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NOES—114  
Green, Gene  
Grijalva  
Gutierrez  
Hahn  
Heinrich  
Himes  
Hinojosa  
Hirono  
Honda  
Hoyer  
Jackson Lee  
Chu  
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Johnson (GA)  
Johnson, E. B.  
Kaptur  
Keating  
Kildee  
Kucinich  
Langevin  
Larson (CT)  
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Lewis (GA)  
Loifgren, Zoe  
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Lynch  
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Markey  
Matsui  
McCollum  
McDermott  
McGovern  
McNerney  
Meeks  
Miller (NC)  
Miller, George  
Moran  
Nadler  
Napolitano  
Neal

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Pallone  
Pelosi  
Peters  
Pingree (ME)  
Price (NC)  
Quigley  
Richardson  
Richmond  
Rothman (NJ)  
Roybal-Allard  
Rush  
Sánchez, Linda  
T.  
Sanchez, Loretta  
Sarbanes  
Schakowsky  
Schiff  
Schwartz  
Scott (VA)  
Scott, David  
Serrano  
Sherman  
Slaughter  
Speier  
Stark  
Thompson (CA)  
Tierney  
Tsongas  
Van Hollen  
Velázquez  
Wasserman  
Schultz  
Watt  
Waxman  
Wilson (FL)  
Woolsey  
Yarmuth

NOT VOTING—16

Akin  
Cardoza  
Clay  
Cleaver  
Crawford  
Hall  
Hunter  
Israel  
Jackson (IL)  
Landry  
Lee (CA)  
McHenry  
Murphy (CT)  
Payne  
Rangel  
Young (AK)

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE  
The SPEAKER pro tempore (during the vote). There is 1 minute remaining.

□ 1631

So the bill was passed.  
The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:  
Mr. CRAWFORD. Mr. Speaker, on rollcall No. 79, I was unavoidably detained. Had I been present, I would have voted "aye."

Mr. MCHENRY. Mr. Speaker, on rollcall No. 79, I was unavoidably detained. Had I been present, I would have voted "aye."

PERSONAL EXPLANATION

Mr. AKIN. Mr. Speaker, on rollcall Nos. 78 and 79, I was delayed and unable to vote. Had I been present, I would have voted "no" on No. 78, and "aye" on No. 79.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 1837, SACRAMENTO-SAN JOAQUIN VALLEY WATER RELIABILITY ACT

Mr. BISHOP of Utah, from the Committee on Rules, submitted a privileged report (Rept. No. 112-405) on the resolution (H. Res. 566) providing for consideration of the bill (H.R. 1837) to address certain water-related concerns on the San Joaquin River, and for other purposes, which was referred to the House Calendar and ordered to be printed.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the Chair will postpone further proceedings today on the motion to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote incurs objection under clause 6 of rule XX.

Any record vote on the postponed question will be taken later.

PRIVATE PROPERTY RIGHTS PROTECTION ACT OF 2012

Mr. SMITH of Texas. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1433) to protect private property rights, as amended.

The Clerk read the title of the bill.  
The text of the bill is as follows:

H.R. 1433

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the "Private Property Rights Protection Act of 2012".

SEC. 2. PROHIBITION ON EMINENT DOMAIN ABUSE BY STATES.

(a) IN GENERAL.—No State or political subdivision of a State shall exercise its power of eminent domain, or allow the exercise of such power by any person or entity to which such power has been delegated, over property to be used for economic development or over property that is used for economic development within 7 years after that exercise, if that State or political subdivision receives Federal economic development funds during any fiscal year in which the property is so used or intended to be used.

(b) INELIGIBILITY FOR FEDERAL FUNDS.—A violation of subsection (a) by a State or political subdivision shall render such State or political subdivision ineligible for any Federal economic development funds for a period of 2 fiscal years following a final judgment on the merits by a court of competent jurisdiction that such subsection has been violated, and any Federal agency charged with distributing those funds shall withhold them for such 2-year period, and any such funds distributed to such State or political subdivision shall be returned or reimbursed by such State or political subdivision to the appropriate Federal agency or authority of the Federal Government, or component thereof.

(c) OPPORTUNITY TO CURE VIOLATION.—A State or political subdivision shall not be ineligible for any Federal economic development funds under subsection (b) if such State or political subdivision returns all real property the taking of which was found by a court of competent jurisdiction to have constituted a violation of subsection (a) and replaces any other property destroyed and repairs any other property damaged as a result of such violation. In addition, the State must pay applicable penalties and interest to regain eligibility.

SEC. 3. PROHIBITION ON EMINENT DOMAIN ABUSE BY THE FEDERAL GOVERNMENT.

The Federal Government or any authority of the Federal Government shall not exercise its power of eminent domain to be used for economic development.

SEC. 4. PRIVATE RIGHT OF ACTION.

(a) CAUSE OF ACTION.—Any (1) owner of private property whose property is subject to

eminent domain who suffers injury as a result of a violation of any provision of this Act with respect to that property, or (2) any tenant of property that is subject to eminent domain who suffers injury as a result of a violation of any provision of this Act with respect to that property, may bring an action to enforce any provision of this Act in the appropriate Federal or State court. A State shall not be immune under the 11th Amendment to the Constitution of the United States from any such action in a Federal or State court of competent jurisdiction. In such action, the defendant has the burden to show by clear and convincing evidence that the taking is not for economic development. Any such property owner or tenant may also seek an appropriate relief through a preliminary injunction or a temporary restraining order.

(b) **LIMITATION ON BRINGING ACTION.**—An action brought by a property owner or tenant under this Act may be brought if the property is used for economic development following the conclusion of any condemnation proceedings condemning the property of such property owner or tenant, but shall not be brought later than seven years following the conclusion of any such proceedings.

