cohen. Aye.

1087 Ms. Deterding. Mr. Cohen votes aye.

1088 Mr. Johnson?

1089 Mr. Johnson. Aye.

1090 Ms. Deterding. Mr. Johnson votes aye.

1091 Mr. Pierluisi?

1092 Mr. Pierluisi. Aye.

1093 Ms. Deterding. Mr. Pierluisi votes aye.

1094 Ms. Chu?

1095 [No response.]

1096 Ms. Deterding. Mr. Deutch?

1097 Mr. Deutch. Aye.

1098 Ms. Deterding. Mr. Deutch votes aye.

1099 Mr. Gutierrez?

1100 [No response.]

1101 Ms. Deterding. Ms. Bass?

1102 [No response.]

1103 Ms. Deterding. Mr. Richmond?

1104 Mr. Richmond. Aye.

1105 Ms. Deterding. Mr. Richmond votes aye.

1106 Ms. DelBene?

1107 Ms. DelBene. Aye.

1108 Ms. Deterding. Ms. DelBene votes aye.

1109 Mr. Garcia?

1110 Mr. Garcia. Aye.

1111 Ms. Deterding. Mr. Garcia votes aye.

1112 Mr. Jeffries?

1113 Mr. Jeffries. Aye.

1114 Ms. Deterding. Mr. Jeffries votes aye.

1115 Chairman Goodlatte. The gentleman from Ohio?

1116 Mr. Jordan. No.

1117 Ms. Deterding. Mr. Jordan votes no.

1118 Chairman Goodlatte. Other Members? Are there other

1119 Members who have not voted who wish to vote?

1120 The gentleman from Texas?

1121 Mr. Gohmert. No.

1122 Ms. Deterding. Mr. Gohmert votes no.

1123 Chairman Goodlatte. The clerk will report.

1124 Ms. Deterding. Mr. Chairman, 13 Members voted aye, 17

1125 Members voted nay.

1126 Chairman Goodlatte. And the amendment is not agreed to.

1127 Let me take a moment here in the midst of this markup to

1128 welcome our newest member of the committee. Congressman

1129 Jason Smith from Missouri was elected a few days ago to take

1130 the seat held by Congresswoman Jo Ann Emerson.

1131 And he will, once given confirmation of serving on the

1132 committee at noon or so today, be empowered to vote on the

1133 committee as well. But he is welcome here as a pending new

1134 Member in the meantime, and let us all give him a round of

1135 applause. We are glad to have him with us.

1136 [Applause.]

1137 Chairman Goodlatte. Are there further amendments?

1138 Mr. Nadler. Mr. Chairman?

1139 Chairman Goodlatte. For what purpose does the gentleman
1140 from New York seek recognition?

1141 Mr. Nadler. Mr. Chairman, I have an amendment at the
1142 desk.

1143 Chairman Goodlatte. The clerk will report the
1144 amendment.

1145 Ms. Deterding. Amendment to the subcommittee amendment
1146 in the nature of a substitute to H.R. 1797, offered by Mr.
1147 Nadler --

1148 Chairman Goodlatte. Without objection, the amendment is
1149 considered as read.

1150 [The amendment of Mr. Nadler follows:]

1151

1152 Chairman Goodlatte. And the gentleman from New York is
1153 recognized for 5 minutes to explain his amendment.

1154 Mr. Nadler. Thank you, Mr. Chairman.

1155 This amendment, which I offer together with the
1156 gentlewoman from Washington, Ms. DelBene, simply provides
1157 what the Constitution requires, a full exception to protect
1158 a woman's life and health. Let us be crystal clear about
1159 this. The Supreme Court in Roe v. Wade struck down certain
1160 pre-viability abortions.

1161 Now I know Mr. Gowdy seems to think that we shouldn't
1162 take any guidance from the Supreme Court, but those of us
1163 who disagree will point out that the court explained, "With
1164 respect to the State's important and legitimate interest in
1165 potential life, the compelling point is at viability. This
1166 is so because the fetus then presumably has the capability
1167 of meaningful life outside the mother's womb.

1168 "State regulation protective of fetal life after
1169 viability thus has both logical and biological
1170 justification. If the State is interested in protecting
1171 fetal life after viability, it may go so far -- it may go as
1172 far as to proscribe abortion during that period, except when

1173 it is necessary to preserve the life or health of the
1174 mother."

1175 In the companion case of Doe v. Bolton, the court
1176 clarified that, "The State may not prohibit an abortion
1177 where the woman's life or health is at risk and that this
1178 determination must be left to a woman in consultation with
1179 her doctor."

1180 The court further held that health includes both
1181 physical and emotional health. It observed, "The medical
1182 judgment may be exercised in light of all factors --
1183 physical, emotional, psychological, familial, and the
1184 woman's age -- relevant to the well-being of the patient.
1185 All these factors may relate to health. This allows the
1186 attending physician the room he needs to make his best
1187 medical judgment and that is room that operates to the
1188 benefit, not the disadvantage, of the pregnant woman."

1189 Since Roe and Doe, the court has narrowed the
1190 constitutional protections available to women to protect
1191 their right to choose. In Planned Parenthood of
1192 Southeastern Pennsylvania v. Casey, the court set out an
1193 undue burden test for determining whether abortion

1194 restrictions are permissible.

1195 As the court observed, "Numerous forms of State
1196 regulation might have the incidental effect of increasing
1197 the costs or decreasing the availability of medical care
1198 whether for abortion or for any other medical procedure.
1199 The fact of the law which serves a valid purpose, one not
1200 designed to strike at the right itself, has the incidental
1201 effect of making it more difficult or more expensive to
1202 procure an abortion cannot be enough to invalidate it. Only
1203 where State regulation imposes an undue burden on a woman's
1204 ability to make this decision does the power of the State
1205 reach into the heart of the liberty protected by the due
1206 process clause."

1207 So that is the law, whether some people like it or not.
1208 That is the constitutional command, whether some people like
1209 it or not. We have taken an oath to uphold the
1210 Constitution, and that is what it commands.

1211 It is also a matter of simple decency. Are we really
1212 prepared to say that the law will require a doctor to allow
1213 a woman's health to fail to avoid 5 years in jail? Are we
1214 really indifferent to the possibility the woman might commit

1215 suicide, as this bill commands? I hope not.

1216 There are limits, and I think protecting a woman's life
1217 and health are the minimum we should be doing here. The
1218 Constitution demands it, and simple humanity commands it.

1219 I urge the adoption of the amendment. I yield to the
1220 gentleman from Michigan.

1221 Mr. Conyers. Yes, thank you very much.

1222 I support this strongly and ask unanimous consent to add
1223 my statement to yours after this discussion.

1224 Ms. Lofgren. Would the gentleman yield?

1225 Mr. Franks. [Presiding] Without objection.

1226 [The information follows:]

1227

1228 Mr. Nadler. I will yield to the gentlelady from
1229 California.

1230 Ms. Lofgren. I would like to speak in support of the
1231 amendment. Not only does the Constitution require this, but
1232 just common sense and humanity requires it.

1233 I recall very clearly the situation of the daughter-in-
1234 law of my colleague on the board of supervisors, Vicki
1235 Wilson, who at one time was a witness -- and I will say a
1236 mistreated witness -- in this committee. She and her
1237 husband, Bill, were very excited to be finally after two
1238 boys, to be the parents of a daughter. In fact, they had
1239 picked out a name.

1240 They were thrilled and then were devastated to find that
1241 the brain had completely formed outside of the cranium, that
1242 the much-wanted daughter would never survive. But further,
1243 that if the pregnancy continued, Vicki's capacity to have
1244 any further children, in fact, maybe even her life would be
1245 endangered.

1246 The idea that we would force someone like Vicki to
1247 endanger her own life, that the Republican men on this
1248 committee think they have the right to do that, is

1249 astonishing and, I think, quite wrong. And this amendment
1250 would at least improve the situation.

1251 I thank the gentleman for introducing the amendment, and
1252 I support it very much and yield back.

1253 Mr. Watt. Would the gentleman yield?

1254 Mr. Nadler. I will yield to the gentleman.

1255 Mr. Watt. And I don't want to prolong this. I just
1256 wanted to thank the gentleman for offering this amendment,
1257 too. It is an amendment that I had offered at least on one
1258 or two occasions in the past to this bill and was not -- I
1259 wasn't sure I was going to be able to be here today so I
1260 didn't join in it.

1261 But I would like my name added as the cosponsor of this
1262 amendment, and I support it because that is what the Supreme
1263 Court has indicated the law is. And for the reasons
1264 outlined by the gentlelady from California, it just makes
1265 patently good sense.

1266 You really can't -- regardless of how you feel about
1267 abortion, you can't put the life of the child, the
1268 undelivered child above the life of the mother who is
1269 delivering the child. That is just -- and that is really

1270 what the Supreme Court has said in this context.

1271 So I would encourage my colleagues to support the
1272 amendment and thank my colleagues for offering it in my
1273 absence.

1274 Thank you.

1275 Mr. Nadler. Reclaiming my time, I thank the gentleman
1276 for his leadership, and I ask unanimous consent that his
1277 name be added to the amendment.

1278 Mr. Franks. Without objection.

1279 Mr. Nadler. Thank you. I yield back.

1280 Mr. Franks. And I will now recognize myself for 5
1281 minutes to oppose the amendment.

1282 It is important to try to come back to earth here a
1283 little bit. The foundational purpose of this bill is to
1284 protect unborn children as they are going into the sixth
1285 month of gestation, pain-capable babies, except wherein --
1286 and this is in the bill -- in reasonable medical judgment,
1287 the abortion is necessary to save the life of a pregnant
1288 woman whose life is endangered by a physical disorder,
1289 physical illness, or physical injury.

1290 The amendment should be rejected, as any additional text

1291 that allows a broader health exception in the bill will
1292 allow circumventions, when even the Supreme Court, it would
1293 allow abortionists to bring definitions to it that are
1294 beyond what we can recognize here. Even the Supreme Court
1295 has never required such an exception as envisioned in this
1296 amendment.

1297 It is important to note also that in Roe v. Wade, we
1298 oftentimes forget the companion decision, Doe v. Bolton,
1299 where there was a health exception, and that was
1300 extrapolated into abortion on demand in this country and
1301 gave rise to monsters like Kermit Gosnell. So it is
1302 significant that we want to write this exception carefully.

1303 It also is the same type of language as we used in the
1304 partial-birth abortion ban, and I would just urge rejection
1305 of this amendment and would ask if anyone else seeks
1306 recognition?

1307 Ms. DelBene. Mr. Chair? I move to strike the last
1308 word.

1309 Mr. Franks. The gentlelady is recognized.

1310 Ms. DelBene. Thank you, Mr. Chairman.

1311 I am a cosponsor of this amendment and strongly support

1312 it. I also reject the underlying legislation and believe
1313 that all members of this committee should oppose this
1314 legislation.

1315 I am disappointed that the consideration of women's
1316 health and medical safety needs have largely been absent
1317 from the ongoing conversation. All too often, women's
1318 voices are not heard, and we must not forget that this
1319 legislation will impact the lives of real women across the
1320 country.

1321 When I read through Section 2 of the legislation, I
1322 noticed there were 14 legislative findings, none of which
1323 included any mention of Congress' role in protecting the
1324 health and lives of pregnant women. I am pleased to
1325 cosponsor this amendment with Representative Nadler to
1326 ensure that in line with Roe v. Wade and longstanding
1327 Supreme Court precedent, abortion is permitted where
1328 necessary to protect the woman's life or health.

1329 This amendment reaffirms a basic premise of Roe v. Wade
1330 and longstanding Supreme Court precedent regarding access to
1331 safe and legal abortion.

1332 I think we should all be able to agree that Congress has

1333 a critical role to play in supporting women's health.
1334 Rather than focusing on this dangerous legislation, Congress
1335 should be protecting and investing in programs that are
1336 needed to ensure that all women, regardless of income or
1337 background, can access affordable care that they need to
1338 have healthier pregnancies.

1339 Instead, H.R. 1797 is a direct challenge to the
1340 protection of women's health that the Supreme Court provided
1341 in Roe v. Wade. H.R. 1797 bans abortions necessary to
1342 protect a woman's health and fails to recognize that many
1343 things can go wrong during a pregnancy. A woman's health
1344 could be at risk in ways that doctors, not Congress, are in
1345 the best position to evaluate.

1346 And H.R. 1797 would force a woman and her doctor to wait
1347 until her condition was terminal to finally act to protect
1348 her health, but by then, it may be too late. This
1349 restriction is not only unconscionable, it is
1350 unconstitutional.

