south of Philadelphia, spilling 265,000 gallons of heavy crude oil.

In January of this year, our Subcommittee on Coast Guard and Maritime Transportation held a field hearing on this marine casualty in Philadelphia. The Coast Guard estimated that the costs of cleanup and natural resources damages resulting from the grounding of the Athos I could be in the range of $200 million. Under current law, the owners of the vessel would be liable for costs of only up to $45 million.

At that hearing, the Chairman, the gentleman from New Jersey (Mr. LoBIONDO), and our newly elected Member, the gentleman from Pennsylvania (Ms. SCHWARTZ), raised the concern that the limits of the vessel owner's liability for response, cleanup, and restoration to the damages caused by this spill were relatively modest, set when the Oil Pollution Act of 1990 was enacted over 15 years ago. The Chairman and I both remember, when we served on the Merchant Marine and Fisheries Committee, we were part of setting that oil pollution liability limit. We increased those limits since that time even though inflation has actually overtaken.

With the leadership of the chairman of the subcommittee and the gentlewoman from Philadelphia and to ensure that the limits do not again become out of date, Section 603 directs the President to adjust limits of liability. First, Section 603 directs the liability limits to account for the inflation of the past 15 years, since the Oil Pollution Act was enacted. Secondly, the provision requires that the President adjust these liability limits not less than every 3 years to reflect changes in the Consumer Price Index since the last adjustment.

I thank the Chairman of the Subcommittee on Coast Guard and Maritime Transportation, the gentlewoman from Philadelphia (Ms. SCHWARTZ), and especially our chairman who has worked together in crafting this legislation to ensure that the Coast Guard reauthorization bill includes this provision and the other provisions of H.R. 1412, the Delaware River Protection Act, which I introduced and which passed with unanimous support in the House. I thank Chairman YOUNG, and Ranking Member OBERSTAR for including the provisions of that bill as part of H.R. 889, the Coast Guard and Maritime Transportation Act of 2005.

I thank the co-sponsors of the original legislation for their assistance in crafting this provision: Mr. SAXTON, Mr. CASTLE, Mr. ANDREWS, and Ms. SCHWARTZ, and I urge my colleagues to support the motion to instruct and the underlying bill as we move to conference with the Senate.

Mr. OBERSTAR. Mr. Speaker, I yield back the balance of my time.

Mr. OBERSTAR. Mr. Speaker, there is no comparable provision that I am aware of, and that is why I think it is important for the House to insist on this language, a position that I know the Chairman will stoutly defend, and we will have unanimous support on our side. We will have a bipartisan position.

Mr. LoBIONDO. Mr. Speaker, I rise in strong support of the gentleman from Minnesota's motion to instruct.

As the gentleman knows, this provision was originally included in H.R. 1412, the Delaware River Protection Act, which I introduced and which passed with unanimous support in the House. I thank Chairman YOUNG, and Ranking Member OBERSTAR for including the provisions of that bill as part of H.R. 889, the Coast Guard and Maritime Transportation Act of 2005.

I thank the co-sponsors of the original legislation for their assistance in drafting this provision: Mr. SAXTON, Mr. CASTLE, Mr. ANDREWS, and Ms. SCHWARTZ, and I urge my colleagues to support the motion to instruct and the underlying bill as we move to conference with the Senate.

Mr. OBERSTAR. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to instruct.

There was no objection.

Mr. OBERSTAR. Mr. Speaker, I rise in strong support of the gentleman from Minnesota's motion to instruct.

The motion was agreed to.

Mr. Sensenbrenner. 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 material on H.R. 4128.

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

There was no objection.

Mr. SENSENBERNENR. 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 material on H.R. 4128.

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

There was no objection.

Mr. SENSENBERNENR. 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 material on H.R. 4128.

The SPEAKER pro tempore. Pursuant to rule XIX, the Chair directs the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 4128.

The SPEAKER pro tempore. The Chair will appoint conferences at a later time.