(c) **ATTORNEYS' FEE AND OTHER COSTS.**—In any action or proceeding under this Act, the court shall allow a prevailing plaintiff a reasonable attorneys' fee as part of the costs, and include expert fees as part of the attorneys' fee.

#### **SEC. 5. REPORTING OF VIOLATIONS TO ATTORNEY GENERAL.**

(a) **SUBMISSION OF REPORT TO ATTORNEY GENERAL.**—Any (1) owner of private property whose property is subject to eminent domain who suffers injury as a result of a violation of any provision of this Act with respect to that property, or (2) any tenant of property that is subject to eminent domain who suffers injury as a result of a violation of any provision of this Act with respect to that property, may report a violation by the Federal Government, State, or political subdivision of a State to the Attorney General.

(b) **INVESTIGATION BY ATTORNEY GENERAL.**—Upon receiving a report of an alleged violation, the Attorney General shall conduct an investigation to determine whether a violation exists.

(c) **NOTIFICATION OF VIOLATION.**—If the Attorney General concludes that a violation does exist, then the Attorney General shall notify the Federal Government, authority of the Federal Government, State, or political subdivision of a State that the Attorney General has determined that it is in violation of the Act. The notification shall further provide that the Federal Government, State, or political subdivision of a State has 90 days from the date of the notification to demonstrate to the Attorney General either that (1) it is not in violation of the Act or (2) that it has cured its violation by returning all real property the taking of which the Attorney General finds to have constituted a violation of the Act and replacing any other property destroyed and repairing any other property damaged as a result of such violation.

(d) **ATTORNEY GENERAL'S BRINGING OF ACTION TO ENFORCE ACT.**—If, at the end of the 90-day period described in subsection (c), the Attorney General determines that the Federal Government, authority of the Federal Government, State, or political subdivision of a State is still violating the Act or has not cured its violation as described in subsection (c), then the Attorney General will bring an action to enforce the Act unless the property owner or tenant who reported the violation has already brought an action to enforce the Act. In such a case, the Attorney

General shall intervene if it determines that intervention is necessary in order to enforce the Act. The Attorney General may file its lawsuit to enforce the Act in the appropriate Federal or State court. A State shall not be immune under the 11th Amendment to the Constitution of the United States from any such action in a Federal or State court of competent jurisdiction. In such action, the defendant has the burden to show by clear and convincing evidence that the taking is not for economic development. The Attorney General may seek any appropriate relief through a preliminary injunction or a temporary restraining order.

(e) **LIMITATION ON BRINGING ACTION.**—An action brought by the Attorney General under this Act may be brought if the property is used for economic development following the conclusion of any condemnation proceedings condemning the property of an owner or tenant who reports a violation of the Act to the Attorney General, but shall not be brought later than seven years following the conclusion of any such proceedings.

(f) **ATTORNEYS' FEE AND OTHER COSTS.**—In any action or proceeding under this Act brought by the Attorney General, the court shall, if the Attorney General is a prevailing plaintiff, award the Attorney General a reasonable attorneys' fee as part of the costs, and include expert fees as part of the attorneys' fee.

#### **SEC. 6. NOTIFICATION BY ATTORNEY GENERAL.**

(a) **NOTIFICATION TO STATES AND POLITICAL SUBDIVISIONS.**—

(1) Not later than 30 days after the enactment of this Act, the Attorney General shall provide to the chief executive officer of each State the text of this Act and a description of the rights of property owners and tenants under this Act.

(2) Not later than 120 days after the enactment of this Act, the Attorney General shall compile a list of the Federal laws under which Federal economic development funds are distributed. The Attorney General shall compile annual revisions of such list as necessary. Such list and any successive revisions of such list shall be communicated by the Attorney General to the chief executive officer of each State and also made available on the Internet website maintained by the United States Department of Justice for use by the public and by the authorities in each State and political subdivisions of each State empowered to take private property and convert it to public use subject to just compensation for the taking.

(b) **NOTIFICATION TO PROPERTY OWNERS AND TENANTS.**—Not later than 30 days after the enactment of this Act, the Attorney General shall publish in the Federal Register and make available on the Internet website maintained by the United States Department of Justice a notice containing the text of this Act and a description of the rights of property owners and tenants under this Act.

#### **SEC. 7. REPORTS.**

(a) **BY ATTORNEY GENERAL.**—Not later than 1 year after the date of enactment of this Act, and every subsequent year thereafter, the Attorney General shall transmit a report identifying States or political subdivisions that have used eminent domain in violation of this Act to the Chairman and Ranking Member of the Committee on the Judiciary of the House of Representatives and to the Chairman and Ranking Member of the Committee on the Judiciary of the Senate. The report shall—

(1) identify all private rights of action brought as a result of a State's or political subdivision's violation of this Act;

(2) identify all violations reported by property owners and tenants under section 5(c) of this Act;

(3) identify the percentage of minority residents compared to the surrounding non-minority residents and the median incomes of those impacted by a violation of this Act;

(4) identify all lawsuits brought by the Attorney General under section 5(d) of this Act;

(5) identify all States or political subdivisions that have lost Federal economic development funds as a result of a violation of this Act, as well as describe the type and amount of Federal economic development funds lost in each State or political subdivision and the Agency that is responsible for withholding such funds; and

(6) discuss all instances in which a State or political subdivision has cured a violation as described in section 2(c) of this Act.

(b) **DUTY OF STATES.**—Each State and local authority that is subject to a private right of action under this Act shall have the duty to report to the Attorney General such information with respect to such State and local authorities as the Attorney General needs to make the report required under subsection (a).