1351 For four decades, the U.S. Supreme Court has recognized
1352 that Congress must make exceptions that permit abortion when
1353 necessary to protect a woman's health or life. So when we

1354 focus on legislation that comes between women and their
1355 doctors, we are allowing Congress, instead of doctors, to
1356 set medical protocol.

1357 We should all be concerned that women's health and
1358 medical safety needs are being ignored by this bill and will
1359 leave doctors unable to provide their patients with the best
1360 quality of care. H.R. 1797 fails women and their families,
1361 and I urge my colleagues to support this amendment to
1362 protect women's health.

1363 And I yield back.

1364 Mr. Franks. Are there any others seeking recognition?

1365 Ms. Jackson Lee. Mr. Chairman?

1366 Mr. Franks. The gentlelady from Texas is recognized for
1367 5 minutes.

1368 Ms. Jackson Lee. Thank you, Mr. Chairman.

1369 As I indicated, I am feeling a little bit of nostalgia
1370 or déjà vu, being reminded of some many, many days and weeks
1371 and years of this similar debate. I am almost reminded of
1372 the time when Pat Schroeder was on this committee. For
1373 those of you who want to check your history books, she was
1374 one of the first women to serve on the Judiciary Committee.

1375 And I remember the weeks that we engaged in this debate
1376 on what then was called the partial-birth abortion, which,
1377 in actuality, was a medical procedure that was done to, as
1378 Mr. Nadler's amendment, to impact on the health of the woman
1379 as well as the life.

1380 And I hope that maybe we would find common ground in
1381 this effort. I would hope that it would not be
1382 characterized as gutting the bill. In fact, I would like us
1383 not to talk in those terms.

1384 What we are trying to do, frankly, is a combination of
1385 interpreting what is constitutional law and the right to
1386 privacy, but then we are giving ourselves an immediate, if
1387 you will, medical degree. We are also putting ourselves in
1388 the feet, the heart, the mind, the body of a woman who has
1389 to make a very difficult and tragic decision. With that, we
1390 will cast aside possibly an amendment that has value to it
1391 because it speaks to an exception on the life or health of
1392 the mother.

1393 We already can accept or hopefully accept the idea that
1394 we are dealing with constitutional law, and that law has not
1395 been overturned. But I have tried to emphasize, for those

1396 of us who have daughters, those of us who have been women
1397 all of our lives, those of us who have mothers and
1398 grandmothers and friends, I just find it troubling to not
1399 want to provide exemptions or exceptions, excuse me, in an
1400 instance where we cannot articulate with the reality of our
1401 existence why we should block an exception on the basis of
1402 the life or health of the mother.

1403 First of all, we know that most abortions occur within
1404 21 weeks gestation. I am not pro abortion. I don't know
1405 anyone else wants to walk around trying to wave that flag.
1406 I am for the prayerful, personal decision of a woman. If
1407 that is called pro choice, I stand willingly and ably to say
1408 I am pro choice.

1409 I am also, I believe, an adherent to the Constitution,
1410 and again, this provides a great deal of difficulty, an
1411 emotional difficulty. And I have said to my friend who is
1412 now sitting in the chairman's seat I have no disdain or
1413 disregard for the concern that the underpinnings of this
1414 legislation is to offer.

1415 Associate myself with Mr. Nadler's position and to
1416 exercise the criminal authority for those who would violate

1417 that, such as what occurred in this Pennsylvania doctor,
1418 tragic situation, heinous situation. But I believe that we
1419 are constraining and not helping if we do not deliberate and
1420 do a legislative fix in the manner in which would be fitting
1421 of individuals who are given the responsibility of upholding
1422 the Constitution, which declares the right to privacy, but
1423 also can act with their heart and can be reminded, Mr.
1424 Chairman, that all of us sit here with our individual faith.

1425 And no one's faith should be challenged. Faith or not
1426 faith should not be challenged because no one can determine
1427 anyone's faith or relationship with their beliefs.

1428 So I am concerned that we not give the gentleman's
1429 amendment due consideration. I rise to support Mr. Nadler's
1430 amendment with the exemption on situations threatening the
1431 life or health of the woman.

1432 I ask my colleagues prayerfully to support the
1433 amendment. I yield back.

1434 Mr. Franks. Are there any others who seek recognition?

1435 If not, the question occurs on the amendment.

1436 Those who are in favor will say aye.

1437 Those opposed, no.

1438 Are there other amendments?

1439 Mr. Nadler. You didn't announce the result.

1440 Mr. Franks. The noes have it.

1441 Mr. Nadler. I would like a roll call vote.

1442 Mr. Franks. Okay. Sorry. The secretary will please
1443 call the roll.

1444 Ms. Deterding. Mr. Goodlatte?

1445 [No response.]

1446 Ms. Deterding. Mr. Sensenbrenner?

1447 Mr. Sensenbrenner. No.

1448 Ms. Deterding. Mr. Sensenbrenner votes no.

1449 Mr. Coble?

1450 Mr. Coble. No.

1451 Ms. Deterding. Mr. Coble votes no.

1452 Mr. Smith from Texas?

1453 [No response.]

1454 Ms. Deterding. Mr. Chabot?

1455 Mr. Chabot. No.

1456 Ms. Deterding. Mr. Chabot votes no.

1457 Mr. Bachus?

1458 Mr. Bachus. No.

1459 Ms. Deterding. Mr. Bachus votes no.
1460 Mr. Issa?
1461 [No response.]
1462 Ms. Deterding. Mr. Forbes?
1463 Mr. Forbes. No.
1464 Ms. Deterding. Mr. Forbes votes no.
1465 Mr. King?
1466 [No response.]
1467 Ms. Deterding. Mr. Franks?
1468 Mr. Franks. No.
1469 Ms. Deterding. Mr. Franks votes no.
1470 Mr. Gohmert?
1471 [No response.]
1472 Ms. Deterding. Mr. Jordan?
1473 Mr. Jordan. No.
1474 Ms. Deterding. Mr. Jordan votes no.
1475 Mr. Poe?
1476 [No response.]
1477 Ms. Deterding. Mr. Chaffetz?
1478 [No response.]
1479 Ms. Deterding. Mr. Marino?

1480 [No response.]

1481 Ms. Deterding. Mr. Gowdy?

1482 Mr. Gowdy. No.

1483 Ms. Deterding. Mr. Gowdy votes no.

1484 Mr. Amodei?

1485 [No response.]

1486 Ms. Deterding. Mr. Labrador?

1487 [No response.]

1488 Ms. Deterding. Mr. Farenthold?

1489 Mr. Farenthold. No.

1490 Ms. Deterding. Mr. Farenthold votes no.

1491 Mr. Holding?

1492 Mr. Holding. No.

1493 Ms. Deterding. Mr. Holding votes no.

1494 Mr. Collins?

1495 Mr. Collins. No.

1496 Ms. Deterding. Mr. Collins votes no.

1497 Mr. DeSantis?

1498 Mr. DeSantis. No.

1499 Ms. Deterding. Mr. DeSantis votes no.

1500 Mr. Conyers?

1501 Mr. Conyers. Aye.

1502 Ms. Deterding. Mr. Conyers votes aye.

1503 Mr. Nadler?

1504 Mr. Nadler. Aye.

1505 Ms. Deterding. Mr. Nadler votes aye.

1506 Mr. Scott?

1507 Mr. Scott. Aye.

1508 Ms. Deterding. Mr. Scott votes aye.

1509 Mr. Watt?

1510 Mr. Watt. Aye.

1511 Ms. Deterding. Mr. Watt votes aye.

1512 Ms. Lofgren?

1513 Ms. Lofgren. Aye.

1514 Ms. Deterding. Ms. Lofgren votes aye.

1515 Ms. Jackson Lee?

1516 Ms. Jackson Lee. Aye.

1517 Ms. Deterding. Ms. Jackson Lee votes aye.

1518 Mr. Cohen?

1519 Mr. Cohen. Aye.

1520 Ms. Deterding. Mr. Cohen votes aye.

1521 Mr. Johnson?

1522 Mr. Johnson. Aye.

1523 Ms. Deterding. Mr. Johnson votes aye.

1524 Mr. Pierluisi?

1525 Mr. Pierluisi. Aye.

1526 Ms. Deterding. Mr. Pierluisi votes aye.

1527 Ms. Chu?

1528 [No response.]

1529 Ms. Deterding. Mr. Deutch?

1530 Mr. Deutch. Aye.

1531 Ms. Deterding. Mr. Deutch votes aye.

1532 Mr. Gutierrez?

1533 Mr. Gutierrez. Aye.

1534 Ms. Deterding. Mr. Gutierrez votes aye.

1535 Ms. Bass?

1536 [No response.]

1537 Ms. Deterding. Mr. Richmond?

1538 Mr. Richmond. Aye.

1539 Ms. Deterding. Mr. Richmond votes aye.

1540 Ms. DelBene?

1541 Ms. DelBene. Aye.

1542 Ms. Deterding. Ms. DelBene votes aye.

1543 Mr. Garcia?

1544 Mr. Garcia. Aye.

1545 Ms. Deterding. Mr. Garcia votes aye.

1546 Mr. Jeffries?

1547 Mr. Jeffries. Aye.

1548 Ms. Deterding. Mr. Jeffries votes aye.

1549 Chairman Goodlatte. [Presiding] How am I recorded?

1550 Ms. Deterding. Not recorded.

1551 Chairman Goodlatte. I vote no.

1552 Ms. Deterding. Mr. Goodlatte votes no.

1553 Chairman Goodlatte. The gentleman from Texas, Mr.

1554 Smith?

1555 Mr. Smith of Texas. Mr. Chairman, I vote no.

1556 Chairman Goodlatte. The gentleman from Texas, Mr. Poe?

1557 Mr. Poe. No.

1558 Chairman Goodlatte. The gentleman from Utah?

1559 Mr. Chaffetz. No.

1560 Chairman Goodlatte. The gentleman from California?

1561 Mr. Issa. No.

1562 Chairman Goodlatte. The gentleman from Iowa?

1563 Mr. King. No.

1564 Chairman Goodlatte. The gentleman from Texas?

1565 Mr. Gohmert. No.

1566 Chairman Goodlatte. The gentlewoman from California,

1567 Ms. Bass?

1568 Ms. Bass. Aye.

1569 Chairman Goodlatte. Are there other Members who are

1570 seeking -- yes, the gentleman from Pennsylvania?

1571 Mr. Marino. No.

1572 Chairman Goodlatte. Is there any Member who has not

1573 voted who wishes to vote?

1574 [No response.]

1575 Chairman Goodlatte. The clerk will report.

1576 [Pause.]

1577 Ms. Deterding. Mr. Chairman, 16 Members voted aye; 20

1578 Members voted nay.

1579 Chairman Goodlatte. And the amendment is not agreed to.

1580 Are there further amendments? The gentlewoman from

1581 Texas, for what purpose do you seek recognition?

1582 Ms. Jackson Lee. Mr. Chairman, I have an amendment at

1583 the desk, amendment number 1.

1584 Chairman Goodlatte. The clerk will report the

1585 amendment.

1586 Ms. Deterding. Amendment to the subcommittee amendment
1587 in the nature of a substitute to H.R. 1797, offered by Ms.
1588 Jackson Lee.

1589 Chairman Goodlatte. Without objection, the amendment is
1590 considered as read.

1591 [The amendment of Ms. Jackson Lee follows:]

1592

1593 Chairman Goodlatte. And the gentlewoman is recognized
1594 for 5 minutes to explain her amendment.

1595 Ms. Jackson Lee. I thank the chairman, and I thank the
1596 ranking member as well.

1597 And I ask my colleagues to view this as an effort at
1598 compromise. I indicated in Mr. Nadler's amendment, which
1599 spoke to the general life or health of the woman. In this
1600 instance, I am pointing out to my colleagues that there are
1601 certain known illnesses that sometimes plagues a woman
1602 during pregnancy.

1603 And I would ask my colleagues in this instance to
1604 consider the exception that has to do with lung disease,
1605 heart disease, or diabetes. Diabetes can kill, and it can
1606 be exacerbated by being pregnant. Pulmonary hypertension,
1607 abnormally high blood pressure in the arteries or the lungs
1608 that can cause heart failure.

1609 Marfan syndrome, a genetic disorder affecting the
1610 connective tissues that lead to a ruptured aorta. Severe
1611 valvular heart disease. Severe narrowing or the obstruction
1612 of the heart valves that may be indicative of a pregnancy.

1613 Heart defects, sensitive cancers, and kidney disease,

1614 but in particular the impact on the lung and the heart and
1615 the idea of diabetes, which can lead to a number of
1616 extensive diseases.

