

# H.R. 1689, THE “PRIVATE PROPERTY RIGHTS PROTECTION ACT”

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## HEARING BEFORE THE SUBCOMMITTEE ON THE CONSTITUTION AND CIVIL JUSTICE OF THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES ONE HUNDRED FIFTEENTH CONGRESS FIRST SESSION

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MARCH 30, 2017  
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115TH CONGRESS  
1ST SESSION

# H. R. 1689

To protect private property rights.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 22, 2017

Mr. SENSENBRENNER (for himself, Ms. MAXINE WATERS of California, and Mr. FITZPATRICK) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To protect private property rights.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Private Property  
5 Rights Protection Act of 2017”.

6 **SEC. 2. PROHIBITION ON EMINENT DOMAIN ABUSE BY**  
7 **STATES.**

8 (a) IN GENERAL.—No State or political subdivision  
9 of a State shall exercise its power of eminent domain, or  
10 allow the exercise of such power by any person or entity  
11 to which such power has been delegated, over property to

1 be used for economic development or over property that  
2 is used for economic development within 7 years after that  
3 exercise, if that State or political subdivision receives Fed-  
4 eral economic development funds during any fiscal year  
5 in which the property is so used or intended to be used.

6 (b) INELIGIBILITY FOR FEDERAL FUNDS.—A viola-  
7 tion of subsection (a) by a State or political subdivision  
8 shall render such State or political subdivision ineligible  
9 for any Federal economic development funds for a period  
10 of 2 fiscal years following a final judgment on the merits  
11 by a court of competent jurisdiction that such subsection  
12 has been violated, and any Federal agency charged with  
13 distributing those funds shall withhold them for such 2-  
14 year period, and any such funds distributed to such State  
15 or political subdivision shall be returned or reimbursed by  
16 such State or political subdivision to the appropriate Fed-  
17 eral agency or authority of the Federal Government, or  
18 component thereof.

19 (c) OPPORTUNITY TO CURE VIOLATION.—A State or  
20 political subdivision shall not be ineligible for any Federal  
21 economic development funds under subsection (b) if such  
22 State or political subdivision returns all real property the  
23 taking of which was found by a court of competent juris-  
24 diction to have constituted a violation of subsection (a)  
25 and replaces any other property destroyed and repairs any

1 other property damaged as a result of such violation. In  
2 addition, the State or political subdivision must pay any  
3 applicable penalties and interest to reattain eligibility.

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

6 The Federal Government or any authority of the Fed-  
7 eral Government shall not exercise its power of eminent  
8 domain to be used for economic development.

9 **SEC. 4. PRIVATE RIGHT OF ACTION.**

10 (a) CAUSE OF ACTION.—Any—(1) owner of private  
11 property whose property is subject to eminent domain who  
12 suffers injury as a result of a violation of any provision  
13 of this Act with respect to that property; or (2) any tenant  
14 of property that is subject to eminent domain who suffers  
15 injury as a result of a violation of any provision of this  
16 Act with respect to that property, may bring an action  
17 to enforce any provision of this Act in the appropriate  
18 Federal or State court. A State shall not be immune under  
19 the 11th Amendment to the Constitution of the United  
20 States from any such action in a Federal or State court  
21 of competent jurisdiction. In such action, the defendant  
22 has the burden to show by clear and convincing evidence  
23 that the taking is not for economic development. Any such  
24 property owner or tenant may also seek an appropriate

1 relief through a preliminary injunction or a temporary re-  
2 straining order.

3 (b) **LIMITATION ON BRINGING ACTION.**—An action  
4 brought by a property owner or tenant under this Act may  
5 be brought if the property is used for economic develop-  
6 ment following the conclusion of any condemnation pro-  
7 ceedings condemning the property of such property owner  
8 or tenant, but shall not be brought later than seven years  
9 following the conclusion of any such proceedings.

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

15 **SEC. 5. REPORTING OF VIOLATIONS TO ATTORNEY GEN-**  
16 **ERAL.**

17 (a) **SUBMISSION OF REPORT TO ATTORNEY GEN-**  
18 **ERAL.**—Any—(1) owner of private property whose prop-  
19 erty is subject to eminent domain who suffers injury as  
20 a result of a violation of any provision of this Act with  
21 respect to that property; or (2) any tenant of property that  
22 is subject to eminent domain who suffers injury as a result  
23 of a violation of any provision of this Act with respect to  
24 that property, may report a violation by the Federal Gov-



1 ernment, any authority of the Federal Government, State,  
2 or political subdivision of a State to the Attorney General.

3 (b) INVESTIGATION BY ATTORNEY GENERAL.—Upon  
4 receiving a report of an alleged violation, the Attorney  
5 General shall conduct an investigation to determine wheth-  
6 er a violation exists.

7 (c) NOTIFICATION OF VIOLATION.—If the Attorney  
8 General concludes that a violation does exist, then the At-  
9 torney General shall notify the Federal Government, au-  
10 thority of the Federal Government, State, or political sub-  
11 division of a State that the Attorney General has deter-  
12 mined that it is in violation of the Act. The notification  
13 shall further provide that the Federal Government, State,  
14 or political subdivision of a State has 90 days from the  
15 date of the notification to demonstrate to the Attorney  
16 General either that: (1) it is not in violation of the Act;  
17 or (2) that it has cured its violation by returning all real  
18 property the taking of which the Attorney General finds  
19 to have constituted a violation of the Act and replacing  
20 any other property destroyed and repairing any other  
21 property damaged as a result of such violation.

22 (d) ATTORNEY GENERAL'S BRINGING OF ACTION TO  
23 ENFORCE ACT.—If, at the end of the 90-day period de-  
24 scribed in subsection (c), the Attorney General determines  
25 that the Federal Government, authority of the Federal

1 Government, State, or political subdivision of a State is  
2 still violating the Act or has not cured its violation as de-  
3 scribed in subsection (c), then the Attorney General will  
4 bring an action to enforce the Act unless the property  
5 owner or tenant who reported the violation has already  
6 brought an action to enforce the Act. In such a case, the  
7 Attorney General shall intervene if it determines that  
8 intervention is necessary in order to enforce the Act. The  
9 Attorney General may file its lawsuit to enforce the Act  
10 in the appropriate Federal or State court. A State shall  
11 not be immune under the 11th Amendment to the Con-  
12 stitution of the United States from any such action in a  
13 Federal or State court of competent jurisdiction. In such  
14 action, the defendant has the burden to show by clear and  
15 convincing evidence that the taking is not for economic  
16 development. The Attorney General may seek any appro-  
17 priate relief through a preliminary injunction or a tem-  
18 porary restraining order.

19 (e) LIMITATION ON BRINGING ACTION.—An action  
20 brought by the Attorney General under this Act may be  
21 brought if the property is used for economic development  
22 following the conclusion of any condemnation proceedings  
23 condemning the property of an owner or tenant who re-  
24 ports a violation of the Act to the Attorney General, but

1 shall not be brought later than seven years following the  
2 conclusion of any such proceedings.

3 (f) ATTORNEYS' FEE AND OTHER COSTS.—In any  
4 action or proceeding under this Act brought by the Attor-  
5 ney General, the court shall, if the Attorney General is  
6 a prevailing plaintiff, award the Attorney General a rea-  
7 sonable attorneys' fee as part of the costs, and include  
8 expert fees as part of the attorneys' fee.

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

10 (a) NOTIFICATION TO STATES AND POLITICAL SUB-  
11 DIVISIONS.—

12 (1) Not later than 30 days after the enactment  
13 of this Act, the Attorney General shall provide to the  
14 chief executive officer of each State the text of this  
15 Act and a description of the rights of property own-  
16 ers and tenants under this Act.