#### **SEC. 8. SENSE OF CONGRESS REGARDING RURAL AMERICA.**

(a) **FINDINGS.**—The Congress finds the following:

(1) The founders realized the fundamental importance of property rights when they codified the Takings Clause of the Fifth Amendment to the Constitution, which requires that private property shall not be taken "for public use, without just compensation".

(2) Rural lands are unique in that they are not traditionally considered high tax revenue-generating properties for State and local governments. In addition, farmland and forest land owners need to have long-term certainty regarding their property rights in order to make the investment decisions to commit land to these uses.

(3) Ownership rights in rural land are fundamental building blocks for our Nation's agriculture industry, which continues to be one of the most important economic sectors of our economy.

(4) In the wake of the Supreme Court's decision in *Kelo v. City of New London*, abuse of eminent domain is a threat to the property rights of all private property owners, including rural land owners.

(b) **SENSE OF CONGRESS.**—It is the sense of Congress that the use of eminent domain for the purpose of economic development is a threat to agricultural and other property in rural America and that the Congress should protect the property rights of Americans, including those who reside in rural areas. Property rights are central to liberty in this country and to our economy. The use of eminent domain to take farmland and other rural property for economic development threatens liberty, rural economies, and the economy of the United States. The taking of farmland and rural property will have a direct impact on existing irrigation and reclamation projects. Furthermore, the use of eminent domain to take rural private property for private commercial uses will force increasing numbers of activities from private property onto this Nation's public lands, including its National forests, National parks and wildlife refuges. This increase can overburden the infrastructure of these lands, reducing the enjoyment of such lands for all citizens. Americans should not have to fear the government's taking their homes, farms, or businesses to give to other persons. Governments should not abuse the power of eminent domain to force rural property owners from their land in order to develop rural land into industrial and commercial property. Congress has a duty to protect the property rights of rural Americans in the face of eminent domain abuse.

**SEC. 9. DEFINITIONS.**

In this Act the following definitions apply:

(1) **ECONOMIC DEVELOPMENT.**—The term “economic development” means taking private property, without the consent of the owner, and conveying or leasing such property from one private person or entity to another private person or entity for commercial enterprise carried on for profit, or to increase tax revenue, tax base, employment, or general economic health, except that such term shall not include—

- (A) conveying private property—
  - (i) to public ownership, such as for a road, hospital, airport, or military base;
  - (ii) to an entity, such as a common carrier, that makes the property available to the general public as of right, such as a railroad or public facility;
  - (iii) for use as a road or other right of way or means, open to the public for transportation, whether free or by toll; and
  - (iv) for use as an aqueduct, flood control facility, pipeline, or similar use;
- (B) removing harmful uses of land provided such uses constitute an immediate threat to public health and safety;
- (C) leasing property to a private person or entity that occupies an incidental part of public property or a public facility, such as a retail establishment on the ground floor of a public building;
- (D) acquiring abandoned property;
- (E) clearing defective chains of title;
- (F) taking private property for use by a public utility, including a utility providing electric, natural gas, telecommunications, water, and wastewater services, either directly to the public or indirectly through provision of such services at the wholesale level for resale to the public; and
- (G) redeveloping of a brownfield site as defined in the Small Business Liability Relief and Brownfields Revitalization Act (42 U.S.C. 9601(39)).

(2) **FEDERAL ECONOMIC DEVELOPMENT FUNDS.**—The term “Federal economic development funds” means any Federal funds distributed to or through States or political subdivisions of States under Federal laws designed to improve or increase the size of the economies of States or political subdivisions of States.

(3) **STATE.**—The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any other territory or possession of the United States.

**SEC. 10. SEVERABILITY AND EFFECTIVE DATE.**

(a) **SEVERABILITY.**—The provisions of this Act are severable. If any provision of this Act, or any application thereof, is found unconstitutional, that finding shall not affect any provision or application of the Act not so adjudicated.

(b) **EFFECTIVE DATE.**—This Act shall take effect upon the first day of the first fiscal year that begins after the date of the enactment of this Act, but shall not apply to any project for which condemnation proceedings have been initiated prior to the date of enactment.

**SEC. 11. SENSE OF CONGRESS.**

It is the policy of the United States to encourage, support, and promote the private ownership of property and to ensure that the constitutional and other legal rights of private property owners are protected by the Federal Government.

**SEC. 12. BROAD CONSTRUCTION.**

This Act shall be construed in favor of a broad protection of private property rights, to the maximum extent permitted by the terms of this Act and the Constitution.

**SEC. 13. LIMITATION ON STATUTORY CONSTRUCTION.**

Nothing in this Act may be construed to supersede, limit, or otherwise affect any pro-

vision of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

**SEC. 14. RELIGIOUS AND NONPROFIT ORGANIZATIONS.**

(a) **PROHIBITION ON STATES.**—No State or political subdivision of a State shall exercise its power of eminent domain, or allow the exercise of such power by any person or entity to which such power has been delegated, over property of a religious or other nonprofit organization by reason of the nonprofit or tax-exempt status of such organization, or any quality related thereto if that State or political subdivision receives Federal economic development funds during any fiscal year in which it does so.

(b) **INELIGIBILITY FOR FEDERAL FUNDS.**—A violation of subsection (a) by a State or political subdivision shall render such State or political subdivision ineligible for any Federal economic development funds for a period of 2 fiscal years following a final judgment on the merits by a court of competent jurisdiction that such subsection has been violated, and any Federal agency charged with distributing those funds shall withhold them for such 2-year period, and any such funds distributed to such State or political subdivision shall be returned or reimbursed by such State or political subdivision to the appropriate Federal agency or authority of the Federal Government, or component thereof.