1617 As I indicated, I would hope that the idea of life and
1618 health would have an impact on our colleagues, but I
1619 certainly know that one can document that when women are
1620 pregnant they are plagued with more sensitivity to a number
1621 of life-threatening illnesses, those dealing with the lung,
1622 those dealing with disease. In fact, there is an
1623 advertisement that has been on national television that
1624 indicated a woman who had delivered a child had an immediate
1625 heart attack.

1626 This is not an issue without substance. So, again, I
1627 would ask my colleagues to accept the compromise that
1628 narrowly focused on lung disease, heart disease, and
1629 diabetes. Diabetes can lead to a stroke and coma and,
1630 therefore, impacts the pregnant woman. And it may be on the
1631 basis of a doctor's decision that warrants the procedure
1632 that would call for a termination of pregnancy.

1633 Again, I know that, as I indicated, there is a limited
1634 experience on this panel of those who may have actually

1635 given birth. I don't suggest that there is not passion nor
1636 compassion. I would never suggest that.

1637 I also don't want to have those of us who believe that
1638 there should be exemptions to, in any way again, not have
1639 the compassion for understanding heinous acts, illegal acts.
1640 That is why this amendment is important.

1641 Why are we criminalizing a woman who needs a medical
1642 procedure? We shouldn't have done it 10 years ago, 5 years
1643 ago. We shouldn't have done it under Roe v. Wade, and we
1644 should not be doing it now. This is a health matter that
1645 someone prayerfully has to make a decision.

1646 I ask my colleagues to support the Jackson Lee
1647 amendment. I yield back.

1648 Chairman Goodlatte. The chair thanks the gentlewoman.

1649 For what purpose does the gentleman from Arizona seek
1650 recognition?

1651 Mr. Franks. I seek recognition to oppose the amendment,
1652 Mr. Chairman.

1653 Chairman Goodlatte. The gentleman is recognized for 5
1654 minutes.

1655 Mr. Franks. Mr. Chairman, I oppose this amendment for

1656 much the same reason as I opposed the previous amendment.
1657 But let me, if I could, just remind the Members that the
1658 gentlelady's comment that somehow we are criminalizing the
1659 woman here is completely incorrect. The bill specifically
1660 does nothing to criminalize the mother in this situation.
1661 It is laid out very clearly.

1662 The base bill already provides a clear exception from
1663 the bill's provisions for "life-endangering physical
1664 conditions," which would, of course, include lung disease
1665 and heart disease. Further evidence from medical experts
1666 demonstrates that modern medicine can successfully treat
1667 complications of pregnancy that fall short of the physical
1668 conditions specified in H.R. 1797 without resorting to
1669 taking the life of the child. And again, the bill's current
1670 exceptions have been upheld by the Supreme Court.

1671 Finally, this amendment that is being offered, Mr.
1672 Chairman, doesn't exclude emotional conditions, and any
1673 exception for psychological or emotional conditions could
1674 clearly be subject to great abuse, just as such exceptions
1675 to general abortion bans were grossly abused in California
1676 and elsewhere prior to the Supreme Court's decision in Roe

1677 v. Wade.

1678 An unborn child in danger of painful dismembering, the
1679 life of that child should be weighed in the balance here as
1680 well as protecting those that might be subject to
1681 psychological problems, and I would urge the rejection of
1682 this amendment.

1683 Ms. Jackson Lee. Would the gentleman yield?

1684 Mr. Franks. I would yield.

1685 Ms. Jackson Lee. I thank the gentleman, and my, if you
1686 will, discussion, I understand the premise in the bill,
1687 provision in the bill. But it engages the woman with an
1688 individual physician that would be charged with a criminal
1689 act on a medical procedure and, therefore, criminalizes the
1690 desire of the woman or the health, the need of the woman to
1691 pursue this kind of procedure.

1692 Mr. Franks. Well, just reclaiming my time, it doesn't
1693 criminalize the desire or anything like that for the mother.
1694 It doesn't criminalize anything related to the mother. It
1695 would only criminalize the doctor who essentially takes her
1696 money and does the process.

1697 That is where the bill is aimed at. It doesn't do

1698 anything to criminalize the mother. And I would -- please.

1699 Please. I would yield.

1700 Ms. Jackson Lee. I thank you.

1701 And I am looking at the bill, and I do want to clarify
1702 that the way the bill is written, it says "including a life-
1703 endangering physical condition caused or arising from the
1704 pregnancy itself." And that is a narrow interpretation that
1705 could be corrected by the Jackson Lee amendment,
1706 particularly as it relates to lung disease and to heart
1707 disease and to diabetes.

1708 And let me just say none of us are adhering to
1709 dismembering. This is about a necessity in terms of
1710 protecting the life, in this instance, the health of a
1711 mother. And I would ask my colleague to join me in
1712 supporting it.

1713 I yield back to the gentleman.

1714 Mr. Franks. Mr. Chairman, I would just repeat and say
1715 that this bill is about preventing the dismembering of
1716 children. That is what it is about, and it has an exception
1717 for life-endangering physical conditions, which would
1718 include a lung disease and heart disease mentioned in the

1719 gentlelady's amendment.

1720 And with that, I would ask Members to reject the
1721 amendment and yield back.

1722 Chairman Goodlatte. Who seeks recognition?

1723 [No response.]

1724 Chairman Goodlatte. The chair notes that a number of
1725 Members have various luncheon obligations, and it is good
1726 for everybody to have lunch. So the committee will stand in
1727 recess until 1:00 p.m.

1728 Ms. Jackson Lee. Mr. Chairman, can we vote on this
1729 amendment, please?

1730 Chairman Goodlatte. We will vote on it when we return
1731 and see if other Members wish to participate in the debate.

1732 The committee will stand in recess.

1733 [Whereupon, at 12:00 p.m., the committee recessed, to
1734 reconvene at 1:00 p.m., the same day.]

1735 Chairman Goodlatte. The committee will reconvene.

1736 When we recessed, we were considering the amendment
1737 offered by the gentlewoman from Texas, Ms. Jackson Lee.

1738 Are there further members seeking recognition?

1739 I will recognize myself, and yield to the gentleman from

1740 Arizona, Mr. Franks.

1741 Mr. Franks. Thank you, Mr. Chairman.

1742 Mr. Chairman, I just wanted to point out something that
1743 one of my colleagues on the other side had said.

1744 Oftentimes, we forget that the simple understanding of a
1745 bill here is what we should really be focused on. And this
1746 bill, essentially, very simply, says that we are going to
1747 protect unborn children beginning at the sixth month of
1748 pregnancy. And we have an exception in there for the life
1749 of the mother, as we have discussed.

1750 But my friends on the other side constantly want to try
1751 to inject the rape/incest question always into the debate.
1752 That has gone back as far as Roe v. Wade, when Sarah
1753 Weddington and other attorneys tried to inject that question
1754 into the case. They encouraged Norma McCorvey to say that
1755 she was raped, to falsely say that she was raped.

1756 And ever since then, they have been trying to inject
1757 that issue, whether it belongs in the discussion or not.

1758 And the point is, Mr. Chairman, is this bill does
1759 nothing to restrict abortions performed before the beginning
1760 of the six months. The bill does not address unborn

1761 children in earlier gestations.

1762 And just to make clear my point earlier, pregnancies
1763 from rape that result in abortion after the beginning of the
1764 sixth month are very rare. That is a matter of fact.

1765 And for my friends to inject that into the debate
1766 always, when at the beginning of sixth month that has become
1767 sort of a moot point. Whatever the decision there should
1768 have been made long prior to that gestation.

1769 And with that, Mr. Chairman, I would just hope that my
1770 comments would be heard in the spirit that they are offered.

1771 Mr. Conyers. Mr. Chairman?

1772 Ms. Lofgren. Mr. Chairman?

1773 Chairman Goodlatte. Reclaiming my time, I thank the
1774 gentleman for his comments. And I would join him in his
1775 observation, and urge my colleagues to oppose this amendment
1776 and to support the bill.

1777 For what purpose does the gentleman from Michigan seek
1778 recognition?

1779 Mr. Conyers. I don't know. I thought this was an ad
1780 hominem observation on the part of our colleague, and I
1781 didn't realize that we were in the middle of completing an

1782 amendment.

1783 Chairman Goodlatte. You are entitled to be --

1784 Ms. Lofgren. Will the gentleman yield?

1785 Chairman Goodlatte. I would be happy to yield to the
1786 gentlewoman from California.

1787 Ms. Lofgren. I would just like to note that the
1788 suggestion that rape rarely leads to pregnancy has no basis
1789 in science or fact.

1790 Mr. Franks. And I would just like to point out that I
1791 never made such a suggestion.

1792 Ms. Lofgren. Reclaiming my time, you just set it again.
1793 And, you know, you are entitled to your opinion --

1794 Chairman Goodlatte. Reclaiming my time, what the
1795 gentleman said was that there were few abortions performed
1796 after the beginning of the sixth month of pregnancy that
1797 were related to rape. It is not that pregnancy didn't --

1798 Ms. Jackson Lee. Will the gentleman yield? Will the
1799 gentleman yield?

1800 Chairman Goodlatte. -- from rape.

1801 I would be happy to yield.

1802 Ms. Jackson Lee. Will the gentleman yield?

1803 I am looking forward to a vote on this amendment, but
1804 what I would just say, Mr. Chairman, is that the members on
1805 the side of the aisle didn't write any stories.

1806 I do think it is unfortunate for any of us to take a
1807 high road -- when I say "high road," a one-upmanship on
1808 rape.

1809 I asked the question, does anyone raise their hand if
1810 they have been raped at this table? It is obviously a
1811 private issue. Some may not have wanted to raise their
1812 hand.

1813 But the point is, there was amendment to try to make
1814 this bill better. And I don't believe we need to try to
1815 document what percentage there are if it is not vested in
1816 science, because it is speculation.

1817 I ask my colleagues to vote for the Jackson Lee
1818 amendment. I yield back.

1819 Chairman Goodlatte. Reclaiming my time, let me just
1820 say, again, to the gentlewoman that the concerns that many
1821 of us have with regard to the amendment offered by the
1822 gentleman from Michigan is that, if you are the victim of a
1823 rape, and you are certainly entitled under the law to seek

1824 an abortion, that by the time child has reached the stage
1825 where it is capable of experiencing pain in the fifth and
1826 sixth month or beyond, that the justification for having
1827 that exception, in my opinion and I think the opinion of
1828 many others, no longer exists, because you had 5 months to
1829 have taken action and had chosen not to do so. So to choose
1830 to do so late in the pregnancy is, in my opinion, not
1831 something deserving of the additional protection offered by
1832 the gentleman from Michigan.

1833 For what purpose does the gentleman from New York seek
1834 recognition?

1835 Mr. Nadler. To strike the last word.

1836 Chairman Goodlatte. The gentleman is recognized for 5
1837 minutes.

1838 Mr. Nadler. Thank you, Mr. Chairman.

1839 I just want to get some facts straight here on the
1840 record.

1841 Number one, the direct quote, "Before when my friends on
1842 the left side of the aisle here tried to make rape and
1843 incest the subject -- because, you know, the incidents of
1844 rape resulting in pregnancy are very low," Franks said. So

1845 that was the statement.

1846 Now, the fact of the matter is, and I return to it
1847 because I just want to make the record clear that it is not
1848 true. A 2003 study from St. Lawrence University found that
1849 pregnancy results from rape significantly more often than it
1850 does in other cases. A 2011 study from San Francisco State
1851 University found that, in Colombia, "female youth who have
1852 experienced sexual violence report significantly higher
1853 levels of unintended pregnancy, an unmet need for
1854 contraception, and lower levels of current modern
1855 contraceptive use compared to those who have not experienced
1856 sexual violence."

1857 So I just want to say that we keep hearing different
1858 versions of the "rape doesn't result in pregnancy," or
1859 rarely results in pregnancy. It is simply not true. In
1860 fact, the converse seems to be true, according to a number
1861 of studies.

1862 And I hope we won't hear any more of these falsehoods.

1863 I yield back.

1864 Mr. Franks. Mr. Chairman, just briefly, I just want to
1865 point out the gentleman is offering a completely different

1866 question. The question is at the sixth month or beginning
1867 of --

1868 Chairman Goodlatte. If the gentleman would suspend, for
1869 what purpose does the gentleman from Virginia seek
1870 recognition?

1871 Mr. Forbes. Move to strike the last word.

1872 Chairman Goodlatte. The gentleman is recognized for 5
1873 minutes.

1874 Mr. Forbes. Chairman, I would like to yield to the
1875 gentleman from Arizona.

1876 Mr. Franks. Thank you, Mr. Chairman. I apologize for
1877 speaking out of turn.

1878 I just want to point out that the gentleman from New
1879 York is talking about a completely different question. We
1880 are talking about the questions here surrounding this bill,
1881 which is protecting unborn children at the beginning of the
1882 sixth month.