The SPEAKER pro tempore. The Chair will appoint conferences at a later time.

Mr. OBERSTAR. Mr. Speaker, I rise in strong support of the gentleman's motion to instruct.

H.R. 889, which was passed unanimously by this House, includes a provision that would increase liability limits by approximately 50 percent for double-hull tank vessels and would, for the first time, establish higher liability limits for single-hull tank vessels.

This legislation was developed through the regular committee process on a completely bipartisan basis.

Further, this bill is supported by the oil and shipping industries as a commonsense measure that both increases the industries' responsibilities and maintains the protections of the Oil Spill Liability Trust Fund to deal with any other major oil spills in the future.

Mr. Speaker, this motion to instruct is one I agree with and, therefore, I urge that we accept it.

The SPEAKER pro tempore. The motion was agreed to.

The SPEAKER pro tempore. Pursuant to the rule, the bill is considered read the first time.

General debate shall not exceed 90 minutes, with 60 minutes equally divided and controlled by the chairman and the ranking minority member of the Committee on the Judiciary, and 30 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Agriculture.

The gentleman from Wisconsin (Mr. SENSENBERNENR) and the gentleman...
from Michigan (Mr. CONYERS) each will control 30 minutes and the gentleman from Wisconsin (Mr. GOODLATTE) and the gentleman from Minnesota (Mr. PETERSON) each will control 15 minutes.

Mr. SENSENBERGIZER, Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in support of H.R. 4128, the Private Property Rights Restoration Act, overwhelmingly bipartisan legislation I introduced along with Agriculture Committee Chairman GOOLITTLE and Judiciary Ranking Member CONYERS.

On June 28, the Supreme Court in a 5 to 4 decision in the case of Kelo v. City of New London transformed established constitutional principles when it held that the fifth amendment's public use clause permitted government to seize the private property of one small homeowner and to give it to a large corporation for a private business use.

As the dissent in that case made clear, under the majority's opinion: "Any property may now be taken for economic development that specifi-
cally allows the types of takings that, prior to the Kelo decision, had achieved a consensus as to their appropriate-
ness. These include takings in which the land is being used con-
tinuously used to make way for casinos. The Poletown decision in the Michigan Su-
preme Court in 1981 allowed the City of Detroit to bulldoze an entire neighbor-
hood, complete with 1,000 or more residences, 600 or more businesses, and nu-
umerous churches in order to give the automaker an even stronger incentive to re-
place property to General Motors for an automobile plant. This case set a prece-
dent, both in Michigan and across the country, for widespread abuse of the power of eminent domain. In De-
troit, eminent domain was subse-
cutaneous to the government of the country, and localities to join me in supporting this measure.

Mr. CONYERS. Mr. Chairman, I yield myself 5 minutes.

Mr. Chairman, I rise in support of the measure before us today, the Private Property Rights Act of 2005. I am pleased to join with my chairman, Mr. SENSENBERGIZER, the gentlewoman from California (Ms. WATERS); and the gentleman from Virginia (Mr. SCORRY) in support of this measure.

This legislation was introduced in re-

dverse reaction to the Kelo decision has united strong opposition from across the political, ideological, and socioeconomic spectrum. The NAACP and the AARP faulted Kelo's failing rea-
sioning by stating:

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ness. These include takings in which the land is being used con-
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cutaneous to the government of the country, and localities to join me in supporting this measure.

Fortunately, the Michigan Supreme Court reversed its decision. Citizens in most other States, though, have not been afforded the same protection and have witnessed an increase in takings for economic development that has been rationalized in Kelo. As a result, a Federal legislative response to Kelo is warranted, and today I am pleased to take this opportunity to meet contemporary challenges. Third, we set an example for States and cities as to how our citizens' property rights must be protected.
Our measure before us is clear and states in no uncertain terms that State and local governments will lose economic development funding if they take someone’s home or business for private commercial development.