(c) **PROHIBITION ON FEDERAL GOVERNMENT.**—The Federal Government or any authority of the Federal Government shall not exercise its power of eminent domain over property of a religious or other nonprofit organization by reason of the nonprofit or tax-exempt status of such organization, or any quality related thereto.

**SEC. 15. REPORT BY FEDERAL AGENCIES ON REGULATIONS AND PROCEDURES RELATING TO EMINENT DOMAIN.**

Not later than 180 days after the date of the enactment of this Act, the head of each Executive department and agency shall review all rules, regulations, and procedures and report to the Attorney General on the activities of that department or agency to bring its rules, regulations and procedures into compliance with this Act.

**SEC. 16. SENSE OF CONGRESS.**

It is the sense of Congress that any and all precautions shall be taken by the government to avoid the unfair or unreasonable taking of property away from survivors of Hurricane Katrina who own, were bequeathed, or assigned such property, for economic development purposes or for the private use of others.

**SEC. 17. DISPROPORTIONATE IMPACT ON MINORITIES.**

If the court determines that a violation of this Act has occurred, and that the violation has a disproportionately high impact on the poor or minorities, the Attorney General shall use reasonable efforts to locate and inform former owners and tenants of the violation and any remedies they may have.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Texas (Mr. SMITH) and the gentleman from New York (Mr. NADLER), each will control 20 minutes.

The Chair recognizes the gentleman from Texas.

**GENERAL LEAVE**

Mr. SMITH of Texas. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous materials on H.R. 1433, as amended, currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. SMITH of Texas. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to thank Congressman SENSENBRENNER and Congresswoman WATERS for introducing 1433, the Private Property Rights Protection Act, to restore vital property rights protections following the Supreme Court's decision in *Kelo v. City of New London*.

This bipartisan legislation passed the House during the 109th Congress by a vote of 376-38 with 99 percent of Republicans and 81 percent of Democrats present voting in favor of final passage. Unfortunately, the bill was never voted on in the Senate. Today, over 6 years later, the *Kelo* decision continues to call out for congressional action.

Our Founders realized the fundamental importance of property rights. Property rights protections are enshrined throughout the Constitution, including in the Fifth Amendment, which provides that private property shall not be taken for public use without just compensation.

Despite these protections, in *Kelo* the Supreme Court held that the government may take private property from one owner and transfer it to another for private economic development. The dissenting Justices sharply criticized the Court's decision, writing that the result of the majority opinion was:

Effectively to delete the words “for public use” from the takings clause of the Fifth Amendment. The specter of condemnation hangs over all property. The government now has license to transfer property from those with few resources to those with more. The Founders cannot have intended this perverse result.

This legislation essentially reverses this result and prohibits State and local governments that receive Federal economic development funds from abusing eminent domain for private economic development. It also prohibits the Federal Government from using eminent domain for economic development purposes.

This bill restores Americans' faith in their ability to build, own, and keep their property without fear of the government taking their homes, farms, or businesses to give to other people. It tells commercial developers that they should seek to obtain property through private negotiation, not by public force.

Too many Americans have lost homes and small businesses to eminent domain abuse, forced to watch as private developers replace them with luxury condominiums and other upscale uses. Local governments often approve the use of eminent domain for private economic development in order to expand their tax basis.

Federal law currently allows Federal funds to be used to support condemnations for the benefit of private developers, which encourages this abuse nationwide.

As the Institute for Justice's witness observed during our hearing on this bill:

Using eminent domain so that another richer, better-connected person may live or work on the land you used to own tells Americans that their hopes, dreams, and hard work do not matter as much as money and political influence. The use of eminent domain for private development has no place in a country built on traditions of independence, hard work, and protection of property rights.

Americans' homes are their castles. Federal taxpayer dollars should not be used to fund the battering ram of eminent domain abuse.

I urge my colleagues to support this bipartisan legislation to restore the Constitution's broad protections for private property rights.

I reserve the balance of my time.

The SPEAKER pro tempore (Mr. CRAWFORD). Without objection, the gentleman from Michigan (Mr. CONYERS) controls 20 minutes.

There was no objection.

Mr. CONYERS. Mr. Speaker, I yield myself such time as I may consume.

I reluctantly rise in opposition to the measure before us, the so-called Private Property Rights Protection Act. Now, while the goal of this legislation to protect property owners and tenants from the abuse of eminent domain is laudable and important, it would, in reality, supplant the work States have already done to respond to the Supreme Court's decision in *Kelo v. The City of New London* in the 7 years since the Court handed down that decision.

Most importantly, whatever the concerns my colleagues may have about the *Kelo* decision, the use and abuse of the power of eminent domain, I hope that every Member would look very carefully at the penalty it will impose on States, counties, cities, and towns across the country. Even if they never take a single piece of property, even if a jurisdiction never uses eminent domain at all, the mere possibility that some future administration would use eminent domain in a prohibited manner would cast a permanent cloud over the jurisdiction's finances.

The risk of the catastrophic penalties being imposed over the life of a 10-year or 20-year bond would be enough to destroy or mitigate a city or State's ability to float bonds at any time for any reason. At the very least, our cities and States would be forced to pay a risk premium that would make us envy Greece.

While it would destroy the finances of every community in the country, it would still allow some of the most flagrant abuses of eminent domain today. One glaring example is that the Keystone XL pipeline, and all pipelines, specifically is exempted. Even now, when a Canadian company is threatening farm families with eminent domain for a project that hasn't even been approved, this bill would give TransCanada a free pass. Whatever your concerns, this bill is not the right answer to a very important question.

You see, since 2005, there have been new developments that call into question whether Congress should even act at this point. When this House last considered similar legislation, the *Kelo* decision was new, and there was real concern that the Supreme Court had opened floodgates to abusive takings of homes, businesses, churches, and farms. The States responded, which is their role in our Federal system. They responded to the concerns of the people who live in those communities to restrain State power and safeguard property rights. In some cases, the State courts have acted to restrain State governments in ways that the Federal law would not.