1883 And I would associate myself with the remarks of the
1884 chairman as to why that the question we were discussing
1885 really becomes a moot point at that juncture.

1886 So I would yield back. Thank you, Mr. Chairman.

1887 Mr. Forbes. Mr. Chairman, I yield back.

1888 Chairman Goodlatte. Thank the gentleman.

1889 For what purpose does the gentleman from Georgia seek
1890 recognition?

1891 Mr. Johnson. Move to strike the last word.

1892 Chairman Goodlatte. The gentleman is recognized for 5
1893 minutes.

1894 Mr. Johnson. Mr. Chairman, I have been pondering this,
1895 since the hearing began. I was waiting on the female
1896 members of the Judiciary Committee on the Republican side to
1897 appear. So I was going to comment about that, but I have,
1898 to my horror, just looked at the names of all the Democrats
1899 and all of the Republicans that are on this committee, and I
1900 see that, of the 17 Democrats on the committee, there are
1901 five females, and of the 23 members of the Republican side
1902 of the aisle on this committee, zero -- zero -- females.

1903 This is a glaring deficiency in the caucus on the other
1904 side. No women, period. This is 2013. Not one single
1905 Republican female on the Judiciary Committee, which is
1906 engaged in what I have always referred to as a war on women
1907 that continues up to this very day. This is crazy.

1908 And I would yield to anyone who wants to respond.

1909 Mr. Gowdy?

1910 Mr. Gowdy. Well, I will just say this, Mr. Johnson. I
1911 just wrote down four names: Mia Love, Nan Hayworth, Ann
1912 Buerkle, and Mary Bono Mack. Maybe if you wouldn't target
1913 our women for defeat in the general elections, we might have
1914 some on the Judiciary.

1915 [Laughter.]

1916 Mr. Johnson. Well, I am not going to comment about
1917 that.

1918 [Laughter.]

1919 Mr. Johnson. But I will say that it continues to be a
1920 glaring deficiency on this panel, because we have plenty of
1921 Republican women in Congress -- not plenty of them, but we
1922 certainly have some. And not a single one could be
1923 encouraged to be appointed to this committee? It is just
1924 kind of strange.

1925 And this is the committee that has been steadily at work
1926 like a termite in this war on women. It is just really -- I
1927 mean, now the women on this side of the aisle are taking up
1928 for the women. And I think they are doing an admirable job.

1929 The comment or the question that my colleague from Texas
1930 asked earlier about who over there has actually been -- what
1931 was it? Who has been raped? What does it feel like, you
1932 know, mentally and physically?

1933 I mean, folks over here, you don't know, you have no
1934 idea what these women have to go through.

1935 And I just beg you for some compassion on this issue.
1936 Even the mental well-being of a female who would fall under
1937 the auspices of this legislation would not be considered.
1938 Her mental or emotional health would not even be considered
1939 important for purposes of an exclusion from the powers of
1940 this bill. And it is just very callous.

1941 With that, I will --

1942 Chairman Goodlatte. Would the gentleman yield?

1943 Mr. Johnson. Yes, I will.

1944 Chairman Goodlatte. We are begging you and others on
1945 your side of the aisle to show compassion for unborn
1946 children who are capable of experiencing pain. You don't
1947 think that is a compassionate cause that we are undertaking
1948 here?

1949 Mr. Johnson. Well, if I may reclaim my time, you are

1950 talking about unborn fetuses. You are not talking about
1951 unborn children.

1952 Now, whether or not they are at the point where they are
1953 viable or not, they can sustain life on their own, I think
1954 that is the question. This, as well as all of the other
1955 measures that you have put in place, or that you have sought
1956 to propose, are chipping away at a woman's right to choose.
1957 And that is very important.

1958 I know we might disagree with it, but that is the law of
1959 the land. And I think that it was a very wise decision that
1960 some folks will not let it rest. And I respect that.

1961 But this is why the elections of people to represent the
1962 people are so important. If you don't have any women
1963 representing women, then the women -- there is going to be a
1964 war on women.

1965 Chairman Goodlatte. The time of the gentleman has
1966 expired.

1967 [Laughter.]

1968 Ms. Jackson Lee. I call the question.

1969 Chairman Goodlatte. The question occurs on the
1970 amendment offered by the gentlewoman from Texas.

1971 All those in favor, respond by saying aye.

1972 Those opposed, no.

1973 In the opinion of the chair, the noes have it. The
1974 amendment is not agreed to.

1975 Are there further amendments?

1976 A reporting quorum being present, the question is on
1977 reporting the bill, as amended, favorably to the House.

1978 Those in favor will say aye.

1979 Those opposed, no.

1980 In the opinion of the chair, the ayes have it, and the
1981 bill is ordered reported.

1982 And a recorded vote is requested, and the clerk will
1983 call the roll.

1984 Ms. Deterding. Mr. Goodlatte?

1985 Chairman Goodlatte. Aye.

1986 Ms. Deterding. Mr. Goodlatte votes aye.

1987 Mr. Sensenbrenner?

1988 Mr. Sensenbrenner. Aye.

1989 Ms. Deterding. Mr. Sensenbrenner votes aye.

1990 Mr. Coble?

1991 Mr. Coble. Aye.

1992 Ms. Deterding. Mr. Coble votes aye.

1993 Mr. Smith from Texas?

1994 [No response.]

1995 Ms. Deterding. Mr. Chabot?

1996 Mr. Chabot. Aye.

1997 Ms. Deterding. Mr. Chabot votes aye.

1998 Mr. Bachus?

1999 Mr. Bachus. Aye.

2000 Ms. Deterding. Mr. Bachus votes aye.

2001 Mr. Issa?

2002 [No response.]

2003 Ms. Deterding. Mr. Forbes?

2004 Mr. Forbes. Aye.

2005 Ms. Deterding. Mr. Forbes votes aye.

2006 Mr. King?

2007 [No response.]

2008 Ms. Deterding. Mr. Franks?

2009 Mr. Franks. Aye.

2010 Ms. Deterding. Mr. Franks votes aye.

2011 Mr. Gohmert?

2012 [No response.]

2013 Ms. Deterding. Mr. Jordan?

2014 Mr. Jordan. Yes.

2015 Ms. Deterding. Mr. Jordan votes aye.

2016 Mr. Poe?

2017 Mr. Poe. Yes.

2018 Ms. Deterding. Mr. Poe votes aye.

2019 Mr. Chaffetz?

2020 Mr. Chaffetz. Aye.

2021 Ms. Deterding. Mr. Chaffetz votes aye.

2022 Mr. Marino?

2023 Mr. Marino. Yes.

2024 Ms. Deterding. Mr. Marino votes aye.

2025 Mr. Gowdy?

2026 Mr. Gowdy. Yes.

2027 Ms. Deterding. Mr. Gowdy votes aye.

2028 Mr. Amodei?

2029 [No response.]

2030 Ms. Deterding. Mr. Labrador?

2031 [No response.]

2032 Ms. Deterding. Mr. Farenthold?

2033 Mr. Farenthold. Aye.

2034 Ms. Deterding. Mr. Farenthold votes aye.

2035 Mr. Holding?

2036 Mr. Holding. Aye.

2037 Ms. Deterding. Mr. Holding votes aye.

2038 Mr. Collins?

2039 Mr. Collins. Aye.

2040 Ms. Deterding. Mr. Collins votes aye.

2041 Mr. DeSantis?

2042 Mr. DeSantis. Aye.

2043 Ms. Deterding. Mr. DeSantis votes aye.

2044 Mr. Smith from Missouri?

2045 [No response.]

2046 Ms. Deterding. Mr. Conyers?

2047 Mr. Conyers. No.

2048 Ms. Deterding. Mr. Conyers votes no.

2049 Mr. Nadler?

2050 Mr. Nadler. No.

2051 Ms. Deterding. Mr. Nadler votes no.

2052 Mr. Scott?

2053 Mr. Scott. No.

2054 Ms. Deterding. Mr. Scott votes no.

2055 Mr. Watt?

2056 Mr. Watt. No.

2057 Ms. Deterding. Mr. Watt votes no.

2058 Ms. Lofgren?

2059 Ms. Lofgren. No.

2060 Ms. Deterding. Ms. Lofgren votes no.

2061 Ms. Jackson Lee?

2062 Ms. Jackson Lee. No.

2063 Ms. Deterding. Ms. Jackson Lee votes no.

2064 Mr. Cohen?

2065 [No response.]

2066 Ms. Deterding. Mr. Johnson?

2067 Mr. Johnson. No.

2068 Ms. Deterding. Mr. Johnson votes no.

2069 Mr. Pierluisi?

2070 Mr. Pierluisi. Yes.

2071 Ms. Deterding. Mr. Pierluisi votes aye.

2072 Ms. Chu?

2073 [No response.]

2074 Ms. Deterding. Mr. Deutch?

2075 [No response.]

2076 Ms. Deterding. Mr. Gutierrez?

2077 Mr. Gutierrez. No.

2078 Ms. Deterding. Mr. Gutierrez votes no.

2079 Ms. Bass?

2080 Ms. Bass. No.

2081 Ms. Deterding. Ms. Bass votes no.

2082 Mr. Richmond?

2083 [No response.]

2084 Ms. Deterding. Ms. DelBene?

2085 Ms. DelBene. No.

2086 Ms. Deterding. Ms. DelBene votes no.

2087 Mr. Garcia?

2088 Mr. Garcia. No.

2089 Ms. Deterding. Mr. Garcia votes no.

2090 Mr. Jeffries?

2091 [No response.]

2092 Chairman Goodlatte. The gentleman from Tennessee?

2093 Mr. Cohen. How am I recorded?

2094 Ms. Deterding. Not recorded.

2095 Mr. Cohen. Surprise, surprise. No.

2096 Ms. Deterding. Mr. Cohen votes no.

2097 Chairman Goodlatte. The gentleman from California?

2098 Mr. Issa. Yes.

2099 Ms. Deterding. Mr. Issa votes aye.

2100 Chairman Goodlatte. The gentleman from Iowa?

2101 Mr. King. Aye.

2102 Ms. Deterding. Mr. King votes aye.

2103 Mr. Scott. Mr. Chairman, I think we have another member

2104 around the corner.

2105 Chairman Goodlatte. The gentleman from Idaho?

2106 Mr. Labrador. Yes.

2107 Ms. Deterding. Mr. Labrador votes aye.

2108 Chairman Goodlatte. The clerk will report.

2109 Mr. Johnson. Mr. Chairman?

2110 Chairman Goodlatte. For what purpose does the gentleman

2111 from Georgia seek recognition?

2112 Mr. Johnson. Well, I have been thinking about this for

2113 a while, and I am just kind of wanting to find out, because

2114 I don't know if you all have me recorded or not. How am I

2115 recorded?

2116 Ms. Deterding. Mr. Johnson votes no.

2117 Mr. Johnson. I am thinking about whether or not I want

2118 to change that.

2119 Chairman Goodlatte. The clerk will report.

2120 Mr. Nadler. Mr. Chairman?

2121 Chairman Goodlatte. For what purpose does the gentleman
2122 from New York seek recognition?

2123 Mr. Nadler. I am trying to recall how I was recorded.

2124 How was I recorded, please?

2125 Ms. Deterding. Mr. Nadler votes no.

2126 Mr. Nadler. Again, huh? Okay.

2127 Chairman Goodlatte. The clerk will report.

2128 Ms. Deterding. Mr. Chairman, 20 members voted aye, 12
2129 members voted nay.

2130 Chairman Goodlatte. And the bill is passed.

2131 Members will have 2 days to submit to views.

2132 [The information follows:]

2133

2134 Chairman Goodlatte. Without objection, the bill will be
2135 reported as a single amendment in the nature of a
2136 substitute, incorporating all adopted amendments, and staff
2137 is authorized to make technical and conforming changes.

2138 Pursuant to notice, I now call up H.R. 1944 for purposes
2139 of mark up, and the clerk will report the bill.

2140 Ms. Deterding. H.R. 1944. To protect private property
2141 rights.

2142 Chairman Goodlatte. Without objection, the bill will be
2143 considered as read and open for amendment at any point.

2144 [The information follows:]

2145

2146 Chairman Goodlatte. I will begin by recognizing myself
2147 and the ranking member for opening statements.

2148 Private ownership of property is vital to our freedom
2149 and our prosperity, and it is one of the most fundamental
2150 principles embedded in the Constitution. The Founders
2151 realized the importance of property rights by enshrining
2152 property rights protections throughout the Constitution,
2153 including in the Fifth Amendment, which provides that
2154 private property shall not be taken for public use without
2155 just compensation.