17 (2) Not later than 120 days after the enact-  
18 ment of this Act, the Attorney General shall compile  
19 a list of the Federal laws under which Federal eco-  
20 nomic development funds are distributed. The Attor-  
21 ney General shall compile annual revisions of such  
22 list as necessary. Such list and any successive revi-  
23 sions of such list shall be communicated by the At-  
24 torney General to the chief executive officer of each  
25 State and also made available on the Internet

1 website maintained by the United States Depart-  
2 ment of Justice for use by the public and by the au-  
3 thorities in each State and political subdivisions of  
4 each State empowered to take private property and  
5 convert it to public use subject to just compensation  
6 for the taking.

7 (b) NOTIFICATION TO PROPERTY OWNERS AND TEN-  
8 ANTS.—Not later than 30 days after the enactment of this  
9 Act, the Attorney General shall publish in the Federal  
10 Register and make available on the Internet website main-  
11 tained by the United States Department of Justice a no-  
12 tice containing the text of this Act and a description of  
13 the rights of property owners and tenants under this Act.

14 **SEC. 7. REPORTS.**

15 (a) BY ATTORNEY GENERAL.—Not later than 1 year  
16 after the date of enactment of this Act, and every subse-  
17 quent year thereafter, the Attorney General shall transmit  
18 a report identifying States or political subdivisions that  
19 have used eminent domain in violation of this Act to the  
20 Chairman and Ranking Member of the Committee on the  
21 Judiciary of the House of Representatives and to the  
22 Chairman and Ranking Member of the Committee on the  
23 Judiciary of the Senate. The report shall—

1           (1) identify all private rights of action brought  
2 as a result of a State's or political subdivision's vio-  
3 lation of this Act;

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

6           (3) identify the percentage of minority residents  
7 compared to the surrounding nonminority residents  
8 and the median incomes of those impacted by a vio-  
9 lation of this Act;

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

12          (5) identify all States or political subdivisions  
13 that have lost Federal economic development funds  
14 as a result of a violation of this Act, as well as de-  
15 scribe the type and amount of Federal economic de-  
16 velopment funds lost in each State or political sub-  
17 division and the Agency that is responsible for with-  
18 holding such funds; and

19          (6) discuss all instances in which a State or po-  
20 litical subdivision has cured a violation as described  
21 in section 2(c) of this Act.

22          (b) DUTY OF STATES.—Each State and local author-  
23 ity that is subject to a private right of action under this  
24 Act shall have the duty to report to the Attorney General  
25 such information with respect to such State and local au-

1 thorties as the Attorney General needs to make the report  
2 required under subsection (a).

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

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

5 (1) The founders realized the fundamental im-  
6 portance of property rights when they codified the  
7 Takings Clause of the Fifth Amendment to the Con-  
8 stitution, which requires that private property shall  
9 not be taken “for public use, without just compensa-  
10 tion”.

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

18 (3) Ownership rights in rural land are funda-  
19 mental building blocks for our Nation’s agriculture  
20 industry, which continues to be one of the most im-  
21 portant economic sectors of our economy.

22 (4) In the wake of the Supreme Court’s deci-  
23 sion in *Kelo v. City of New London*, abuse of emi-  
24 nent domain is a threat to the property rights of all

1 private property owners, including rural land own-  
2 ers.

3 (b) SENSE OF CONGRESS.—It is the sense of Con-  
4 gress that the use of eminent domain for the purpose of  
5 economic development is a threat to agricultural and other  
6 property in rural America and that the Congress should  
7 protect the property rights of Americans, including those  
8 who reside in rural areas. Property rights are central to  
9 liberty in this country and to our economy. The use of  
10 eminent domain to take farmland and other rural property  
11 for economic development threatens liberty, rural econo-  
12 mies, and the economy of the United States. The taking  
13 of farmland and rural property will have a direct impact  
14 on existing irrigation and reclamation projects. Further-  
15 more, the use of eminent domain to take rural private  
16 property for private commercial uses will force increasing  
17 numbers of activities from private property onto this Na-  
18 tion's public lands, including its National forests, National  
19 parks and wildlife refuges. This increase can overburden  
20 the infrastructure of these lands, reducing the enjoyment  
21 of such lands for all citizens. Americans should not have  
22 to fear the government's taking their homes, farms, or  
23 businesses to give to other persons. Governments should  
24 not abuse the power of eminent domain to force rural  
25 property owners from their land in order to develop rural

1 land into industrial and commercial property. Congress  
2 has a duty to protect the property rights of rural Ameri-  
3 cans in the face of eminent domain abuse.

4 **SEC. 9. SENSE OF CONGRESS.**

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

10 **SEC. 10. RELIGIOUS AND NONPROFIT ORGANIZATIONS.**

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

20 (b) INELIGIBILITY FOR FEDERAL FUNDS.—A viola-  
21 tion of subsection (a) by a State or political subdivision  
22 shall render such State or political subdivision ineligible  
23 for any Federal economic development funds for a period  
24 of 2 fiscal years following a final judgment on the merits  
25 by a court of competent jurisdiction that such subsection



1 has been violated, and any Federal agency charged with  
2 distributing those funds shall withhold them for such 2-  
3 year period, and any such funds distributed to such State  
4 or political subdivision shall be returned or reimbursed by  
5 such State or political subdivision to the appropriate Fed-  
6 eral agency or authority of the Federal Government, or  
7 component thereof.

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

14 **SEC. 11. REPORT BY FEDERAL AGENCIES ON REGULATIONS**  
15 **AND PROCEDURES RELATING TO EMINENT**  
16 **DOMAIN.**

17 Not later than 180 days after the date of the enact-  
18 ment of this Act, the head of each Executive department  
19 and agency shall review all rules, regulations, and proce-  
20 dures and report to the Attorney General on the activities  
21 of that department or agency to bring its rules, regula-  
22 tions and procedures into compliance with this Act.

23 **SEC. 12. SENSE OF CONGRESS.**

24 It is the sense of Congress that any and all pre-  
25 cautions shall be taken by the government to avoid the

1 unfair or unreasonable taking of property away from sur-  
2 vivors of Hurricane Katrina who own, were bequeathed,  
3 or assigned such property, for economic development pur-  
4 poses or for the private use of others.

5 **SEC. 13. DISPROPORTIONATE IMPACT.**

6 If the court determines that a violation of this Act  
7 has occurred, and that the violation has a disproportion-  
8 ately high impact on the poor or minorities, the Attorney  
9 General shall use reasonable efforts to locate former own-  
10 ers and tenants and inform them of the violation and any  
11 remedies they may have.

12 **SEC. 14. DEFINITIONS.**

13 In this Act the following definitions apply:

14 (1) **ECONOMIC DEVELOPMENT.**—The term  
15 “economic development” means taking private prop-  
16 erty, without the consent of the owner, and con-  
17 veying or leasing such property from one private  
18 person or entity to another private person or entity  
19 for commercial enterprise carried on for profit, or to  
20 increase tax revenue, tax base, employment, or gen-  
21 eral economic health, except that such term shall not  
22 include—

23 (A) conveying private property—

24 (i) to public ownership, such as for a  
25 road, hospital, airport, or military base;

1 (ii) to an entity, such as a common  
2 carrier, that makes the property available  
3 to the general public as of right, such as  
4 a railroad or public facility;

5 (iii) for use as a road or other right  
6 of way or means, open to the public for  
7 transportation, whether free or by toll; and

8 (iv) for use as an aqueduct, flood con-  
9 trol facility, pipeline, or similar use;

10 (B) removing harmful uses of land pro-  
11 vided such uses constitute an immediate threat  
12 to public health and safety;

13 (C) leasing property to a private person or  
14 entity that occupies an incidental part of public  
15 property or a public facility, such as a retail es-  
16 tablishment on the ground floor of a public  
17 building;

18 (D) acquiring abandoned property;

19 (E) clearing defective chains of title;

20 (F) taking private property for use by a  
21 utility providing electric, natural gas, tele-  
22 communication, water, wastewater, or other  
23 utility services either directly to the public or  
24 indirectly through provision of such services at  
25 the wholesale level for resale to the public; and

1 (G) redeveloping of a brownfield site as de-  
2 fined in the Small Business Liability Relief and  
3 Brownfields Revitalization Act (42 U.S.C.  
4 9601(39)).