□ 1640

In response to the *Kelo* decision, States have moved aggressively to reconsider and amend their own eminent domain laws. More than 40 States have acted, and States have considered carefully the implications of this decision and the needs of their citizens.

Congress should not now come charging in after 7 years of work and presume to sit as a national zoning board, arrogating to our national government the right to decide which States have gotten the balance right and deciding which projects are or are not appropriate. Yet my colleagues who decry an intrusive Federal Government, who exalt States' rights, and who demand that the courts defer to the elected branches of government to make important decisions are not satisfied. They want the courts to interfere. They want a one-size-fits-all, Washington-knows-best solution. They don't want to respect the way States have dealt with this issue.

The power of eminent domain is an extraordinary one, and it should be used rarely and with great care. All too often, it has been abused for private gain or to benefit some at the expense of others.

Has this bill drawn the appropriate line between permissible and impermissible uses of eminent domain? I think that is one of the questions we will really need to consider. We all know the easy cases. As the majority in *Kelo* said:

The City would no doubt be forbidden from taking petitioners' land for the purpose of conferring a private benefit on a particular private party . . . nor would the City be allowed to take property under the mere pretext of a public purpose when its actual purpose was to bestow a private benefit.

But which projects are appropriate and which are not can sometimes be a difficult call.

Historically, eminent domain has been used to destroy communities for projects having nothing to do with economic development as prohibited by this bill. For example, highways have cut through neighborhoods, destroying them. I know about that. Many of these communities have been low-income and minority communities, and many of them have yet to recover from

the wrecker's ball. Yet this bill would permit those projects to go forward, using eminent domain, as if nothing had happened. Other projects that have genuine public purposes would, nonetheless, be prohibited.

There is no rhyme or reason for this legislation. I believe, as I did in 2005, that this bill is the incorrect approach to a very serious problem.

With that, Mr. Speaker, I reserve the balance of my time.

Mr. SMITH of Texas. Mr. Speaker, I yield 6 minutes to the gentleman from Wisconsin (Mr. SENSENBRENNER), who is the sponsor of this legislation and also a former chairman of the Judiciary Committee.

After that, Mr. Speaker, I ask unanimous consent that the gentleman from Virginia (Mr. GOODLATTE) be allowed to control the remainder of the time.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. SENSENBRENNER. I thank the gentleman from Texas for yielding me the time.

Mr. Speaker, I want to state at the beginning that I deeply appreciate my cosponsor of this legislation, the gentlewoman from California (Ms. WATERS). This is a Sensenbrenner-Waters bill. You will never see another Sensenbrenner-Waters bill, and that is probably one of the best reasons to vote in favor of it.

Yet, on the merits, I am pleased that the House of Representatives today is considering H.R. 1433, the Private Property Rights Protection Act. This legislation will prevent economic development from being used as a justification for exercising the power of eminent domain.

I first introduced a version of this bill after the 2005 Supreme Court's ruling in *Kelo v. City of New London*. In this decision, the Court held 5-4 that "economic development" can be a "public use" under the Fifth Amendment's Takings Clause, justifying the government's taking of private property and giving it to a private business for use in the interest of creating a more lucrative tax base. As a result of this ruling, the Federal Government's power of eminent domain has become almost limitless, providing citizens with few means to protect their property.

Under the decision, farmers in my State of Wisconsin are particularly vulnerable. The fair market value of farmland is less than that of residential or commercial property, which means it doesn't generate as much property tax as homes or offices. Uncle Sam can condemn one family's house only because another private entity would pay more in tax revenue.

This bill is needed to restore to all Americans the property rights the Supreme Court took away. Although several States have independently passed legislation to limit their power of eminent domain and even though the Supreme Courts of Illinois, Michigan, and

Ohio have barred the practice under their State constitutions, these laws exist on a varying degree.

The Private Property Rights Protection Act will provide American citizens in every State of this country with the means to protect their private property from exceedingly unsubstantiated claims of eminent domain. Under the legislation, if a State or a political subdivision of a State uses its eminent domain power to transfer private property to other private parties for economic development, the State is ineligible to receive Federal economic development funds for 2 fiscal years following a judicial determination that the law has been violated. Additionally, the bill prohibits the Federal Government from using eminent domain for economic development purposes.

The protection of property rights is one of the most important tenets of our government. I am mindful of the long history of eminent domain abuses, particularly in low-income and often predominantly minority neighborhoods, and of the need to stop it. I am also mindful of the reasons we should allow the government to take land when the way in which the land is being used constitutes an immediate threat to public health and safety. This bill accomplishes both of those goals.

The need to ensure that property rights are returned to all Americans is as strong now as it was when Kelo was decided. Congress must play a pivotal role in reforming the use and abuse of eminent domain. I urge my colleagues to join me in protecting property rights for all Americans and in limiting the dangerous effects of the Kelo decision on the most vulnerable in society.

Mr. CONYERS. It is my pleasure to yield such time as she may consume to a senior member of the Judiciary Committee, my longstanding friend and supporter for many years, the gentlewoman from California, the Honorable MAXINE WATERS.

Ms. WATERS. Mr. CONYERS, I want to thank you for not only granting me this time but for being my friend for many years. It is odd for me to be on the opposite side of you. This may be the first time, certainly, in my career that we have ever disagreed on anything.

Mr. SENSENBRENNER is correct in that this will be the only time we will probably come together around an issue, but we've been together on this one for a long time.