2156 This clause created two conditions to the government
2157 taking private property, that the subsequent use of the
2158 property is for the public, and that the government gives
2159 the property owner just compensation.

2160 However, the Supreme Court 5-to-4 decision in *Kelo v.*
2161 *City of New London* was a step in the opposite direction.
2162 This controversial ruling expanded the ability of State and
2163 local governments to exercise eminent domain powers to seize
2164 property under the guise of economic development when the
2165 public use is as incidental as generating tax revenues or
2166 creating jobs.

2167 The Kelo decision even permits the government to take
2168 property from one private individual and give it to another
2169 private entity.

2170 As the dissenting Justices observed, by defining public
2171 use so expansively, the result of the Kelo decision is
2172 effectively to delete the words "for public use" from the
2173 takings clause of the Fifth Amendment.

2174 The specter of condemnation hangs over all property.
2175 The government now has license to transfer property from
2176 those with few resources to those with more.

2177 The Founders cannot have intended this perverse result.

2178 In the wake of this decision, State and local
2179 governments can use eminent domain powers to take the
2180 property of any individual for nearly any reason. Cities
2181 may now bulldoze citizens' homes, farms, churches, and small
2182 businesses to make way for shopping malls or other
2183 developments.

2184 For these reasons, it is important that Congress finally
2185 pass the Private Property Rights Protection Act.

2186 I want to thank Mr. Sensenbrenner for reintroducing this
2187 legislation. He and I have worked together on this issue

2188 for many years, and I am pleased that this legislation
2189 incorporates many provisions from legislation I helped
2190 introduce in the 109th Congress called the STOPP Act.

2191 Specifically, the Private Property Rights Protection Act
2192 would prohibit State and local governments that receive
2193 Federal economic development funds from using economic
2194 development as a justification for taking property from one
2195 person and giving to another private entity.

2196 Any State or local government that violates this
2197 prohibition will be ineligible to receive Federal economic
2198 development funds for a period of 2 years.

2199 In addition, this legislation grants adversely affected
2200 landowners the right to use appropriate legal remedies to
2201 enforce the provisions of the bill.

2202 Furthermore, this bill allows State and local
2203 governments to cure violations by giving the property back
2204 to the original owner. The bill also includes a carefully
2205 crafted definition of economic development that protects
2206 traditional uses of eminent domain, such as taking land for
2207 public uses like roads while prohibiting abuses of the
2208 eminent domain power.

2209 No one should have to live in fear of the government
2210 snatching up their home, farm, or business. As the
2211 Institute for Justice's witness observed during a hearing on
2212 this bill, "using eminent domain so that another richer,
2213 better connected person may live or work on the land you
2214 used to own tells Americans that their hopes, dreams, and
2215 hard work do not matter as much as money and political
2216 influence. The use of eminent domain for private
2217 development has no place in a country built on traditions of
2218 independence, hard work, and protection of property rights."

2219 The Private Property Rights Protection Act creates
2220 incentives for State and local governments to help ensure
2221 that eminent domain abuse does not occur in the future.

2222 In closing, I would like to remind my colleagues that
2223 the adage that one's home is one's castle applies to people
2224 across the economic spectrum. No matter where your district
2225 is located, the citizens in your district may be affected by
2226 eminent domain abuse if Congress does not act to prevent
2227 these unconstitutional takings.

2228 I urge my colleagues to support this legislation and
2229 recognize the gentleman from Michigan, Mr. Conyers, the

2230 ranking member, for his opening statement.

2231 Mr. Conyers. Thank you, Chairman.

2232 Following the Supreme Court's decision in Kelo, I was
2233 concerned that States and municipalities could use this
2234 decision to expand their power of eminent domain, whether
2235 for the benefit of private parties or even public projects
2236 to the detriment of those who are the least powerful, namely
2237 the poor, the elderly, and communities of color.

2238 Historically, the power of eminent domain has been
2239 abused, particularly with respect to those lacking economic
2240 or political power.

2241 For several reasons, however, I have come to conclude
2242 that, for the time being, we should allow the State to craft
2243 responses rather than impose an awkward, one-size-fits-all
2244 Federal legislative response.

2245 Now, the Supreme Court acknowledged in Kelo that State
2246 courts may interpret their own eminent domain powers in a
2247 manner that is more protective of property rights. I am
2248 encouraged that no fewer than 43 States have followed that
2249 advice and taken steps to restrict their powers of eminent
2250 domain to guard against abuse.

2251 In Michigan, voters approved an amendment to the State
2252 constitution to preclude takings for economic development or
2253 tax enhancement among a number of other protections for
2254 property owners and tenants.

2255 Given the fact that our system of federalism appears to
2256 be working, and the States are in consensus on the need to
2257 prevent abuse, I don't believe that Federal intervention at
2258 this time is necessary.

2259 Second, the bill's enforcement provisions are troubling.
2260 For example, a jurisdiction that is found in violation of
2261 the measure would be stripped of all Federal economic
2262 development funds for 2 years. This could possibly bankrupt
2263 that jurisdiction.

2264 And despite the draconian penalty, the actual property
2265 owner might not get anything. The bill doesn't even give
2266 the property owner the right to sue to stop the taking in
2267 the first place. A suit can only be brought after the
2268 property is taken.

2269 The Supreme Court has long held that when Congress
2270 attaches conditions to a State's acceptance of Federal
2271 funds, the conditions must be set out, quote/unquote,

2272 "unambiguously."

2273 And so H.R. 1944 fails to satisfy this requirement with
2274 respect to its definition of economic development funds, and
2275 could, therefore, subject a jurisdiction to punitive
2276 provisions.

2277 For instance, the Government Accountability Office
2278 testified in the Congress about the difficulty of
2279 determining what qualifies as an economic development
2280 program. GAO has also warned that the loss of Federal
2281 funding to a State and local government could encompass
2282 Highway Trust Fund, Community Development Block Grants, and
2283 other Department of Housing and Urban Development programs
2284 intended to assist vulnerable communities.

2285 Given the uncertainty that sequestration has cast over
2286 the viability of States to stimulate job creation, provide
2287 health care, and build infrastructure, the bill's punitive
2288 provisions could prove devastating.

2289 Finally, we mustn't forget that eminent domain abuse has
2290 a long and shameful history of disproportionately impacting
2291 minority communities. Inner-city neighborhoods that lacked
2292 institutional and political power were often designated as

2293 blighted areas slated for redevelopment through urban
2294 renewal programs. Properties were condemned. Land was
2295 turned over to private parties.

2296 Detroit neighborhoods -- such as Poletown experienced
2297 firsthand -- showed us how eminent domain can destroy
2298 neighborhoods.

2299 And this underscores why it is important that we
2300 continue to monitor the facts on the ground to determine
2301 whether Federal action is warranted.

2302 So if the States do not continue to act to protect our
2303 citizens, Congress should remain steady, willing, ready, and
2304 able to do so. However, as the States have acted to curb
2305 abuse, we, in Congress, should allow them to maintain their
2306 authority to act.

2307 I thank the chairman for this opportunity.

2308 Chairman Goodlatte. The chair now recognizes the
2309 chairman of the Constitution and Civil Justice Subcommittee,
2310 the gentleman from Arizona, Mr. Franks, for his opening
2311 statement.

2312 Mr. Franks. Well, thank you, Mr. Chairman.

2313 Mr. Chairman, the Private Property Rights Protection Act

2314 is needed to blunt the negative impact of the Supreme
2315 Court's decision in *Kelo v. City of New London*, which
2316 permitted the use of eminent domain to take property from
2317 homeowners and small businesses, and to transfer it to
2318 others for private economic development.

2319 In Justice O'Connor's words, the *Kelo* decision
2320 pronounced that "under the banner of economic development,
2321 all private property is now vulnerable to being taken and
2322 transferred to another private owner, so long as it might be
2323 upgraded. ... Nothing is to prevent the State from replacing
2324 any Motel 6 with a Ritz-Carlton, any home with a shopping
2325 center, or any farm with a factory."

2326 The *Kelo* decision was resoundingly criticized from
2327 across all quarters. In 2005, the House voted to express
2328 grave disapproval of the decision and overwhelmingly passed
2329 the Private Property Rights Protection Act with 376 members
2330 voting in favor and only 38 members voting against.

2331 Last Congress, the House once again passed this
2332 legislation this time by voice vote. Unfortunately, the
2333 bill has not been taken up by the Senate.

2334 The Private Property Rights Protection Act prohibits

2335 States and localities that receive Federal economic
2336 development funds from using eminent domain to take private
2337 property for economic development purposes. States and
2338 localities that use eminent domain for private economic
2339 development are ineligible to receive Federal economic
2340 development funds for at least 2 fiscal years.

2341 Every day, local governments in search of a more
2342 lucrative tax base take property from homeowners and small
2343 businesses, churches and farmers, and in turn give it to
2344 large corporations for private redevelopment. And Federal
2345 law currently allows Federal funds to be used to support
2346 such condemnations, encouraging this abuse nationwide.

2347 This bill, Mr. Chairman, will restore Americans' faith
2348 in their ability to build, own, and keep their property
2349 without fear that the government will take it and give it to
2350 someone else, and it will tell commercial developers that
2351 they should seek to obtain property through private
2352 negotiations, not through government force.

2353 Too many Americans have lost homes and small businesses
2354 to eminent domain abuse, forced to watch as private
2355 developers replace them with luxury condominiums and other

2356 upscale uses. Family farmers and farms have been wiped out
2357 by eminent domain to make way for shopping centers and big
2358 box stores. And churches generally entitled to tax-exempt
2359 status are often seized through eminent domain to be
2360 replaced by more lucrative private development.

2361 Unfortunately, it is usually the most vulnerable who
2362 suffer from economic development takings. As Justice Thomas
2363 observed in his dissenting opinion in *Kelo*: Extending the
2364 concept of public purpose to encompass any economically
2365 beneficial goal guarantees that these losses will fall
2366 disproportionately on poor communities. Those communities
2367 are not only systematically less likely to put their lands
2368 to the highest and best social use, but are also the least
2369 politically powerful. The deferential standard this Court
2370 has adopted for the public use clause encourages those
2371 citizens with disproportionate influence and power in the
2372 political process, including large corporations, development
2373 firms, to victimize the weak.

2374 Mr. Chairman, we must restore the property rights
2375 protections that were erased from the Constitution by the
2376 *Kelo* decision. John Adams wrote over 200 years ago that

2377 property must be secured or liberty cannot exist. As long
2378 as the specter of condemnation hangs over all property, our
2379 liberty is threatened, Mr. Chairman.

2380 And I would urge all my colleagues to support the
2381 Private Property Rights Protection Act, and I yield back.

2382 Chairman Goodlatte. The chair thanks the gentlemen and
2383 recognizes the gentleman from New York, Mr. Nadler, the
2384 ranking member of the Constitution and Civil Justice
2385 Subcommittee, for his opening statement.

2386 Mr. Nadler. Thank you, Mr. Chairman.

2387 Mr. Chairman, the power of eminent domain is an
2388 extraordinary one, and should be used rarely and with great
2389 care.

2390 All too often, it has been abused for private gain or to
2391 benefit one community at the expense of another. It is,
2392 however, an important tool in making possible transportation
2393 networks, irrigation projects, and other public purposes.

2394 To some extent, all of these projects are "economic
2395 development projects."

2396 Members of Congress are always trying to get these
2397 projects for districts, and certainly, the economic benefit

2398 to our constituents is always a consideration.

2399 Has this bill drawn the appropriate line between
2400 permissible and impermissible abuses of eminent domain? I
2401 think that is one of the questions we really need to
2402 consider.

2403 We all know the easy cases. As the majority in Kelo
2404 said, "The city would no doubt be forbidden from taking
2405 petitioners' land for the purpose of conferring a private
2406 benefit on a particular private party. ... Nor would the
2407 city be allowed to take property under the mere pretext of a
2408 public purpose, when its actual purpose was to bestow a
2409 private benefit."

2410 But which projects are appropriate and which are not can
2411 sometimes be a difficult call. Historically, eminent domain
2412 has been used to destroy communities for projects having
2413 nothing to do with economic development, at least as defined
2414 in this bill.

2415 For example, highways have cut through neighborhoods,
2416 destroying them. Some of these communities are in my
2417 district and have yet to recover from the wrecker's ball
2418 decades ago. Yet, that would still be permitted by this

2419 bill.

2420 Other projects might have a genuine public purpose, and
2421 yet would be prohibited. The rhyme or reason of this bill
2422 is not totally clear.