5 (2) FEDERAL ECONOMIC DEVELOPMENT  
6 FUNDS.—The term “Federal economic development  
7 funds” means any Federal funds distributed to or  
8 through States or political subdivisions of States  
9 under Federal laws designed to improve or increase  
10 the size of the economies of States or political sub-  
11 divisions of States.

12 (3) STATE.—The term “State” means each of  
13 the several States, the District of Columbia, the  
14 Commonwealth of Puerto Rico, or any other terri-  
15 tory or possession of the United States.

16 **SEC. 15. LIMITATION ON STATUTORY CONSTRUCTION.**

17 Nothing in this Act may be construed to supersede,  
18 limit, or otherwise affect any provision of the Uniform Re-  
19 location Assistance and Real Property Acquisition Policies  
20 Act of 1970 (42 U.S.C. 4601 et seq.).

21 **SEC. 16. BROAD CONSTRUCTION.**

22 This Act shall be construed in favor of a broad pro-  
23 tection of private property rights, to the maximum extent  
24 permitted by the terms of this Act and the Constitution.

1 **SEC. 17. SEVERABILITY AND EFFECTIVE DATE.**

2 (a) SEVERABILITY.—The provisions of this Act are  
3 severable. If any provision of this Act, or any application  
4 thereof, is found unconstitutional, that finding shall not  
5 affect any provision or application of the Act not so adju-  
6 dicated.

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

○



# H.R. 1689, PRIVATE PROPERTY RIGHTS PROTECTION ACT OF 2017

THURSDAY, MARCH 30, 2017

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON THE CONSTITUTION AND CIVIL JUSTICE

COMMITTEE ON THE JUDICIARY

*Washington, DC.*

The subcommittee met, pursuant to call, at 9:10 a.m., in Room 2141, Rayburn House Office Building, Hon. Steve King [chairman of the subcommittee] presiding.

Present: Representatives King, Franks, Cohen, Conyers, and Raskin.

Staff Present: Paul Taylor, Majority Counsel; Jake Glancy, Majority Clerk; James Park, Minority Chief Counsel, Subcommittee on the Constitution; Matthew Morgan, Minority Professional Staff Member; and Veronica Eligan, Minority Professional Staff Member.

Mr. KING. The Subcommittee on the Constitution and Civil Justice will come to order. Without objection, the chair is authorized to declare a recess of the committee at any time.

We welcome Mr. Cohen, and we welcome everyone to today's hearing on H.R. 1689, Private Property Rights Protection Act.

I now recognize myself for an opening statement.

On June 23, the Supreme Court, in a five-to-four decision in *Kelo v. City of New London*, held that, and I quote, "economic development," close quote, can be a public use under the Fifth Amendment's takings clause. In doing so, the Supreme Court allowed the government to take perfectly fine property rights from one small homeowner and give it to a large corporation for a private business facility.

As a dissent in that case pointed out, under the majority's opinion, any property may now be taken for the benefit of another private party. 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.

The public reaction to the *Kelo* decision was swift and strong. According to the *Wall Street Journal* and an NBC news poll, in an 11-to-1 margin, Americans said they oppose the taking of private property for public uses. And according to an American survey poll conducted at the time, public support for limiting the power of eminent domain is robust and cuts across demographic and partisan groups. Justice O'Connor, in a subsequent speech, called the *Kelo*

decision scary. Even Justice John Paul Stevens, who wrote the Kelo decision for the five-justice majority, subsequently told the Clark County, Nevada Bar Association that if he were a legislator instead of a judge, he would have opposed the results of his own ruling by working to change current law.

Well, we've taken some of that advice. Well, that's exactly what the Private Property Rights Protection Act will do. This legislation has a long bipartisan history. On October 25th of 2005, then Judiciary Committee Chairman Sensenbrenner and Representative Goodlatte, the current chairman, along with House Judiciary Committee Ranking Member Mr. Conyers, first introduced the Private Property Rights Protection Act, which would deny States or localities that abuse eminent domain all Federal economic development funds for a period of 2 years. This bill was reported out of the House Judiciary Committee on October 27th by a vote of 27 to 3. The bill went on to pass the House with 365 votes. It subsequently passed the House by a simple voice vote.

The NAACP and the AARP has said: "The takings that result from the Supreme Court's decision will disproportionately affect and harm the economically disadvantaged and, in particular, racial and ethnic minorities and the elderly."

The representatives of religious organizations have stated that: "Houses of worship and other religious institutions are, by their very nature, nonprofit and almost universally tax-exempt. These fundamental characteristics of religious institutions render their property singularly vulnerable to being taken under the rationale approved by the Supreme Court."

And the American Farm Bureau, the federation has stated: "Farmers and ranchers own and lease significant amounts of land on which they depend for their livelihoods and upon which all Americans rely for food and basic necessities. As valuable as the land is to our members and to the rest of the country, however, it will often be the case that more intense development by other private individuals or entities for other private purposes would yield greater tax revenue to the local government," close quote. That's the American Farm Bureau.

Congress' power to condition the use of Federal funds extends to prohibiting States and localities from receiving any Federal economic development funds for a specified period of time if such entities abuse their power of eminent domain, even if only State and local funds are used in that abuse of power.

Such a broader penalty is an appropriate use of Congress' spending power, as the Supreme Court has made clear that Congress may attach conditions to the receipt of any Federal funds, provided such conditions are related to the, quote, "Federal interest in particular and national projects or programs," close quote.

Under this legislation, there is a clear connection between the Federal funds that would be denied and the abuse Congress is intending to prevent. The policy is that States or localities that abuse their eminent domain power by using economic development as a rationale for taking should not be trusted with Federal economic development funds that could contribute to similarly abusive land grabs.



This legislation also includes an express private right of action to make certain that those suffering injuries from a violation of the bill will be allowed access to State or Federal Court to enforce its provisions.

I look forward to hearing from all of the witnesses today and to continuing the bipartisan tradition here in the House of Representatives, maybe even restarting it here today, and of protecting private property rights.

And I would point out, as I remarked earlier, that I recall clearly the debate we had on the floor of the House of Representatives in 2005, June 30th, when we had a resolution rejecting and a resolution of disapproval of the Supreme Court's decision. And I went down to the front row and prepared myself to rebut Mr. Barney Frank of Massachusetts, because that happened often, and I took my notes on all that he said and realized that Mr. Frank and I completely agreed on this property rights Kelo decision.

I would also point out that the properties in question in New London, Connecticut, are grown up to weeds. They haven't been developed, and the people that were displaced were abused by this decision and by their local government.

And the very vitality of America's free enterprise economy is rooted in property rights, and without them, capital can't make wise investments and we actually don't own our homes if it can be at the design of someone with more money and more political influence that could move eminent domain against our private property. So I am very much in support of this legislation that is before us here today.

I look forward to the witnesses, but I would yield to the ranking member for his opening statement.

Mr. COHEN. Thank you, Mr. Chair.

This is not one of those black-and-white issues like should we have health care for everybody or not, should we extend voting rights to everybody or not, those things that are easily understood and part of the American way. This is a difficult decision.