With that, Mr. Speaker, I rise in strong support of H.R. 1433, the Private Property Rights Protection Act of 2012. This legislation on which I joined with Representative SENSENBRENNER will restore the property rights of all Americans and prevent the Federal Government or any authority of the Federal Government from using economic development as a justification for exercising its power of eminent domain. Economic development condemnations have all too often been used by power-

ful interest groups to acquire land at the expense of the poor and politically weak.

As the dissent in the Kelo case pointed out:

To reason, as the Court does, that the incidental public benefits resulting from the subsequent ordinary use of private property render economic development takings "for public use" is to wash out any distinction between private and public use of property. The beneficiaries are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms. As for the victims, the government now has license to transfer property from those with fewer resources to those with more. The Founders cannot have intended this perverse result.

Few protested the Kelo ruling more ardently than the National Association for the Advancement of Colored People, the NAACP. In an amicus brief filed in the case, it argued "the burden of eminent domain has and will continue to fall disproportionately upon racial and ethnic minorities, the elderly and economically disadvantaged." Unfettered eminent domain authority, the NAACP concluded, is a "license for government to coerce individuals on behalf of society's strongest interests."

□ 1650

The Private Property Rights Protection Act of 2011 will discourage eminent domain abuse by denying local governments that take private property for economic development access to Federal economic development funds for a period of 2 years.

One of the basic constitutional functions of American government is the protection of private property rights. H.R. 1433 will protect homes, communities, churches, and other privately owned property from predatory takers under the guise of "economic development."

Private developers and local governments that have a genuine project should be able to acquire the land or property they need through legitimate, voluntary purchases. If the project really is more valuable than the current use of the same land, then they should be willing to negotiate with property owners who are willing to sell.

Eminent domain abuse impacts both urban and rural communities, and it is past time that Congress acted affirmatively to protect the private property rights of all Americans, who all too often are not evenly matched to challenge private companies in lengthy litigation. Where the Supreme Court created ambiguity with its Kelo ruling, Congress must be clear: There should never be a legal question concerning the rights individuals have to be secure in their homes and communities.

With that, let me just wrap this up by saying I have been engaged for the past several years with the subprime meltdown in this country that caused so many families to be in foreclosure, and I have been engaged on that sub-

ject because I consider the home the most precious asset, the most precious possession that any American can have.

And so whether it's trying to protect people who got involved in mortgages that they did not understand, mortgages where they were suckered into signing on the dotted line because we had exotic products that had been put into the marketplace which caused them to lose that home, or whether it is the pure question of eminent domain, property ownership is the basis of our American government and protected, should be always, by the Constitution and the Members who are elected to come to Congress to uphold the Constitution and protect our citizens.

And so today I join with Congressman SENSENBRENNER and others on the opposite side of the aisle in ways that I don't normally do, and probably won't have the opportunity to do for a long time to come, but today is important. We join together in the interest of American citizens who simply want to be able to own their home without their government intervening in their lives and taking their property and saying they are doing it in the name of economic development.

Mr. GOODLATTE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, private ownership of property is vital to our freedom and our prosperity, and it is one of the most fundamental principles embedded in our Constitution. The Founders realized the importance of property rights when they codified the takings clause of the Fifth Amendment to the Constitution, which requires that private property shall not be taken "for public use without just compensation."

This clause created two conditions to the government taking private property: that the subsequent use of the property is for the public, and that the government give the property owners just compensation.

However, the Supreme Court's 5-4 decision in Kelo v. City of New London was a step in the opposite direction. This controversial ruling expanded the ability of State and local governments to exercise eminent domain powers to seize property under the guise of "economic development" when the public use is as incidental as generating tax revenues or creating jobs, even in situations where the government takes property from one private individual and gives it to another private entity.

By defining "public use" so expansively, the court essentially erased any protection for private property as understood by the Founders of our Nation. In the wake of this decision, State and local governments can use eminent domain powers to take the property of any individual for nearly any reason. Cities may now bulldoze private citizens' homes, farms, and small businesses to make way for shopping malls or other developments.

For these reasons, I joined with Chairman SENSENBRENNER to introduce H.R. 1433, the Private Property Rights Protection Act.

I am pleased that H.R. 1433 incorporates many provisions from legislation I coauthored in the 109th Congress, the STOPP Act. Specifically H.R. 1433 would prohibit all Federal economic development funds for a period of 2 years for any State or local government that uses economic development as a justification for taking property from one person and giving it to another private entity.

In addition, this legislation would allow State and local governments to cure violations by giving the property back to the original owner. Furthermore, this bill specifically grants adversely affected landowners the right to use appropriate legal remedies to enforce the provisions of the bill.

H.R. 1433 also includes a carefully crafted definition of economic development that protects traditional uses of eminent domain, such as taking land for public uses like roads, while prohibiting abuses of eminent domain powers. No one should have to live in fear of the government snatching up their home, farm or business, and the Private Property Rights Protection Act will help create the incentives to ensure that these abuses do not occur in the future.

I urge my colleagues to support this important piece of legislation.

I reserve the balance of my time.

Mr. CONYERS. Mr. Speaker, I yield 3 minutes to the distinguished gentlelady from Texas (Ms. JACKSON-LEE).

Ms. JACKSON LEE of Texas. I thank the distinguished chairman and the manager of the legislation, the distinguished gentleman from Virginia, and look forward to joining in supporting this legislation, H.R. 1433.

This is legislation that has been long in coming. It is a bipartisan initiative, and I think it is particularly important, when we speak to our colleagues who are representing the American public, to be able to say that property is valuable, that the Bill of Rights that requires due process before a taking is being reinforced by this legislation.

H.R. 1433 would prohibit a State or political subdivision from exercising its power of eminent domain, or allowing the exercise of such power by delegation, over property to be used for economic development, or of a property that is used for economic development, within 7 years after that exercise if the State or political subdivision receives Federal economic development funds during any fiscal year in which the property is so used or intended to be used.