2423 I believe, as I did in the last Congress, that this bill
2424 is the wrong approach to a serious issue. It will permit
2425 many of the abuses and injustices of the past to continue by
2426 excluding from its coverage many of the projects that cause
2427 these abuses, including pipelines, transmission lines, and
2428 railroads.

2429 It would allow the Keystone pipeline, for example, to
2430 cut through the heartland of America and condemn property
2431 along its route. I believe that no one in this room failed
2432 to be moved by the eloquent testimony of Julia Trigg
2433 Crawford, whose family is having their property seized by
2434 foreign energy company, and the water they use on their farm
2435 threatened by a tar sands pipeline.

2436 Apparently, though, that is okay. I am not sure family
2437 farmers, homeowners, and small businesses along the pipeline
2438 route would agree.

2439 The bill would still allow highways to cut through

2440 communities and would allow all the other public projects
2441 that have historically fallen most heavily on the poor and
2442 powerless.

2443 As Hilary Shelton of the NAACP testified when we
2444 considered this legislation a number of years ago, these
2445 projects are just as burdensome as projects that include
2446 private development. The bill would still allow the use of
2447 eminent domain to give property to a private party, "such as
2448 a common carrier that makes the property available for use
2449 by the general public as of right."

2450 Does that mean a stadium? A stadium is privately owned.
2451 It is available for use by the general public as a right at
2452 least as much as a railroad. You can buy a seat. Is it a
2453 shopping center? You don't even need a ticket, so shopping
2454 centers and stadiums are apparently okay. Privately owned
2455 shopping centers and stadiums are apparently okay under this
2456 bill.

2457 But the World Trade Center could not have been built
2458 under this law. It was publicly owned but was predominately
2459 leased for office space and retail use. Neither could
2460 Lincoln Center have been built.

2461 Affordable housing, like the Hope VI or the fabled
2462 Nehemiah Program, a faith-based affordable housing program
2463 in Brooklyn, could never have gone forward. So public
2464 housing projects built by the government are okay, but
2465 public-private partnerships for affordable housing are not
2466 okay. That really makes no sense at all, especially when we
2467 keep hearing that private-public partnerships are the way to
2468 go, rather than purely the public.

2469 Since 2005, there have been new developments that call
2470 into question whether Congress should even act at this
2471 point. In response to the Kelo decision, States have moved
2472 aggressively to reconsider and amend and narrow their own
2473 eminent domain laws. More than 40 States have acted.
2474 States have carefully considered the implications of this
2475 decision and the needs of their citizens.

2476 I question whether Congress should now come charging in
2477 and presume to sit as a national zoning board, abrogating to
2478 the Federal Government the right to decide which States have
2479 gotten the balance right and deciding which projects are or
2480 are not appropriate.

2481 There is another problem with this bill, which is

2482 clearly not the intent, but it is there. The lawsuits
2483 authorized by the bill and the vagueness of the bill's
2484 definitions would cast a cloud over legitimate projects. A
2485 property owner or tenant would have 7 years after the
2486 condemnation before the litigation and appeals even begin.
2487 The local government would risk all of its economic
2488 development funding for 2 years even for unrelated projects
2489 and face bankruptcy if it gets it wrong about a project.

2490 Even if a jurisdiction did not use eminent domain at
2491 all, the cloud this bill would cast over the possibility of
2492 some future improper taking would be enough to destroy the
2493 ability of the municipality to float bonds at any time.

2494 I plan to offer an amendment that would solve this
2495 problem by, instead, allowing a property owner to sue and
2496 stop the taking before the fact, obtain equitable relief and
2497 compensation for damages, as well as attorneys' fees.

2498 That is what property owners want. They want to keep
2499 their homes, not bankrupt their towns.

2500 Mr. Chairman, this legislation goes well beyond the
2501 hypothetical taking of a Motel 6 to build a Ritz-Carlton,
2502 which, despite dire warnings at the time of the Kelo

2503 decision, never happened. It threatens communities with
2504 bankruptcy without necessarily protecting the most
2505 vulnerable populations. It comes after years of State
2506 action, in which States have decided which approach would
2507 satisfy their concerns and protect their citizens the best.

2508 I look forward to this markup. If we are to report a
2509 bill, I hope we can work together to make it more precise
2510 and balanced.

2511 I yield back the balance of my time.

2512 Chairman Goodlatte. For what purpose does the gentleman
2513 from Iowa seek recognition?

2514 Mr. Forbes. Move to strike the last word, Mr. Chairman.

2515 Chairman Goodlatte. Gentleman is recognized for 5
2516 minutes.

2517 Mr. Forbes. Thank you, Mr. Chairman.

2518 I just wanted to lay down a couple of observations that
2519 I have here in this Congress from the Kelo decision, and
2520 that is that, in the Fifth Amendment, it says nor shall
2521 private property be taken for public use without just
2522 compensation.

2523 The effect of the Kelo decision was to strike three

2524 words out of the Fifth Amendment, "for public use." Now the
2525 Fifth Amendment just simply reads, in effect, nor shall
2526 private property be taken without just compensation,
2527 regardless of whether it is for public use.

2528 For me, I can't imagine how the Supreme Court ignored
2529 that clause. It is there for a reason.

2530 In the same Fifth Amendment is the due process clause.
2531 Can we take life, liberty, or property without due process?
2532 No.

2533 I believe that this Kelo decision will one day be
2534 revisited by the Court, and I think there will then, at that
2535 point, be more likely to come with an appropriate and
2536 accurate decision.

2537 In the meantime, we have had to go through these
2538 maneuverings here in the Congress, and as we passed a
2539 resolution on the floor of the House in the aftermath of the
2540 Kelo decision, I was queued up to speak behind a former
2541 member of this committee, Barney Frank from Massachusetts.
2542 I had my notepad on my knee, ready to write my rebuttals as
2543 he spoke, because that was the typical activity.

2544 I found that I agreed with him completely in everything

2545 that he said that day. And I didn't know it, but I was
2546 speaking a lot of the same words that were written by
2547 Justice O'Connor in her dissent in the Kelo decision.

2548 This is a very controversial decision, the Kelo
2549 decision. I don't believe that it is grounded in the text
2550 of the Constitution, and I can't track the rationale that
2551 would conclude that government should take private property
2552 for private property use because they can increase their tax
2553 base. That was what our Founding Fathers wanted to avoid.

2554 So I wanted to make sure that we are talking about
2555 taking this back to the Constitution with the anticipation
2556 that one day the Supreme Court will revisit Kelo, and what
2557 we are doing with this legislation is simply substituting
2558 the spending clause for the takings clause in the
2559 Constitution.

2560 I urge adoption of this act, and I yield back to the
2561 chairman. I appreciate the attention.

2562 Chairman Goodlatte. It is my understanding that the
2563 gentleman from Wisconsin, the author of the legislation,
2564 chooses to submit his statement for the record.

2565 Mr. Sensenbrenner. I ask unanimous consent that my

2566 statement be placed in the record at this point.

2567 Chairman Goodlatte. Thank the gentlemen.

2568 [The information follows:]

2569

2570 Chairman Goodlatte. For what purpose does the gentleman
2571 from Georgia seek recognition?

2572 Mr. Johnson. Move to strike the last word.

2573 Chairman Goodlatte. The gentleman is recognized for 5
2574 minutes.

2575 Ms. Johnson. Thank you, Mr. Chairman.

2576 I think this piece of legislation is a classic bait-and-
2577 switch. It's no doubt that the Kelo decision was a bad one.
2578 Kelo allowed a public taking for a public purpose with
2579 adequate compensation. But it extended that to include
2580 turning the property over to a private entity for
2581 development, and that is the problem with the Kelo decision.

2582 It allows a government to condemn, take by eminent
2583 domain, private property and then transfer the property to a
2584 private entity for economic development. That is something
2585 that should not be permissible in our society.

2586 And I support clean legislation that would get at that
2587 problem.

2588 But what this does, what this legislation does, it
2589 doesn't address Kelo. It simply says that a State or a
2590 political subdivision shall not exercise its power of

2591 eminent domain over property to be used as economic
2592 development or that which is 7 years thereafter used for
2593 economic development, if that State receives Federal
2594 economic development funds.

2595 So you are putting handcuffs on local government, State
2596 government, or political subdivisions, county government,
2597 whatever. You are putting handcuffs on them, and then you
2598 are going to deprive them of Federal economic development
2599 funds for 2 years. That seems to be what is really the goal
2600 of this legislation.

2601 And then you would give the owner of private property,
2602 whose property is subject to eminent domain, they would have
2603 standing to contest in Federal court such a taking. But you
2604 also give a tenant in the property or of the property the
2605 right to go to court, even notwithstanding the fact that the
2606 owner of the property may be in favor of the taking of the
2607 property.

2608 And then it puts a standard of proof into it that is
2609 different than what is there for most civil litigants. They
2610 have to prove a case by a preponderance of the evidence, and
2611 then the burden shifts to the defendant to rebut that

2612 presumption. But here, this legislation would impose upon a
2613 defendant the burden to show by clear and convincing
2614 evidence that the taking is not for economic development.

2615 I just think this goes far afield of Kelo and looks more
2616 like punishment for State and local governments for
2617 condemning property that prior to Kelo, and after Kelo, was
2618 fine to condemn, but not transferred to another entity.

2619 So with that, I will yield back the balance of my time.
2620 My vote will be to oppose this legislation.

2621 Chairman Goodlatte. Are there any amendments?

2622 Mr. Conyers. I have an amendment, Mr. Chairman.

2623 Chairman Goodlatte. The clerk will report the amendment
2624 offered by the gentleman from Michigan.

2625 Ms. Deterding. Amendment to H.R. 1944 offered by Mr.
2626 Conyers. Page 15, line 5 --

2627 Chairman Goodlatte. Without objection, the amendment is
2628 considered as read.

2629 [The amendment of Mr. Conyers follows:]

2630

2631 Chairman Goodlatte. And the gentleman is recognized for
2632 5 minutes.

2633 Mr. Conyers. Thank you.

2634 This amendment simply ensures that tar sands pipelines,
2635 like the Keystone XL, will not be exempt from the
2636 prohibition in H.R. 1944. The bill as introduced has a
2637 specific exemption -- guess what? -- for pipelines.

2638 The sponsors of this bill rightly rail against the abuse
2639 of power of eminent domain by government, but it has long
2640 been the case that poor and minority communities, in fact,
2641 all communities without political power to resist, have been
2642 the victims of eminent domain abuse.

2643 We have a baseball stadium built by investment partners
2644 of George Bush, who can seize private property from people
2645 who can't match their political muscle.

2646 The Subcommittee on the Constitution and Civil Justice
2647 received testimony from the victim of one such glaring
2648 example of abuse, Julia Trigg Crawford. Remember her?
2649 Third generation from Texas, her family has had a farm
2650 purchased by her grandfather in 1948.

2651 TransCanada used the power of eminent domain to take an

2652 easement through the family, threatening their water supply,
2653 to profit a well-connected foreign energy corporation.

2654 And Ms. Crawford told the committee, and I remember it,
2655 when we politely asked them to seek a way around us,
2656 TransCanada could have slightly altered their route and
2657 traversed that neighboring land differently, avoiding our
2658 property altogether. But instead, they just pulled out the
2659 club of eminent domain, telling a reporter later that it was
2660 just too late to make any changes.

2661 And she went on, Ms. Crawford, to caution the
2662 subcommittee: if we allow an exception for TransCanada and
2663 the Keystone XL, we will be setting a dangerous precedent,
2664 leaving the door open for even further misuses of our legal
2665 system and more abuse of landowners unwilling to risk their
2666 property for foreign profits.

2667 This pipeline is yet another example of eminent domain
2668 being used to the advantage of the powerful, to the
2669 disadvantage of small property owners.

2670 Even in this House, those foreign corporations wield
2671 disproportionate power. Recently, a bill waiving every
2672 relevant law solely for the benefit of Keystone pipeline was

2673 rushed through the House in just over 2 months. For a place
2674 that is notoriously gridlocked, somehow the machinery is
2675 able to move with amazing speed when the power and the money
2676 show up.

2677 H.R. 1944 would exempt all pipelines and allow precisely
2678 the kind of eminent domain abuse that we are seeing across
2679 the country. And that is wrong, and we have a chance to
2680 make it better.

2681 And so my amendment would make clear that pipelines
2682 carrying tar sands, a dangerous product that has already
2683 poisoned communities, should not be given the power of
2684 eminent domain as boldly and arrogantly as it is provided
2685 for in the bill.