Homesteaders can also bring suit against those States and cities that want to continue violating their property rights. We are making the financial gains that come with replacing residential areas with commercial districts less attractive.

This legislation advances a more traditional view of public use. By restricting the use of eminent domain powers for economic development, we reserve those powers for projects that have traditionally been considered public use.

We can justify a State or city’s takings when the taking is for a road, a school, a public utility, but we cannot agree with a State or city’s takings when it is done for private uses like condominiums and shopping malls.

Mr. Chairman, I reserve the balance of my time.

Mr. SMITH of Texas. Mr. Chairman, I yield 2 minutes to the gentleman from Virginia (Mr. SCOTT).

Mr. SCOTT of Virginia. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I rise to oppose the legislation which is the congressional response to the Supreme Court decision Kelo v. City of New London. By enacting this legislation, we are undermining the States’ rights and assuming the role of a city council. We should not change Federal law every time Members of Congress disagree with the judgment of a locality when it uses eminent domain for the purpose of economic development. We were elected to the United States Congress, not to local city councils.

Mr. Chairman, it is impossible for Congress to draw a bright line principle separating those cases in which economic development is appropriate for a particular area and when it is not. The Constitution does require that the taking be for a public purpose. A city council to weigh the needs of a particular community and consider when the government should use eminent domain.

Sometimes that might mean taking property for the purpose of economic development. Sometimes it may not. Sometimes we will agree with the judgment of the locality. Sometimes we will disagree.

I cannot think of a more fitting example of the quagmire this bill presents than the situation we have right here in Washington, D.C., where they are trying to build a baseball stadium. I find it ironic that, at the same time we are marking up the bill, Washington, D.C., and the Federal Government are trying to build a baseball stadium.

The debate on this bill has already exposed the shortcomings of the legislation. For example, we found that if a stadium were built and owned by the city at taxpayer expense, it would clearly be allowed under the bill. On the other hand, if the owner offered to build a stadium at his own expense, that might not be allowed.

The bill requires public access to the stadium for a “matter of right.” Does that mean that the skyboxes must be put to public auction, or can the owner pick and choose which businesses can acquire rights to skyboxes?

Anybody who surveys baseball or football stadiums around the country will find all kinds of public and private and joint public/private ownership combinations. Could some use eminent domain, while others be prohibited?

Mr. Chairman, the right to private property ownership is one of the cornerstones on which this country was founded. H.R. 4128 will make sure that right continues to be protected.

Mr. CONYERS. Mr. Chairman, I yield 4 minutes to the gentleman from Virginia (Mr. SCOTT).

Mr. SCOTT of Virginia. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I rise to oppose the legislation which is the congressional response to the Supreme Court decision Kelo v. City of New London. By enacting this legislation, we are undermining the States’ rights and assuming the role of a city council. We should not change Federal law every time Members of Congress disagree with the judgment of a locality when it uses eminent domain for the purpose of economic development. We were elected to the United States Congress, not to local city councils.

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Anybody who surveys baseball or football stadiums around the country will find all kinds of public and private and joint public/private ownership combinations. Could some use eminent domain, while others be prohibited from using eminent domain based on the fact that they want to limit access to skyboxes? How will be decided how the title of the stadium is held?

Mr. Chairman, the World Trade Center and Lincoln Center in New York, the Baltimore Inner Harbor, even President Bush’s baseball stadium in Houston, Texas, were all made possible by eminent domain takings for the purpose of economic development. And although we might agree or disagree with the wisdom of these projects, we agree that they should not have been illegal. These are political decisions that ought to be left to the localities within the confines of their State legislature’s parameters.

Congress cannot restrict eminent domain to the States, then we should focus on the real issues involved in eminent domain. We should require, for example, that just compensation should include replacement cost, not just technical appraisal value. We should require that relocation expenses be paid to owners and tenants.