Texas has faced a number of incidences, Mr. Speaker. One, in particular, is after the aftermath of Hurricane Ike. Although there are different laws dealing with coastal property, I saw the pain in a number of beach owners's faces as their property was condemned, even though they were trying to anxiously save it.

This bill establishes a private cause of action for any private property owner or tenant who suffers injury as a result of violation of this act. This helps the little guy—someone who owns property can actually have a remedy to stand up and challenge the taking of their property.

The bill prohibits State immunity in Federal or State court and sets the statute of limitations at 7 years. Although I offered an amendment to extend that to 10 years, I was willing to compromise at 7, as well as requiring the Attorney General to bring an action to enforce this act in certain circumstances, but prohibits an action brought later than 7 years following the conclusion of any condemnation proceedings.

□ 1700

And maybe as it makes its way through, we'll have an opportunity to expand that 7-year period. These are the efforts of Mr. SENSENBRENNER and Congresswoman WATERS, along with the rest of us who cosponsored this amendment.

The three amendments I offered to the bill, some of them were accepted. My first amendment requires that a study be conducted to identify the number of minorities versus non-minorities who will be impacted by the act, in addition to the median incomes of those who are mostly highly affected.

My second amendment requires the United States Attorney General to locate and inform members of minority communities if it is determined that the act has a disproportionate impact. Both of those amendments, I believe, were accepted.

The SPEAKER pro tempore. The time of the gentlewoman has expired.

Mr. CONYERS. Mr. Speaker, I yield the gentlelady 3 additional minutes.

Ms. JACKSON LEE of Texas. I thank the gentleman.

I also offered an amendment to ensure that States are required to pay penalties and interest in cases where they run afoul of this bill.

I am well aware of the needs of local communities and the needs of economic development; but I am glad that this Congress seeks today to stand up on behalf of private property rights and owners. I am delighted that in the course of working in particular with this issue, we have a fair and balanced approach. Let me just give you a very brief example, and I thank the gentleman for his courtesy.

The history of eminent domain is rife with abuse specifically targeting racial and ethnic and poor neighborhoods. Now, redlining may not be equated to condemning neighborhoods or eminent domain; but when you don't allow a neighborhood to refurbish itself, to refinance, you are putting it in the line quickly for being a target of eminent domain. A 2004 study estimated that 1,600 African American neighborhoods were destroyed by municipal projects

in Los Angeles. In San Jose, California, 95 percent of the properties targeted for economic redevelopment are Hispanic or Asian owned, despite the fact that only 30 percent of businesses in that area are owned by racial or ethnic minorities.

In Mount Holly Township, New Jersey, officials have targeted for economic development a neighborhood in which the percentage of African American residents, 44 percent, is twice that of the entire township and nearly triple that of Burlington County. Lastly, according to a 1989 study, 90 percent of the 10,000 families displaced by highway projects in Baltimore were African Americans.

In my own home State of Texas, I remember a very well-stocked neighborhood of teachers and various blue collar workers. We called it Third Ward, Riverside, a thriving area. Its schools were schools like E.O. Smith and Jack Yates High School. And in the course of trying to develop a major highway, in fact, that neighborhood was ultimately, in essence, diminished—diminished greatly.

So as growth comes, I understand it, but I think this is an excellent balance. I want economic development. I want to see growth, but I would like it to support and encourage thriving neighborhoods of all backgrounds and diversity.

This legislation will help in doing so, and I believe it will correct decisions made previously and allow Texans, allow Californians, New Yorkers, Midwesterners, Southerners, Northerners, Easterners and Westerners to have a fair balance when the government comes and says it's time to take your property. I ask my colleagues to support this legislation.

Mr. Speaker, I rise today to debate H.R. 1433. I appreciate this opportunity to explain my support for H.R. 1433, "Private Property Rights Protection Act of 2011." First I would like to thank the Chairman of the Judiciary Committee, who accepted three of the four amendments I offered to H.R. 1433 during the Committee markup.

H.R. 1433 would prohibit a state or political subdivision from exercising its power of eminent domain, or allowing the exercise of such power by delegation, over property to be used for economic development or over property that is used for economic development within seven years after that exercise, if the state or political subdivision receives federal economic development funds during any fiscal year in which the property is so used or intended to be used.

In addition, it prohibits the federal government from exercising its power of eminent domain for economic development. Also, establishes a private cause of action for any private property owner or tenant who suffers injury as a result of a violation of this Act. The bill prohibits state immunity in federal or state court and sets the statute of limitations at seven years, as well as requiring the Attorney General, DOJ, to bring an action to enforce this Act in certain circumstances, but prohibits an action brought later than seven years following the conclusion of any condemnation proceedings.

This bill has been the product of a tremendous effort by Representative MAXINE WATERS. I, along, with Representative WATERS have worked for nearly a decade on this issue. During Committee markup, I added several changes to this bill that I believe have enhanced this bill.

The three amendments that I have offered to the bill would ensure that both minorities and non-minorities will have additional protections under this measure. My first amendment requires that a study be conducted to identify the number of minorities versus non-minorities who will be impacted by the Act, in addition to the median incomes of those who are most highly affected.

My second amendment requires the United States Attorney General to locate and inform members of minority communities, if it is determined that this Act has a disproportionate impact on them.

My final amendment to this measure will ensure that states are required to pay penalties and interest in cases where they run afoul of this bill. The purpose of my amendment was to ensure that both small businesses and low-income homeowners are protected as well, those who might not have the ability to engage in drawn-out and expensive litigation.