In the 113th Congress, I voted against a bill that was substantially identical to this bill. And I understand the nuances, but I still remain opposed to the bill.

I voted against that bill after I thought about it for a long time and considered the arguments. And there are good arguments on both sides for the use of eminent domain for economic development and about the need for Congress to appropriately intervene when necessary. And it was a tough call. As I say, not like health care, which it's obvious that everybody should have health care and we should all have voting rights and, you know, women should have choice and things like that.

But, I was sympathetic to those who opposed the Supreme Court's decision in Kelo. In that case, the Court upheld as constitutional the decision of that city to take private property and give it to another private party as part of an economic development plan.

I understand and appreciated the fact that the power of eminent domain has been abused by some localities for sure, and it targeted oftentimes low-income and minority communities for wholesale destruction. And I think at the time the NAACP was in favor of this

bill, because of that reason. I think they've switched their position, but that had an influence on me too.

And those local governments that weren't doing as good a job as they were were able to do so because such communities were politically marginalized and they were not in a position to challenge the taking of property for public purposes, including for economic development. As Mr. King has mentioned, it sometimes was the small houses and they couldn't compete with the powerful developers. And that's unfortunate. Normally, I'm on the side of the weak and the poor and what you do unto the least of these.

However, I concluded that economic development can help everyone, and that those people who were in the worst economic shape and had difficulty sometimes getting together their strength to fight at the city council level may be the ones that benefit the most from economic development, because—not to agree with our 45th President, who said, you know, how much worse can it get? We've seen how much worse it could get. It's gotten a lot worse with the proposals that are made with the budget he's proposed.

But the minority communities in inner city are very down in terms of economic opportunity, and they do need the jobs. They need the economic development that these projects are intended to provide.

So, there's merit in letting States and localities use eminent domain to develop communities and have economic revitalization. It's sometimes extremely essential.

My city of Memphis is not among the cities that are doing the best economically. We are in the lower ranks of growth, economic growth, jobs growth, and we've got a lot of areas we're not—so sometimes eminent domain can be helpful in creating economic vitality, and that creates jobs. And oftentimes in the inner cities, which are important to keep as a core, because that's where people come together rather than running away—flight to the suburbs.

So it's an important issue that helps minorities maybe more so than it hurts them. Indeed, using eminent domain can help the less powerful communities, marginalized, so to speak, because that's where the problems are disproportionate.

Just to the point of whether use of eminent domain for economic development is a good or bad idea, it was appropriate for the court in *Kelo* to leave that decision to States and localities, interestingly enough. States and localities I think should make zoning decisions and local economic decisions. That should be a local decision, as should medical malpractice, and that should be a State decision, as should the right to carry guns, but that's a whole different area of law.

This is because State and local governments are in the best position to understand local conditions and local needs, which is why land use decisions have traditionally been left to them. Sometimes the one-size-fits-all Washington answer is not the right answer. We want to leave things to local folks.

In criticizing the *Kelo* decision, many people have unhelpfully blurred the distinction to two issues, whether or not using eminent domain for economic development is a good idea on its merits, on the one hand; or, on the other hand, whether courts or an elected

legislature at the Federal, State or local level should make that decision as to the first question.

The court's decision in *Kelo* did not come out of thin air. It wasn't a case of just kind of first impression. It relied on decades of precedent to hold that a State or city could use eminent domain for public purposes of economic redevelopment.

The court also made clear States are always free to pass new laws or take other measures to limit or prohibit the use of eminent domain to give greater protection to property owners, something 44 States have done in response to the *Kelo* decision. And that's what the States have done, who know what their communities' needs might be.

Rather than short circuiting the State-level response, we ought to let it continue to develop. There are constitutional issues here. Mr. King took a proactive position and said, well, I think it's constitutional. The Supreme Court has made clear that there are constitutional limits to Congress's power to condition the use of Federal funds by States.

Congress may not threaten States with the loss of Federal funds to the degree where it coerces a State into carrying out Federal policy. H.R. 1689 conditions the use of vaguely defined Federal economic development funds on States' willingness to prohibit the use of eminent domain for economic development, and threatens to take away those funds completely for 2 years if the State doesn't comply.

Such a total loss of Federal funding may amount to the unconstitutional coercion of the States by the Federal Government. As a practical matter, losing Federal funding could bankrupt many already struggling municipalities, is something I find unacceptable.

For these and other reasons on what is a close call but a call that I find is important to just leave to States and local governments the decision and decisions that might help the economically depressed more and those that need it greatly. I find the bill unnecessary and problematic and, therefore, I continue to have concerns and will oppose the bill.

I yield back the balance of my time.

Mr. KING. The gentleman yields back.

And the chair would now recognize the ranking member of the full committee, Mr. Conyers of Michigan, for his opening statement. Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman.

My colleagues, this is an interesting question. And my first observation is that most States are already taking action, and here comes the Feds marching in to determine what they ought to do or can do.

I am concerned about the provision in the bill denying Federal economic development funds for 2 years. If the States appear to be in consensus on the need to prevent abuses, Federal intervention is neither necessary nor appropriate. So this attempt at legislation to respond to *Kelo*, which affirmed a city's use of eminent domain to transfer property from one private party to another for the public purpose of economic development. In the wake of that decision, there was concern that States and cities could expand their use of eminent domain to the detriment of politically marginalized groups.

And so I think this bill, in my view, unnecessarily intrudes on State decisionmaking and violates Federalism principles.

And I am going to yield to my colleague from Maryland, Mr. Raskin, to get his two cents' worth in.

Mr. RASKIN. Thank you so much, Mr. Conyers.

Welcome to the witnesses.

It is, indeed, a very engaging and fascinating subject before us today. I am particularly interested in what the witnesses have to say with respect to developments in the States since the Kelo decision.

As I recall Kelo, the court set out kind of a typology of answers to different kinds of situations. Everybody seems to agree that if you have the government just nakedly taking A's property and giving it to B, that runs afoul of the takings clause. Everybody seems to agree, on the other end of the spectrum, that if you have the government developing for a public purpose like a bridge or a road or a park or what it might be, that it can be taken with just compensation under the takings clause.

And then the question in the case was, what happens if you have a general social purpose for redevelopment of a community or neighborhood and you are taking one person's property that may not even be, quote, "blighted," which has been the traditional justification for doing this, and it ends up in the hands of another private party as part of an overall development scheme.

And I think what caused so much consternation was the court's validation of a situation like that, that a public use could be defined as being part of an overarching public purpose.

So I am curious as to what the States have done to protect people in a situation like that. In other words, have they extended more State constitutional or statutory protection in a context like that, where the Supreme Court seems to have withdrawn Federal constitutional protection.

And then I am also interested, if the witnesses would address the question of the utility and the specific efficacy of the legislative proposal before us.

I'm not sure I totally understand its terms, but the way I basically understand it is that if a State or a locality is engaged in a particular redevelopment project that does transfer property holder A's property to property holder B, then no economic development funding can come in for a certain period of time, 5 or 7 years I think it was.

And I'm wondering what you think about that as a solution to the problem that was caused by Kelo that was so widely understood to give too much authority to local governments to take people's property. And so is this a good answer?

If the Federal response is going to be along these lines, should it be a discontinuation of any Federal funding for the particular project that involves the transfer of one person's property to another or should it be in general to the whole State or the whole community, because I think that there's some ambiguity in the way that the legislation is written. Should it be a cutoff to the entire State for any purposes or should it just be for the purposes of the particular project?

Those are my thoughts. And thank you very much, Mr. Chair, and Mr. Conyers, for yielding.

Mr. KING. Mr. Conyers yields back his time and I appreciate his opening statement. And I thank the gentleman.

And, without objection, other members' opening statements will be made part of the record.