2686 The bill, as introduced, has a specific exemption for
2687 pipelines. All the arguments we have heard in support of
2688 the Keystone have been economic, touting the jobs and more
2689 revenue that it will produce. It is an economic development
2690 project, but a dangerous one. And if they need someone's
2691 property, let them negotiate with the property owner in a
2692 respectful manner and make a decent offer, not use
2693 extraordinary government power to force their will on family

2694 farmers, small businesses, churches, and homeowners.

2695 So I am asking you that we remember the witness that
2696 came before us, Julia Trigg Crawford. She was right. It
2697 would be a travesty if these energy corporations got a free
2698 ride.

2699 And so I urge support of my amendment, and return any
2700 time that may not have been used.

2701 Mr. Sensenbrenner. Mr. Chairman?

2702 Chairman Goodlatte. For what purpose does the gentleman
2703 from Wisconsin seek recognition?

2704 Mr. Sensenbrenner. In opposition to the amendment.

2705 Chairman Goodlatte. The gentleman is recognized for 5
2706 minutes.

2707 Mr. Sensenbrenner. Mr. Chairman, I won't take the full
2708 5 minutes.

2709 The purpose of this bill is to enforce the taking clause
2710 as it was understood by the Supreme Court prior to the Kelo
2711 decision. What the gentleman from Michigan amendment does
2712 is actually reduce those purposes, with the exception that
2713 he has made.

2714 Now the use of eminent domain to take private property

2715 for use as a pipeline has been understood as an acceptable
2716 public use, and that goes back to an 1894 treatise by Carman
2717 F. Randolph, "The Law of Eminent Domain," where he said that
2718 oil and gas pipelines are examples of accepted use of the
2719 condemnation power. And that goes with public parks,
2720 markets, schoolhouses, public baths, cemeteries, gasworks,
2721 waterworks, highways, railroads, telephone and telegraph
2722 lines, which are all public uses, even though there might be
2723 a private entity running the phone company, which has been
2724 the case in most parts of the country.

2725 So what the gentleman from Michigan is trying to do is
2726 to say, well, if there is a certain kind of pipeline,
2727 eminent domain can't be used. I think that is wrong, to
2728 pick and choose, and I honestly feel that we should be
2729 arguing the whole business of whether or not the Keystone XL
2730 pipeline is a legitimate public use in another forum, like
2731 the Energy and Commerce Committee, for starters.

2732 Because this amendment goes beyond the intended purpose
2733 of the base bill, I oppose it, and yield back the balance of
2734 my time.

2735 Chairman Goodlatte. For what purpose does the gentleman

2736 from Georgia seek recognition?

2737 Mr. Johnson. Move to strike the last word.

2738 Chairman Goodlatte. The gentleman is recognized for 5
2739 minutes.

2740 Mr. Johnson. Thank you, Mr. Chairman.

2741 The definitions in Section 14 of the act, which for the
2742 definition of economic development, the term "economic
2743 development," it means taking of private property without
2744 the consent of the owner and conveying or leasing such
2745 property from one private person or entity to another
2746 private person or entity for commercial enterprise carried
2747 on for profit, et cetera. And then it goes on to exclude
2748 certain takings from that definition.

2749 Now, the definition of economic development simply means
2750 that, if you are taking private property without consent of
2751 the owner -- often private property is taken through the use
2752 of eminent domain without the consent of the owner, but then
2753 you have the component of just compensation, and the
2754 government then is able to take the property. You certainly
2755 can't take it without just compensation.

2756 But this is little different from that, this definition

2757 of economic development, and what would be covered under
2758 this statute, which gives me further confidence that it is a
2759 bait-and-switch type situation.

2760 Then you are excluding from the term or definition
2761 "economic development," at subsection (A)(ii), an entity
2762 such as a common carrier that makes the property available
2763 to the general public as of right, such as a railroad or
2764 public facility. That is so broad that it could mean even
2765 an amusement park or some other location where people are
2766 invited, the general public, but they had to pay a fee.

2767 And then when you go down to subsection (F), it does not
2768 include the taking of private property for use by a utility
2769 providing electric, natural gas, telephone communication,
2770 water, wastewater, other utility services, either directly
2771 to the public or indirectly through provision of such
2772 services at the wholesale level for resale to the public.

2773 And so "the taking of private property by a utility,"
2774 can I ask, what is a utility? That term is not defined.

2775 But having asked that question, and expecting no answer
2776 to it, I will yield back the balance of my time.

2777 Chairman Goodlatte. The question occurs on the

2778 amendment offered by the gentleman from Michigan.

2779 All those in favor, respond by saying aye.

2780 Those opposed, no.

2781 In the opinion of the chair, the noes have it. The

2782 amendment is not agree to.

2783 For what purposes does the gentleman from New York seek

2784 recognition?

2785 Mr. Nadler. Mr. Chairman, I have an amendment at the

2786 desk.

2787 Chairman Goodlatte. The clerk will report the

2788 amendment.

2789 Ms. Deterding. Amendment to H.R. 1944 offered by Mr.

2790 Nadler of New York.

2791 Page 1, line 8, strike "In General."

2792 Chairman Goodlatte. Without objection, the amendment is

2793 considered as read.

2794 [The amendment of Mr. Nadler follows:]

2795

2796 Chairman Goodlatte. And the gentleman from New York is
2797 recognized for 5 minutes.

2798 Mr. Nadler. Thank you, Mr. Chairman.

2799 Mr. Chairman, this amendment is very straightforward and
2800 I would hope the members, regardless of their views on the
2801 underlying bill, will see its merit.

2802 The bill as proposed imposes a substantial penalty on
2803 any jurisdiction that is found to have used the power of
2804 eminent domain for a prohibited purpose, or has put the
2805 condemned property to prohibited use at a later time.

2806 The penalty is the loss of all economic development
2807 funding for a 2-year period.

2808 Since the bill does not specify what economic
2809 development funding means, we can only guess. We can assume
2810 that if it includes most of the programs we normally
2811 associate with economic development, the loss of that
2812 funding or the requirement that if it be repaid to the
2813 Federal Government would be financially devastating to the
2814 jurisdiction hit by the penalty. Given the tight budgets
2815 States and localities face, it would probably bankrupt most
2816 of them.

2817 Like sequestration, I have to assume there is no
2818 intention on the part of the sponsor to bankrupt our
2819 communities, but to place a strong disincentive in the way
2820 of the exercise of improper eminent domain.

2821 But the problem does not end there. In view of the
2822 threat, in view of the uncertainty of what a subsequent
2823 mayor and governor might do, it is inescapable that no
2824 jurisdiction subject to this penalty -- that is to say no
2825 jurisdiction at all -- any jurisdiction that might exercise
2826 eminent domain and might exercise it improperly -- that is
2827 any jurisdiction; who knows what the future brings -- no
2828 such jurisdiction could ever float another bond again. No
2829 prudent bond underwriter would ever take the chance that
2830 over the life of a bond, a future administration might make
2831 a mistake and compromise their ability to repay the note by
2832 giving up the Federal aid for 2 years.

2833 Even if the jurisdiction does nothing wrong, even if it
2834 never uses eminent domain, it will be paralyzed financially
2835 by the penalty in this bill.

2836 And it makes no sense, because what does a property
2837 owner get out of this penalty, or out of this bill? The

2838 bill doesn't let him go to court until the condemnation has
2839 been completed. At that point, he has lost his property and
2840 has received whatever compensation he is entitled to under
2841 the law.

2842 The bill does not give him opportunity to stop the
2843 condemnation. It does not given the ability to get a court
2844 to have his property returned. It doesn't give him any
2845 damages. The only thing he can get is the perverse
2846 satisfaction of ruining his community.

2847 My amendment takes another approach, and I would urge
2848 the sponsor to consider it, because I think it would get the
2849 sponsor what he wants without destroying the finances of
2850 every State and locality in the country.

2851 The amendment let's the property owner or his tenant or
2852 that attorney general go to court, not after the
2853 condemnation but when it begins. The property owner can
2854 seek equitable relief, including an injunction against the
2855 taking; damages, if appropriate; and attorneys' fees.

2856 If the taking is illegal under this bill, it would be
2857 stopped and the property owner would get to keep his
2858 property. If his is damaged by the illegal taking, he can

2859 get compensation. That is what every homeowner wants. They
2860 want to keep the property and protect it from illegal
2861 takings. That is what my amendment would give them.

2862 In effect, what this bill does is to say you can't use
2863 eminent domain for certain purposes. Fine. Whatever you
2864 think of that.

2865 But the enforcement mechanism in the bill won't help.
2866 The enforcement mechanism in the bill gives the property
2867 owner the ability after the taking is completed to object
2868 and say, gee, that is improper because it was for economic
2869 development motive, so it doesn't get him his property back,
2870 but bankrupts the community.

2871 So unless his motive is to bankrupt the community
2872 because he hates the mayor or something, he has no motive to
2873 go to court and spend attorneys' costs because it doesn't
2874 help him with his property.

2875 My amendment, instead, says, if the property owner
2876 thinks that the community, the city, the State, is using
2877 eminent domain improperly, he can go to court. He can get
2878 injunctive relief. The court can order the taking stopped.
2879 He can get attorneys' fees. He can get damages, if there

2880 are any. He gets an effective way to enforce the
2881 prohibition in this bill against a taking for economic
2882 development purposes by stopping it right up front.

2883 Now, frankly, say some may ask, if I don't like the
2884 bill, why am I making it effective? And the answer is
2885 because I don't want every locality, whether they ever use
2886 eminent domain or not, to have a cloud on their future
2887 Federal aid that will inhibit them from floating bonds.

2888 So if you are interested in this bill, you should
2889 support the amendment, because it enables the property owner
2890 to stop the improper taking. And it's the only way it does,
2891 because, as the bill is written, the property owner can go
2892 to court after he has lost his property, but he gets nothing
2893 out of it. He has no motive to do so, so the bill won't be
2894 enforced.

2895 So I urge the adoption of the amendment, and I yield
2896 back.

2897 Mr. Sensenbrenner. Mr. Chairman?

2898 Chairman Goodlatte. For what purpose does the gentleman
2899 from Wisconsin seek recognition?

2900 Mr. Sensenbrenner. In opposition to the amendment.

2901 Chairman Goodlatte. The gentleman is recognized for 5
2902 minutes.

2903 Mr. Sensenbrenner. Mr. Chairman, this amendment guts
2904 the bill, and it guts the bill by taking away the meaningful
2905 enforcement tool that very clearly tells local and State
2906 jurisdictions that they better not even think of having a
2907 condemnation simply to transfer the condemned property to a
2908 private entity because more tax revenue would come in if you
2909 replace the Motel 6 with the Ritz-Carlton.

2910 I think that we ought to keep that penalty on the books,
2911 because that will tell local governments and, perhaps in
2912 some cases, State governments that they better not even try
2913 to do this.

2914 Now this is a fairly straightforward prohibition. There
2915 is no problem if one wants to condemn for a school or a road
2916 or a sewer line or an electric or a telephone line or even a
2917 pipeline, if that is what the municipality or the proper
2918 jurisdiction wants to do. But if they are thinking of
2919 condemning a church, which is tax-exempt, to put in a strip
2920 mall, which would yield a lot of tax revenue, that should be
2921 off the local government's agenda right from the get-go.

2922 And the mayor ought to tell any developer that wants to try
2923 to enlist the municipality and the mayor to attempt to do
2924 that, no, it is illegal, don't bother us anymore.

2925 Now all I will say is, look what the bill says. Section
2926 2 says that no State or political subdivision of a State
2927 shall exercise its power of eminent domain over property
2928 that is used for economic development if that State or
2929 political subdivision receives Federal economic development
2930 funds.

2931 So if they don't want the economic development funds,
2932 they can go ahead and do it anyhow. And if they don't get
2933 any economic development funds, there is no restriction on
2934 it at all.

2935 And Section 4 provides that any owner of private
2936 property who suffers an injury as a result of the violation
2937 of any provision of this act may bring an action to enforce
2938 any provision of this act in the appropriate Federal or
2939 State court.

2940 So there is judicial relief for the owner of a property
2941 who thinks that his property rights are going to be abused
2942 as a result of what the State or municipality has in mind on

2943 what to do with the property it wants to condemn.

2944 Now, I think that this bill is rather well-thought-out.

2945 I can say that even organizations like the NAACP and the

2946 AARP that usually aren't very sympathetic to what us folks

2947 on this side of the aisle are doing think that this is a

2948 good bill. As a matter of fact, even some of the Justices

2949 in the majority said that if they were in Congress, they

2950 would have voted to overturn Kelo. I think we ought to take

2951 the advice of all those people and vote to over overturn

2952 Kelo, reject the amendment, and pass the bill.

2953 And I yield back the balance of my time.

2954 Mr. Conyers. Mr. Chairman?

2955 Chairman Goodlatte. For what purposes does the

2956 gentleman from Michigan seek recognition?