The Private Property Rights Protection Act prohibits state and local governments that receive federal economic development funds from using eminent domain to transfer private property from one private owner to another for the purpose of economic development.

The history of eminent domain is rife with abuse specifically targeting racial and ethnic minority and poor neighborhoods. A 2004 study estimated that 1,600 African American neighborhoods were destroyed by municipal projects in Los Angeles.

In San Jose, California, 95 percent of the properties targeted for economic redevelopment are Hispanic or Asian-owned, despite the fact that only 30 percent of businesses in that area are owned by racial or ethnic minorities.

In Mt. Holly Township, New Jersey, officials have targeted for economic redevelopment a neighborhood in which the percentage of African American residents, 44 percent, is twice that of the entire township and nearly triple that of Burlington County.

Lastly, according to a 1989 study 90 percent of the 10,000 families displaced by highway projects in Baltimore were African Americans.

Thousands of Texans, from Houston to San Antonio to El Paso, now live under the threat of eminent domain abuse. These minority home and business owners have well-founded fears that their property may soon be taken from them to make way for private redevelopment projects cooked up by developers and city officials.

The threatened homes and businesses are important parts of functioning communities, many of which have been there since the earliest days of Texas' history as an independent nation. Their only fault is that they are located on land coveted by developers and government officials.

In Justice O'Connor's dissent in *Kelo*, she predicted, "Any property may now be taken for the benefit of another private party, but the fallout from this decision will not be random. The beneficiaries are likely to be those citizens with disproportionate influence and power in the political process, including large

corporations and development firms. As for the victims, the government now has license to transfer property from those with fewer resources to those with more."

Following the decision in *Kelo*, Texans, and minorities in particular, remain tremendously vulnerable to eminent domain abuse by ambitious cities and developers.

Hours after *Kelo* was decided, the city of Freeport, Texas, urged its attorneys to redouble their efforts to take a family-owned seafood business for a private marina development project. This so outraged the Texas legislature that Texas became the second state—out of 43 so far—to reform its eminent domain laws.

In El Paso, a neighborhood called El Segundo Barrio (which has been called the "Ellis Island of the Southwest") is being targeted by a large consortium of developers and business owners who want to remake the U.S.-Mexico border area for the overwhelming benefit of private parties.

In San Antonio, the city wants to expand its famed River Walk northward again, to be filled with private businesses owned by people other than the current land owners.

In Houston, the threat is everywhere. One little noticed part of the city's light rail plan allows the rail authority to condemn any property within a quarter mile of any light rail station to facilitate something called "transit-oriented development."

Municipalities often look for areas with low property values when deciding where to pursue redevelopment projects because it costs the condemning authority less and thus the state or local government gains more, financially, when they replace areas of low property values with those with higher property values.

This abuse can happen anywhere in the United States. Eminent domain abuses affecting racial minorities and those in the relatively low income bracket must be stopped.

My amendment permits judicial review, to determine if this Act has a disproportionate impact on minorities, and for the Attorney General to locate those affected and inform them of their rights.

The displacement of African Americans and urban renewal projects are so intertwined that "urban renewal" was often referred to as "Black Removal."

There are vast disparities of African Americans or other racial or ethnic minorities that have been removed from their homes due to eminent domain actions are well documented and must continue to be judicially reviewed.

When an area is taken for "economic development," low-income families are driven out of their communities and find that they cannot afford to live in the "revitalized" neighborhoods.

The remaining "affordable" housing in the area is almost certain to become less so. When the goal is to increase the area's tax base, it only makes sense that the previous low-income residents will not be able to remain in the area.

This is borne out not only by common sense, but also by statistics: one study for the mid-1980s showed that 86 percent of those relocated by an exercise of the eminent domain power were paying more rent at their new residences, with the median rent almost doubling.

I am keenly aware that my colleagues on the other side of the aisle see this bill as the reversal of the *Kelo* decision from an ideologi-

cally different window but I hope that this bill can be used as a marker to help support the rights of property owners who do not have access to the "Big Litigation."

Mr. CONYERS. Mr. Speaker, I have no further speakers, and so I yield back the balance of my time.

Mr. GOODLATTE. Mr. Speaker, I yield myself such time as I may consume to say that I urge my colleagues to adopt this bipartisan legislation to restore meaning to the Fifth Amendment to the Constitution. As Justice Sandra Day O'Connor noted in her dissent in that opinion, the *Kelo* decision effectively renders meaningless the protections under this law because, as the interpretation exists, as the Court ruling exists, State and local governments can seize property for almost any reason under the context of calling it for purposes of economic development, and we need to change that.

We need to make sure that private property is what people think it is, and that is something that they have the right to own and not be interfered with by the government except for real purposes of eminent domain, taking land for pure public uses like roads and utilities and schools and other clearly public uses.

I urge my colleagues to support the legislation, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. SMITH) that the House suspend the rules and pass the bill, H.R. 1433, as amended.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

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COMMUNICATION FROM DISTRICT REPRESENTATIVE, THE HONORABLE STEVE KING, MEMBER OF CONGRESS

The SPEAKER pro tempore laid before the House the following communication from Sandra Hanlon, District Representative, the Honorable STEVE KING, Member of Congress:

FEBRUARY 24, 2012.

Hon. JOHN A. BOEHNER,  
Speaker, House of Representatives,  
Washington, DC.

DEAR MR. SPEAKER, this is to notify you formally, pursuant to rule VIII of the Rules of the House of Representatives, that I have been served with a trial subpoena ad testificandum issued by the United States District Court for the Northern District of Iowa.

After consultation with the Office of General Counsel, I will determine whether compliance with the subpoena is consistent with the privileges and rights of the House.

Sincerely,

SANDRA HANLON,  
District Representative,  
Congressman Steve King.