Let me now introduce our witnesses. Our first witness is Jeffrey Redfern, an attorney at the Institute for Justice, a public interest law firm. And our second is Tina Barnes. Ms. Barnes is a medical billing clerk and a client of the Institute for Justice. And our third witness is Mr. William Buzbee, returning here, professor of law at Georgetown University Law Center.

Each of the witnesses' written statements will be entered into the record in its entirety. I ask each of the witnesses to summarize your testimony in 5 minutes or so. And to help you stay within that time limit, there is a light in front of you. And you'll recognize that it is green; yellow, and yellow means you have a minute left; and when it gets to be red, we hope you have summarized your thoughts, but we want to hear the completion of those thoughts.

So before I recognize the witnesses, it is our tradition that the subcommittee witnesses be sworn in. So witnesses, would you please stand to be sworn, and raise your right hand.

Do you swear that the testimony you are about to give before this committee is the truth, the whole truth, and nothing but the truth, so help you God?

You may be seated. Thank you.

Let the record reflect that all the witnesses responded in the affirmative.

And I now recognize Mr. Redfern for his testimony. Mr. Redfern.

**TESTIMONY OF JEFFREY REDFERN, ATTORNEY, INSTITUTE FOR JUSTICE; TINA BARNES, CLIENT, INSTITUTE FOR JUSTICE; AND WILLIAM BUZBEE, PROFESSOR OF LAW, GEORGETOWN UNIVERSITY LAW CENTER**

**TESTIMONY OF JEFFREY REDFERN**

Mr. REDFERN. Thank you, Chairman.

And thank you for the opportunity to testify about eminent domain abuse, an issue that has rightly received national attention as a result of the Supreme Court's infamous decision in Kelo.

My name is Jeff Redfern. I am an attorney at the Institute for Justice, and I am here with my client Tina Barnes. She is a member of the Charlestown, Indiana, City Council, and she is a resident of a neighborhood that has been targeted for Kelo-style redevelopment.

After the Kelo decision, there was a nationwide backlash, and many States passed some kind of reform. But, unfortunately, a lot of these reforms were not meaningful and, adding insult to injury, government subsidies, including Federal funding, continues to finance these abuses. We're glad the committee is focused on this issue and we hope that Congress takes action.

When you litigate eminent domain cases, as we at the Institute for Justice do, you inevitably get to see a lot of PowerPoint presentations about proposed developments. And they often have beau-

tiful architectural renderings, things like trendy loft apartments, and high-end fitness centers, and organic gelato shops. And the public officials that promote these plans, they always claim that they are portraying the revitalization of a neighborhood. But that's not really accurate. What they're really portraying is the wholesale replacement of a poor neighborhood with a wealthy one.

And what is always missing from these pictures is the fate of eminent domain's victims. You see, eminent domain is used almost exclusively in low-income neighborhoods. And the people who live there simply can't afford to live in the kinds of luxury housing that the developers want to build.

That's actually what we're seeing in Charlestown, where Ms. Barnes lives. The developer there wants to replace homes worth about \$50,000 with homes worth hundreds of thousands of dollars. Many of these people have absolutely no idea where they're going to go.

The consequences for displaced people are devastating. They lose not only their homes, but their neighborhoods, their communities, their support networks. And these harms are too often invisible, because the victims of eminent domain are literally out of sight; they're gone.

The use of eminent domain for private development first took off during the 1950s and sixties during the so-called urban renewal movement. In this period, American cities went wild, bulldozing poor neighborhoods, and in the process displacing over one million people. Normally, when a million poor people are driven from their homes with no idea where they're going to go, we'd call that a refugee crisis.

But the public officials who wanted to raze these neighborhoods invariably said that they were doing it for the good of the residents. For instance, the Supreme Court in 1954 approved the use of eminent domain to redevelop southwest Washington, D.C. In that decision, the court said that living in that neighborhood could, quote, "suffocate the spirit and make living an almost insufferable burden." Well, the burdens of living in poor housing don't compare to the burdens of being forced out of one's home and neighborhood with no clear idea of where you're going to go. When the dust settled in southwest D.C., almost all of the former residents were gone. And the same story has continued to play out for decades around the country up to the present.

An obvious consequence of this kind of forced displacement is economic. The destruction of low-income housing drives prices up. One study found that 86 percent of people displaced by eminent domain end up paying more for housing after they relocate.

Many small businesses, such as corner stores, restaurants, barber shops, they're completely destroyed, because you can't relocate those kinds of businesses away from your customers.

There are also noneconomic consequences. One study tracked down the former residents of southwest D.C. who had been displaced by eminent domain, and the findings were heartbreaking. Five years after forced displacement, 25 percent of the former residents had yet to make a single friend in their new neighborhood. Eminent domain doesn't just destroy low-income housing; it de-

stroys communities and support structures that simply can't be replaced.

Now, I study these issues and I litigate these cases, but I think that my client Tina Barnes understands better than I ever will what is really at stake when governments are trying to forcibly displace homeowners.

So I look forward to hearing her remarks and I also look forward to answering the subcommittee's questions.

Thank you again for the opportunity to testify today.

Mr. KING. Thank you, Mr. Redfern.

And the chair now recognizes Ms. Barnes for your testimony. Ms. Barnes.

#### **TESTIMONY OF TINA BARNES**

Ms. BARNES. Thank you for the opportunity to testify about legislation that will protect the private property rights of people like me and my neighbors.

My name is Tina Barnes and I live in Pleasant Ridge, located near Louisville, Kentucky, where I spent the first 17 years of my life. Neighbors became family and helped to instill many values in me, including caring and helping others. When I found myself divorced, I moved back to Pleasant Ridge. I bought a duplex, which is perfect for us. I have a disabled adult daughter, Casey, who lives on one side, and my two grandchildren, Taylor and Kenzie, live on the other side with me. I had come home and my children were thriving.

Then in 2014, the unthinkable happened. Our mayor wanted to bulldoze our neighborhood for a wealthy developer to build an upscale subdivision with houses costing up to a million dollars. To achieve this, the mayor had applied for BEP funding, which is actually TARP money. He wanted to use Federal money to take everything from us. The application was full of lies. It stated our homes were blighted and temporary. Really? They've been standing for 70 years, through storms, tornadoes, and a hurricane. But worst of all, he called us transients.

As I said, I grew up here, so let me tell you about some of our transients. Helen still lives in the same home I went and played in. Ms. Smith is a retired school teacher. Here is a woman that has devoted her entire life to teaching and now has to worry about her home being taken from her. The Brewers have lived here for generations and were a huge part of starting our volunteer fire department and lady auxiliary.

My cousin Findley and his wife live next door in a home that my Uncle Garrison bought about 50 years ago. Their daughter Angela lives across the street. The Keiths have a beautiful home and a sanctuary for a backyard that even has an irrigation system. We are far from being transients.

The BEP application was pulled, but our mayor did not give up. He has now passed numerous ordinances designed to rid the city of Pleasant Ridge. One ordinance has been used against the landlords. They have been cited with hundreds of thousands of dollars in fines and their only resource was to sell out to the developer for only \$10,000 per property. Time has run out for some of these rent-

ers, and they have nowhere to go. Like Robbie, who is bedridden with MS.

It is truly sad watching them leave. Some of the children that have left, like Antonio, John Carlos, and Zack, used to play in our yard. It has been extremely hard on the adults involved, but can you imagine what this is doing to our children? How are they going to respect government after being treated this way? Losing their home and having the mayor refer to us as a cloud over the city.

Never would I have imagined that anyone holding a public office would refer to people living in their city this way, that a public official would go after a group of citizens using such tactics as this to obtain their privately owned property. After all, this is America, and one of the most fundamental rights is to own property.