2957 Mr. Conyers. I rise in opposition to the amendment.

2958 Chairman Goodlatte. The gentleman is recognized for 5

2959 minutes.

2960 Mr. Conyers. I am sorry to find that the NAACP does not

2961 frequently support the initiatives of the gentleman on the

2962 other side of aisle. I think that we ought to have a

2963 relationship that improves a little bit on that, and I would

2964 like to work with him on it, because I know intimately some
2965 of the leaders in the organization.

2966 But I think that there is a question of whether the
2967 property owner gets relief from this amendment, or whether
2968 he doesn't. And for that purpose, I would like to yield to
2969 the gentleman from New York, Mr. Nadler.

2970 Mr. Nadler. I thank the gentleman for yielding.

2971 I want to comment on what the on Mr. Sensenbrenner said.

2972 Forgetting the underlying merits of the bill, if you
2973 agree with the bill and you want to protect the property
2974 owner, you ought to support amendment, because the bill as
2975 written doesn't protect the property owner.

2976 It says you shouldn't condemn for economic development
2977 purposes. Fine. Let's assume the city does so. What
2978 happens under the bill?

2979 Well, the property owner, after the condemnation has
2980 taken effect, can go to court, spend money on attorneys and
2981 get the city punished by having its Federal aid taken away.
2982 But the property owner has no motive to go to court, because
2983 he does not get his property back. He does not get his
2984 attorneys' fees paid. And he does not get any damages. He

2985 gets nothing. All he gets is the psychic satisfaction of
2986 hitting the mayor.

2987 What the amendment does is say, if the property owner
2988 thinks the condemnation is for an economic development
2989 purpose that the bill says it shouldn't be, the property
2990 owner can go to court -- or the attorney general, for that
2991 matter -- can go to court at the commencement of the
2992 proceeding, not after it's all over, and stop it. He can go
2993 to court and get a permanent injunction to say, do not seize
2994 the land. And he can get damages, if there are any, and he
2995 can get attorneys' fees.

2996 Now, without the amendment, the bill, frankly, is
2997 ineffective, because it is not going to stop inappropriate
2998 condemnation, because it does not give anybody the right to
2999 enforce what the bill says.

3000 But it does do one thing that is very damaging, and that
3001 is that, because of the possibility that at sometime in the
3002 future, a city may do an improper condemnation, and its
3003 Federal aid may be cut off for 2 years because of the
3004 possibility, then the city is not going to be able to use
3005 its Federal aid as a collateral to float a bond. It's going

3006 to make it more expensive to float economic development
3007 bonds, but it's not going to help the property owner get his
3008 property or stop the condemnation at all.

3009 Mr. Sensenbrenner. We will gentleman yield, the
3010 gentleman from Michigan?

3011 Mr. Conyers. Yes, absolutely.

3012 Mr. Sensenbrenner. Most of the municipal bonding that I
3013 am familiar with, the collateral is an irrevocable tax
3014 designed to pay for the bond service and the principal and
3015 interest on the bond. Now Federal aid can go up and down.
3016 I think we all know that.

3017 And I don't see bond counsels signing off on whether or
3018 not a municipality is going to receive Federal aid.

3019 And so I think that the argument that the bond counsel
3020 will get squeamish as result of this because of Federal aid
3021 is misplaced. It is whether there is enough tax base to
3022 provide the irrepealable tax to pay for the debt service.

3023 Mr. Conyers. I have the time, and I will yield to Jerry
3024 Nadler.

3025 Mr. Nadler. Thank you.

3026 Well, there are all kinds of bond counsels. They are

3027 all kinds of localities. I have seen future revenue streams
3028 used as collateral for bonds.

3029 But even if the gentleman is right, even if the
3030 gentleman is right and bond counsel would never permit use
3031 of future Federal aid to float a bond anyway, it is still
3032 the case that, without my amendment, this bill is
3033 unenforceable.

3034 It is still the case that the bill establishes a right
3035 -- you cannot use eminent domain to seize someone's property
3036 for economic development purposes -- but gives nobody the
3037 ability to enforce that until after the fact. And then
3038 nobody has the motive to enforce it at that point, because
3039 all it says is, after the fact, after the taking is
3040 complete, the landowner can go and sue. But if he sues and
3041 takes on the expense of the lawsuit, if he wins, he doesn't
3042 get the property back, he doesn't get damages, he doesn't
3043 get anything. The city gets bankrupted.

3044 What my amendment says is, he can go to court right up
3045 front, the moment they start the condemnation and say, hey,
3046 this is a wrong condemnation because of this bill, and it
3047 violates the provisions of this bill. Therefore, I want an

3048 injunction. The court can give him an injunction, a
3049 permanent injunction that says we will not permit this
3050 condemnation because it is for economic development
3051 purposes. The court can give him damages. The attorney
3052 general can do to the same thing. And he has got a motive
3053 for doing that, because he can stop it.

3054 If you like this bill and you don't want property seized
3055 for economic development, then let somebody enforce it. Let
3056 the landowner who has a motive for keeping his land go to
3057 court and get an injunction against the condemnation,
3058 against the seizure, get damages if there are any, and get
3059 attorneys' fees, instead of only allowing him, as the
3060 current bill does, to wait for the condemnation to be
3061 effective. The land is gone. Now he can go to court. But
3062 the only thing he can do in court is punish the city.

3063 So this bill is not going to be -- and Mr. Sensenbrenner
3064 says this amendment guts the bill because it takes away the
3065 sanction. Nonsense. There is no sanction, because
3066 sanctions against the city, who is going to go to court to
3067 enforce it? Not the former landowner. He is not going to
3068 spend hundreds of thousands of dollars in a lawsuit to get

3069 the city punished if he gets nothing out of it.

3070 So you have no enforcement of this bill at all, unless
3071 you pass my amendment.

3072 Now, since I don't like the bill, maybe I shouldn't be
3073 handing you this enforcement. But I am afraid of the bond
3074 stuff, which is what I am doing it.

3075 But whether you think the bond threat is real or not,
3076 this bill is totally ineffective if it relies only after-
3077 the-fact ability to punish the city for which no one has a
3078 motive to go to court, and doesn't give, as my amendment
3079 does, the landowner the right to go to court upfront and
3080 stop the taking in the first place.

3081 Chairman Goodlatte. The time of the gentleman has
3082 expired.

3083 The chair recognizes himself.

3084 I oppose Mr. Nadler's amendment because it would strike
3085 the bill's core provision.

3086 Pursuant to Congress's power under the Constitution's
3087 spending clause, the Private Property Rights Protection Act
3088 conditions the receipt of Federal economic development funds
3089 on State and local governments agreeing not to use economic

3090 eminent domain for private economic development takings.

3091 Federal law currently permits expending Federal funds to
3092 support the use of eminent domain for these abusive takings.

3093 In our current economy and with the Federal Government
3094 running deficits every year, Congress should not be spending
3095 American taxpayers' scarce economic development funds to
3096 support State and local governments that unconstitutionally
3097 deprive hardworking Americans of their homes, farms, and
3098 small businesses.

3099 By conditioning the receipt of Federal economic
3100 development funds on State and local government agreeing not
3101 to take property for commercial development, this provision
3102 in the bill ends the Federal Government's complicit support
3103 of eminent domain abuse.

3104 Mr. Nadler's provision would strike this provision,
3105 leaving in the bill only the civil causes of action designed
3106 to enforce the Federal funding restriction. The enforcement
3107 provisions alone are not enough. We must end Federal
3108 monetary support for economic development takings.

3109 And therefore, I must oppose the gentleman from New
3110 York's amendment. Notwithstanding his opposition to the

3111 legislation overall, I appreciate his desire to improve the
3112 enforcement mechanisms. And we will certainly continue to
3113 discuss with him any aspects of his ideas that might improve
3114 the bill.

3115 But taken as a whole, I cannot support this amendment.

3116 And I would be happy to yield to the gentleman.

3117 Mr. Nadler. I thank you for yielding. I certainly look
3118 forward to trying to work with you.

3119 But most of what you just said, sir, deals with the
3120 underlying merits of the bill. I am not going to comment on
3121 that. But if you agree with the underlying merits of the
3122 bill, punishing the city after the fact, which no one will
3123 do because it pays no one to go to court to do it, makes no
3124 sense.

3125 And it's not the case that my amendment simply leaves in
3126 the bill civil enforcement mechanisms. It puts in the bill
3127 civil enforcement mechanisms. It puts into the bill the
3128 ability of the landowner to go to court in advance and get a
3129 permanent injunction against the taking, which is not
3130 currently in the bill.

3131 And that is the only way you are going to enforce such a

3132 bill. But I thank you for your comments.

3133 Chairman Goodlatte. For what purposes does the
3134 gentleman from Texas seek recognition?

3135 Mr. Gohmert. To strike the last word.

3136 Chairman Goodlatte. The gentleman is recognized for 5
3137 minutes.

3138 Mr. Gohmert. Thank you, Mr. Chairman.

3139 I appreciate the gentleman's efforts to add enforcement
3140 teeth to this, but then again, it can go too far and go
3141 beyond the bounds that the Federal authorities that the U.S.
3142 Congress has to interfere in local affairs. When it comes
3143 to a nexus with whether or not to cut Federal funds, that
3144 certainly is something over which we have jurisdiction.

3145 But I do note on page 3 of the proposed bill, and I
3146 would like to yield to my friend from Wisconsin, Mr.
3147 Sensenbrenner, it does say down here, any such property
3148 owner or tenant may also seek an appropriate relief through
3149 a preliminary injunction or temporary restraining order.

3150 It does appear that the individual property owner can
3151 take such action. And I would like to yield to my friend
3152 for a comment on that.

3153 Mr. Sensenbrenner. I thank the gentleman for yielding.

3154 The gentleman is correct on this.

3155 There is a private right of action, and practically all
3156 the things that the gentleman from New York says that he
3157 wants to put in this bill by his amendment are already
3158 there, and that is by the amendment should be defeated.

3159 Mr. Gohmert. Reclaiming my time, that is what I
3160 thought. And it does include a preliminary injunction to
3161 prevent actions before they happen. That is why it is
3162 called preliminary.

3163 But I also want to note that my friend from Michigan,
3164 apparently he stepped out, but anyway, I agree with him.
3165 And in fact, in talking to someone at the Supreme Court
3166 after the Kelo decision, he said the Court was totally
3167 shocked by the public reaction to their decision in Kelo.
3168 They had no idea people were going to get upset about that.

3169 And my friend from Michigan I think makes a good point
3170 with regard to sports stadiums that were totally private.
3171 They are not like a pipeline that had over 100-year history
3172 of utilizing eminent domain to effectuate the pipeline.
3173 This was a relatively new action that allowed cities

3174 basically to say, hey, it's going to be great to have a
3175 sports team here. We are going to make a lot of memory, a
3176 lot of revenue. More people coming to town. Therefore, we
3177 will use eminent domain to condemn property and give it over
3178 to a private owner.

3179 That is why, apparently to some in the Supreme Court, in
3180 part, they were so shocked, because nobody made that much
3181 noise about giving that power to a sports stadium.

3182 My friend from Michigan pointed out a Republican. But
3183 the fact is, there have been Democrats and Republicans, I am
3184 not sure how many which way, but have utilized that in order
3185 to condemn property for private purposes.

3186 I agree with my friends across the aisle that believe
3187 eminent domain should not be utilized for private purposes
3188 no matter what they are. But when it comes to anything
3189 related to utilities, as the gentleman from Wisconsin has
3190 pointed out, we have had to use eminent domain to make sure
3191 people have the energy they need when they need it,
3192 including in places like Massachusetts, where they just
3193 assume not produce any.

3194 And with that, I yield back.

3195 Chairman Goodlatte. The question occurs on the
3196 amendment offered by the gentleman from New York.

3197 All those in favor respond by saying aye.

3198 Those opposed, no.

3199 In the opinion of the chair, the noes have it, and the
3200 amendment is not agreed to.

3201 A reporting quorum being present, the question is on
3202 reporting the bill favorably to the House.

3203 Those in favor will say aye.

3204 Those opposed, no.

3205 The ayes have it, and the bill is ordered reported
3206 favorably. Members will have 2 days to submit views.

3207 [The information follows:]

3208

3209 Chairman Goodlatte. Without objection, the bill will be
3210 reported as a single amendment in the nature of the
3211 substitutes, incorporating all adopted amendments, and staff
3212 is authorized to make technical and conforming changes.

3213 And with that, the business of the committee is
3214 concluded. We thank all the members for their
3215 participation, and the meeting is adjourned.

3216 [Whereupon, at 2:37 p.m., the committee was adjourned.]