We have been fighting this battle for 3 years. I cannot even begin to explain the amount of stress this has placed on all of us. I've watched the decline of many of my neighbors, and we've buried several. Some of them was Barb. She loved to collect salt and pepper shakers. A few had heart attacks, like Larry and Peggy.

See, the truth is, we know our neighborhood would have benefited from the BEP funding had it been used in the manner it was intended. We ask you to not let eminent domain be used to force us out of our homes. We still believe in you, our government. And a major function of our government is to protect us, and that protection must include the right to ownership of property. So, please, whatever legislation that you must pass to restrict the use of Federal funds to ensure us that protection and prevent us from having a fight like Pleasant Ridge battle, please do this.

And, again, thank you for hearing our story.

Mr. KING. Thank you, Ms. Barnes.

The chair now recognizes Professor Buzbee for his testimony. Professor.

#### **TESTIMONY OF WILLIAM BUZBEE**

Mr. BUZBEE. Thank you, Chairman King, Ranking Member Conyers, and members of the committee. Thanks for inviting me here today.

I should preface my testimony, saying that I agree that eminent domain can be abused, as can any political power. I also agree it should be rarely used, and I support many State law reforms to limit the uses of eminent domain.

Those risks of eminent domain, however, don't logically call for a single one-size-fits-all Federal law, especially that would displace more context-sensitive and politically informed judgments of State and local governments. So I will break my testimony into six fairly succinct points.

First, I think the bill is based on an erroneous reading of the Supreme Court's Kelo decision. Now, it is correct that the Kelo declined to bar private-to-private takings/transfers. It called for judicial deference to State and local governments to determine if there is a public purpose. But first, it did not make radical new law; it followed about 100 years of precedent.

Second, it did not surrender judicial taking scrutiny, it repeatedly emphasized that purely private takings are not permitted. And it also again and again emphasized that the case involved le-



gitimate economic development planning and no evidence of illegitimate purpose. And this discussion, as my colleagues here I think have used, that discussion created litigation opportunities if a State and local government is pursuing eminent domain without the kind of publicly accountable economic development planning and public accountable action.

In addition, Kelo itself welcomed and prompted State law reforms. And many States have, indeed, amended their laws to discourage or prohibit such private-to-private takings, but with a diversity of approaches. I would emphasize that especially valuable are the State and local governments that have made sure eminent domain follows a very public and accountable process. So Kelo has been over-read and States have been responsive.

Second, about the bill's constitutionality. I think it's mostly well-crafted to fit within Federal power. However, the 2012 NFIB v. Sebelius decision did say that conditional Federal spending can be unconstitutionally coercive, and so I think important for this committee and Congress to assess the magnitude of this bill's financial threat to State and local governments if Federal economic development funds were forfeited. And I have not found that in previous testimony. I think it important to hear from State and local governments about that.

Third point: Eminent domain remains a legitimate and often necessary regulatory tool. State and local governments are always trying to spur new development, strengthen their tax base, and attract new employers. And very often eminent domain and development efforts do involve efforts to assemble large parcels and an attempt to attract large private employers and large private projects. So this bill is targeted not at the exception, but something that could have a very, very vast economic impact.

Eminent domain remains important to address the problem of economic holdouts. Sometimes they're just good faith disputes over value, but, as economists and professors and historians have documented, some involve holdouts who strategically try to demand a special premium as their property becomes more and more crucial to a development effort that is well underway.

Eminent domain provides the answer. The government has to pay, and it has to pay fair market value. So, again, I think eminent domain is a bad alternative, but it does have a place and can be important in the regulatory tool chest.

Fourth, does this bill fit into any traditional rationales for Federal regulation? I think it doesn't. As you look at this bill, this is an area where the Federal Government has no special expertise. There are no regulatory economies of scale to have this handled at the Federal level. This is not uniform Federal standard-setting to assess or prevent regulatory races to the bottom, and there's no cross-border harms. In fact, here you are dealing with a situation where there's a diversity of State and local conditions, and that generally cuts against a one-size-fits-all punitive Federal scheme. Does it make sense to impose a strong anti-eminent domain policy on booming and struggling cities? Should Manhattan and Detroit be subject to the exact same incentives and threats? I think State and local conditions, tradeoffs, goals, and economic needs are generally best known by State and local governments.

My fifth point, I think that this bill actually does create a problem that people haven't previously recognized, and I call this the strategic super-holdout problem. And that is, this bill would specially empower property holders not just with the value of their land, which is always something they can seek, but by being able to threaten the loss of all Federal economic development funds.

A single holdout can threaten really not just to hold up a project, but to cause a cessation of major funds that would otherwise flow to the jurisdiction. And so this holdout really is specially empowered, and I think that's a real problem.

As I suggest in my testimony, I see my time is running out, I think one way to address some of these issues would be that if this bill is to proceed is that there should be some way for people to know, if they have reached a genuine agreement with State and local governments, that they couldn't take fair market value and then walk away and then sue. And then similarly, there should be a way for people to settle in a way that they know is final. This would mean timely challenges rather than waiting up to 7 years later.

Thank you very much.

Mr. KING. Thank you, Professor Buzbee.

I thank all the witnesses.

I now recognize myself for 5 minutes.

As I listen to the testimony here, I reflect back upon an incident that happened in one of my hometowns some years ago, where there was a gentleman that farmed right on the outside edge of town. He had bottom ground that had a good location with highway access, gravel road access, and utilities. He liked farming that piece of ground. And Walmart came into town and said, we'd like to build a Walmart here on this 17 or 19 acres that was worth probably a thousand dollars an acre at the time.

And he said, no, I like my farm and I want to live out my life doing this. And they kept upping the ante and upping the ante until they got up to about \$545,000 as opposed to \$20- or \$25,000. And then the five kids flew home and said, Dad, you need to think about us too, and he sold the land and Walmart built the building.

Now, I understand this is private to private. But that's how eminent domain is supposed to be respected and how property rights are supposed to be. What that value of that land is is what it's worth to the owner, not what it's worth to somebody's calculation on what fair market value is. And that's why the people that have been pushed off their homes, as Ms. Barnes has testified, why it cuts so deeply, because it's your homes, and it's generational, generational homes that you've been pushed off of.

And so when I think of—but a way they might have done this with Walmart, they might have then instead said, it's too high to bid this up to \$545,000, we're going to go to the city and propose a mall, and now you're going to get all of this property tax, go in and condemn the property, we will take it over, we will build the retail outlet.

And everything is done at a much cheaper price than paying what that land was worth to the person who owned it under their sacred property rights and sold it.

So if I see little white square frame farmhouse or a house of any kind sticking up out of an asphalt parking lot on a strip mall, that makes me happy, because that's a symbol of the protection of property rights. And when I think of what the Fifth Amendment says: "Nor shall private property be taken for public use"—and I emphasize "for public use"—"without just compensation." One thing that not only Barney Frank, Ms. Barnes and also Sandra Day O'Connor, Justice O'Connor agreed on is that that Kelo decision stripped those three words out of the Fifth Amendment, "for public use."

And so if the court can strip "for public use" out of the Fifth Amendment, how then shall we rewrite the Constitution if we're going to amend it to fix this problem that was created, I believe, by the Kelo decision? And do we say we really mean it, for public use, or do we concede that the court can ignore the plain language of the Constitution itself? Then you can look at the Fifth Amendment, giving them a similar amount of latitude that they took in the Kelo decision, and argue that there is really no prohibition in the Fifth Amendment for the government from taking private property.

It doesn't say you can't take private property; it's implied in the Fifth Amendment. "Nor shall private property be taken for public use." And so if we are going to ignore "for public use," then we can ignore also the prohibition on taking private property, because that's less specific in the Fifth Amendment than the language "for public use."

So I am way disturbed by an amendment to the Constitution that has been edited by the Supreme Court with a level of impunity. And the impact of all of this breaks my heart, but the damage to the Constitution is even greater.

So I know, Professor Buzbee, you heard my argument on this. And I wanted to give you an opportunity to respond and perhaps rebut the assertions that I've made.

Professor, here's your opportunity.

Mr. BUZBEE. First, thank you. And I agree that eminent domain should be the exception. I think it's completely legitimate for State and local governments to look at their conditions and create high hurdles to it. I think they genuinely should.

And so two responses: One is the idea that eminent domain—

Mr. KING. To the constitutional principle, though, that I have articulated.

Mr. BUZBEE. The idea that under the Constitution that eminent domain plays a role, the Constitution recognizes it. It has long been one of the regulatory pieces in the tool chest.

Mr. KING. Do you agree that the Supreme Court stripped the three words out of the Fifth Amendment, "for public use"?

Mr. BUZBEE. I don't. You know, the way the court looked—and it really is about 100 years and it goes back to opinions by Oliver Wendell Holmes.

Mr. KING. And I do understand that string of arguments, but the effect of it has been—and what if we accept that and we look at the Fifth Amendment now and we accept for public use is no longer an issue. Then do we use our judgment? Because that sounds to me like your testimony was we need to use our judgment at local government rather than be bound by the Constitution.

Mr. BUZBEE. No, no, no. I think that eminent domain remains a check—the Kelo case really does set out several kind of toeholds to challenge illegitimate takings. The idea that you need a public purpose, which is the phrase that has been used for about 100 years, remains in the Constitution and has been well-litigated.

Mr. KING. Thank you, Professor. And I would assert that that's out on the fringes of the argument myself.

But if the panel would indulge me, I would like to give Mr. Redfern an opportunity to respond.

Mr. REDFERN. Sure. First, I want to note that whether Kelo broke new ground doesn't directly speak to whether eminent domain abuse is a problem and whether this bill can solve it. But I think we don't need to parse the language of Kelo to determine whether it broke new ground.

The data shows that it did. After Kelo was decided, eminent domain condemnations tripled nationwide. That happened because developers understood that private property rights had been eviscerated. We wouldn't have had a dramatic change on the ground if there hadn't been a dramatic change in the law.

This idea that eminent domain should be a rare exception, everybody says that eminent domain should be rare, that it should be an exception, but that isn't meaningful if it's still on the table. You don't have any leverage to negotiate if you know that if you choose not to sell, the government is just going to come and condemn your land anyway. So I don't think that's much comfort to property owners.

And then finally, regarding whether there are any limitations in Kelo, we think that there are some toeholds, and we're working to develop them. But so far, under Kelo, it has been no holds barred in those States. We've primarily been litigating in States that have greater protection for constitutional rights.

Mr. KING. Thank you, Mr. Redfern. My time has run over, but I recognize the ranking member from Tennessee for his questions.

Mr. COHEN. Thank you, sir.

It's a tough case to make an argument on, but I do think it's a local issue. And eminent domain has done good on many occasions. Sometimes it hasn't.

Ms. Barnes, in your situation, it sounds like it was maybe not done well. Were you elected to the city council after this happened?

Ms. BARNES. Kind of in the middle. I was elected last year. And a new council came along with that, and that was the hand-picked people the mayor had chosen other than myself had won. So they've been able to pass new laws to govern our city that has been absolutely targeted onto Pleasant Ridge.

The first council is the one who voted against the BEP application, and that's the reason it was pulled.

Mr. COHEN. And was the mayor reelected too?

Ms. BARNES. Yes, he was.

Mr. COHEN. And what is the project they're putting in? It's homes? You say million dollar homes?

Ms. BARNES. Yes, sir.

Mr. COHEN. Pleasant Ridge. Is Pleasant Ridge to the folks, is it close enough to where the people live in Louisville?

Ms. BARNES. We now—

Mr. COHEN. I mean work in Louisville, excuse me.

Ms. BARNES. We now have a bridge that has been built on the very outskirts of our town that connects us to Louisville, Kentucky, which makes it very accessible. There is a huge Ford Motor plant that's just minutes away from us now. And then the other thing that has come into play is the Indiana Army Ammunition Plant is actually located in Charlestown, and that has been opened up for privatizing. So we've had a lot of businesses come in there.

So our mayor looks at our town as the next boomtown. And our subdivision, our particular place has 350 houses on it, and it's very localized. We can walk to anywhere in the town and be able to get to the store and buy whatever we need to. A lot of our neighbors don't even have cars, because they just walk there.

But there's all kinds of land outside of our neighborhood that can be used for the same purpose. It doesn't have to be our neighborhood. We have empty lots all over the place, and they can build there. I don't understand why our neighborhood, to be honest with you. It's just what they have chosen.

Mr. COHEN. And have they done all the buying of the properties in your neighborhood?

Ms. BARNES. I'm sorry?

Mr. COHEN. Have they bought all the homes up in your neighborhood?

Ms. BARNES. No, sir. They have bought about 150, and all of those are landlord rental properties. They have not bought any of our homes. So we still have about 200 that still is there, not to be sold.

Mr. COHEN. Maybe there's a reason why it's called Pleasant Ridge, and that's why they wanted it.

Ms. BARNES. Well, I think they will change the name, though, I'm sure. But they're not going to, because I'm still going to be there.

Mr. COHEN. Good luck.

Professor, how would you respond to Mr. Redfern's argument?

Mr. BUZBEE. Well, as I understand the argument, they would like stronger protections. And the main view is first this idea that there was a tripling post Kelo of use of eminent domain. It's very difficult to figure out before and after, with economic conditions and the rest. And so I've always been slightly skeptical of that. I have not looked at it, but I think it's worth studying. Like if I were Congress, I would certainly commission a study to figure this out.

But my own sense here is that eminent domain can be abused. I hope that State and local governments will put a check on it. But the idea that Federal Government should prevent all jurisdictions across the country from trying to catalyze development and deal with the holdout problem I think would be an overreach.

So, although I think it should be used sparingly and it can be a bad idea, it does have a place. And I think that it is not an area where the Federal Government brings the special skills or knowledge that it should across the board largely preclude private-to-private takings/transfers under an economic development plan.

Mr. COHEN. Thank you. And, Mr. Redfern, just curious, where did you teach at prep school?

Mr. REDFERN. I taught at the Western School For Girls in Pasadena, California.

Mr. COHEN. I went to Polytech. My first date——

Mr. REDFERN. Right down the street.

Mr. COHEN. Right. Exactly.

I yield back.

Mr. KING. The gentleman returns his time.

The chair would now recognize the ranking member of the full committee, Mr. Conyers of Michigan, for his questions.

Mr. CONYERS. Thank you, Mr. Chairman.

I wanted to point out to you, Professor Buzbee, that the critics of Kelo argued that it broke with past Supreme Court precedent on the issue of what constitutes public use under the takings clause. Do you sympathize with that description?

Mr. BUZBEE. No, I don't think that's correct. If you look at public use being defined as public purpose, it goes back to the late 1800s. And then there were several previous cases where the court had recognized that can include legitimate State and local choices to try to further the public purpose where, in the end, eminent domain involves private projects.

Mr. CONYERS. Does this measure, 1689, raise any constitutional red flags under the spending clause, particularly given that it threatens the State with loss of all of its Federal economic development funding for 2 years if even a locality violates the requirements of this bill?

Mr. BUZBEE. I believe there could be a concern. I think what counts after the Sebelius case as unconstitutional coercion needs to be a large amount. But this bill doesn't actually define what falls into this category, and so what you need to have someone do is to trace how much Federal dollars flow to State and local governments to see if this is truly coercive. If it is, it could be unconstitutional.

Mr. CONYERS. That's true.

Well, I thank you and I yield back the balance of my time.

Mr. KING. Would the gentleman yield?

Mr. CONYERS. Sure.

Mr. RASKIN. Thank you very much.

So, Ms. Barnes, I've been in Congress now for only 3 months, but I think you are the best witness I've seen since I got here.

Ms. BARNES. Thank you.

Mr. RASKIN. So thank you for your testimony. It was very powerful. You also have a very good lawyer, I think. I don't know whether Mr. Redfern represented Vera Coking, but that was an Institute of Justice client as well.

Do you know who Vera Coking is?

Ms. BARNES. No, sir.

Mr. RASKIN. Vera Coking is a woman in a very similar situation to you. She lived right off the boardwalk in Atlantic City. And somebody bought a huge hotel or land and built a huge hotel next door and then wanted to create a parking lot for limousines. And the name of the guy who did that was Donald Trump. And she didn't want to sell her house. She was exactly in your situation. She said, no way. Her house was worth around a half million dol-

lars. They offered her 400, 500, I think, a million. She said, no, we're not moving.

So he went to someplace called the Casino Reinvestment Development Authority, one of these shadowy public-private corporations set up in situations like this, to try to force her off of the land, and undoubtedly would have succeeded except the Institute of Justice intervened and represented her and was able to stop that takeover.

I just found some articles about Donald Trump, who is a master of eminent domain. An article in the Washington Post: "Donald Trump's history of eminent domain abuse." He made a pattern out of just this kind of activity. Donald Trump's eminent domain love nearly cost a widow her house. Case after case where he tried to force people out, and he bragged about doing it and ultimately went to these authorities to try to push people out.

What does it feel like to be the object of some big wealthy developer's ambition to take your property and force you out? What was the psychological/emotional experience like?

Ms. BARNES. Anger is definitely on the forefront. Disbelief is there. You can't believe that somebody is just going to take your property just to build a bigger, prettier home. Why? My home's good enough for me, and my family.

Mr. RASKIN. In the Jersey case, Donald Trump said that the house wasn't very nice and she didn't really care about the house, she just wanted more money. How do you react to that? I mean, are you in a situation where they're saying all you want is more money?

Ms. BARNES. Honestly, money hasn't even played a factor, because we've not even spoken about money. But even if it had been, honestly, there is no amount of money, because it's my private property. I bought it. I've paid for it. My children and I live there, and we're very happy with it. As, again, just because it's not big and pretty on the outside doesn't mean what is living on the inside.

Mr. RASKIN. Mr. Chairman, could I continue for my 5 minutes?

Mr. KING. The gentleman's time has expired and he is rerecognized for 5 minutes.

Mr. RASKIN. Thank you very much, Mr. Chairman.

So let me ask you, because here's the tough thing, Council Member Barnes, because you're a public official as well as being a homeowner in a citizen situation. If they were trying to take over your land for the building of a bridge, for example, or a street, would you be fighting it equally as hard as you are fighting this takeover by a big private real estate developer?

Ms. BARNES. No, sir, I wouldn't. I understand those factors that would come into with a bridge. I would be disheartened and I would be hurt still that they're taking my home, but it's different.

Mr. RASKIN. You would not experience the same sense of wrong and indignation that you've got about turning it over to a developer to build a million dollar condo for somebody who can afford that.

Ms. BARNES. Yes, sir.

Mr. RASKIN. So the distinction that the chairman of the subcommittee makes here is actually a meaningful one. There is a difference between a public use, in terms of a bridge, a park or a street, and a broadly defined public purpose, which is we want to economically redevelop and take A's land and give it to B.

All right. Thank you very much for your testimony.

Professor Buzbee, let me come to you, as a fellow law professor. I should be expected to concur with you here, but all of the heartstrings are tugging me in the other direction. I think that there is a real difference between something that is a public use and just a broadly defined public purpose.

What would be the problem with Congress saying that we are not going to give money that goes specifically directly to a project like that, as opposed to punishing the whole State and other municipalities and counties in Indiana?

Mr. BUZBEE. You know, I think if it were a prospective with notice, that people would have to identify in advance if they were using Federal dollars in connection with such a taking, that would certainly be less chilling of all economic development involving eminent domain. So that would be much less harmful to State and local governments.

So I think that would be a major difference in the design, but that definitely is not what this bill does.

Mr. RASKIN. I got you. No, I read it too and that's what jumped out at me. Do you think we could define it with sufficient precision to map off, to rope off the kinds of cases we see in the New Jersey case with Trump's attempt to take over the widow's house or in Ms. Barnes' case?

Mr. BUZBEE. I'm not sure, because I don't know how much State and local governments are careful to track and trace money as it moves through. If typical accounting keeps track of all money so they know which pool money is coming from, then it might be quite easy for governments to say, you know, this money is from the Federal Government, and be prohibited from using it.

On the other hand, if it goes generally to a department which is handling public housing and vouchers and the rest and some development efforts, then it might be difficult to handle.

Mr. RASKIN. Of course, and that would then argue for the more sweeping approach that seems to be embodied in the legislation now, which is, don't go down this road at all because you're going to lose Federal money in general.

Mr. BUZBEE. Well, I don't think in the end, it does. Mainly, the holdout problem is not just a hypothetical. It's always there. So there are many people who absolutely have good reasons not to sell, but there also are people who strategically demand huge premiums to sell.

Mr. RASKIN. Well, but when you say huge premiums, that really is the market. I mean, my property is worth what my property is worth to me. I don't have to sell my house. That's what private property means, right? Somebody might say, well, the market would say your house is worth \$200,000; but, as in Ms. Barnes' case, this is where, you know, my family has lived for several generations and we love it and we love the neighbors and you can't offer me a million dollars. That's what happened in the Trump case. He thought that his money could buy her, and she said, we're not selling. And so then he went to this, you know, public-private corporation to say, force her out, let's use the power of law to get her out. That just strikes me as really antithetical to the constitutional design.



Mr. BUZBEE. Well, just to respond briefly.

Mr. RASKIN. Please.

Mr. BUZBEE. If you look, I think the National Conference of State Legislatures and Vermont Law School and a few others have done sort of studies of these uses of eminent domain and negotiation. And I think there are some where people demanded like 60 to 80 times the value of their property, because they end up being a linchpin piece.

Mr. RASKIN. I got you.

Mr. BUZBEE. That's a possibility.

Mr. RASKIN. If it's a real public use, then we define what just compensation is, based on fair market value, right? But in a situation like this, the parking lot that Trump wanted to build for limos, now that whole property has been condemned. Trump has abandoned it, because of what happened in Atlantic City. So you could have forced some people out of their home, forced them to sell to Donald Trump at a rate that they never would have accepted, and then the whole thing could have gone bankrupt, as his business did, a couple years later. I don't understand how that's fair.

In other words, that places a whole market paradigm on top of people's rights. And property means different things to people, I think.

Mr. BUZBEE. I agree. And it can be used in awful ways. And the only thing is you have to also assess places where it's important and a good legitimate use. You don't want to chill all of them. This particular bill I think is just too blunt a tool.

Mr. RASKIN. Mr. Chair, I yield back. Thank you very much.

Mr. KING. The gentleman returns his time. And I would say in conclusion that there's an image in my mind of a bill-signing ceremony for H.R. 1689 where Mr. Raskin and Steve King might join together behind the desk of the President of the United States one day.

Mr. RASKIN. And we can invite not just Ms. Barnes but Ms. Coking too.

Mr. KING. And I thank all the witnesses for your testimony and the interchanges we've had, and the panelists.

Without objection, all members will have 5 legislative days to submit additional written questions for the witnesses or additional materials for the record.

This hearing is now adjourned. Thank you.