As written, the bill does nothing to ensure that displaced individuals receive reasonable compensation for the replacement value and relocation expenses. The bill does not provide compensation for loss of goodwill of a business, nothing to ensure that due consideration is given for the length of time a family or business has been at a particular location. Nothing in the bill deals with the fact that minorities and the poor are usually the victims of eminent domain abuses. Let us put some protections in the bill so that those who are relatively weak politically can be protected from unfair use of eminent domain.

Mr. Chairman, I would like to place in the RECORD at this point letters from the National League of Cities, the National Conference of State Legislatures and the National Association of Housing and Redevelopment Officials.

Mr. Chairman, I believe that the decision-making power of eminent domain should remain at the State and local level and that congressional attempts to define when eminent domain is allowable and when not will cause more problems than they solve.

Therefore, I urge my colleagues to oppose the bill.

National League of Cities,
Washington, DC, October 27, 2005.
Hon. JAMES SENSENBRNEER, Chair, House Judiciary Committee, Rayburn House Office Building, Washington, DC.

Dear Mr. Chairman and Ranking Member Conyers:

The National League of Cities (NLC) strongly opposes H.R. 4128, the Private Property Rights Protection Act of 2005. The NLC is the country’s largest and oldest organization representing nearly 1,600 direct member cities and 49 state municipal leagues, which collectively represent more than 18,000 United States communities.

NLC acknowledges the spirit underlying this bill and does not condone abuse of eminent domain power that defies law. However, NLC believes this bill, or any anti- eminent domain bill pending in Congress, is unnecessary at this time because of the ongoing actions of state legislatures and the absence of direct evidence confirming that alleged abuses of eminent domain authority...
are of a national scope and scale that demand immediate federal action.

Despite fearful rhetoric in the press, the Supreme Court’s decision in Kelo v. City of New London did not expand the use of eminent domain power. The Kelo decision confirmed that eminent domain, a power derived from state law, is not a one-size-fits-all power that the majority focused on just compensation and comprehensive planning process modifications. Since June 2005, Alabama, Texas, and Delaware enacted laws that tighten the application of eminent domain power in each state.

NLC urges Congress to let state governments act on their own eminent domain laws and not move forward with federal legislation. Many aspects of H.R. 4128, led by the proposed definition at Section 6 of “economic development,” troubles NLC. Economic development is a process, not the concrete act of taking private property from A and giving it to B for a commercial enterprise carried on for profit. The bill could hurt the unintended consequence of preventing hurricane-damaged communities from rebuilding. In those communities, eminent domain may be necessary to assemble land and help with negotiations associated with comprehensive redevelopment plans. Implementing those comprehensive redevelopment plans would “increase tax revenue, tax base, employment, or general economic health,” violating the bill’s further definition of economic development.

Moreover, the bill at Section 2(b) grants final authority to the appointed—judiciary to determine what constitutes “economic development.” Curiously, this was an important argument against the Kelo decision raised by property rights activists. The practical effects from this bill, including its loose definition at Section 8 of “Federal economic development funds” and its creation of a private right of action at Section 4 that invites forum shopping, would not only freeze the process of economic development across the country.

Eminent domain is a powerful tool for local governments—its prudent use, when ex-ercised in the sunshine of public scrutiny, helps achieve a greater public good that benefits the entire community. Again, NLC opposes H.R. 4128 for the reasons stated in this letter. Please weigh carefully the unintended consequences from a rush to pass federal legislation in response to unsubstantiated fears over the Supreme Court’s decision in Kelo v. City of New London.

Sincerely,

Donald J. Borut
Executive Director.

National Conference of State Legislatures,
Washington, DC, October 25, 2005.

Subject: H.R. 3315

Hon. James Sensenbrenner,
Chair, Judiciary Committee, House of Representatives, Washington, DC.

Hon. Jesse velocitas,
Ranking Member, Judiciary Committee, House of Representatives, Washington, DC.

Dear Chairman Sensenbrenner and Ranking Member velocitas:

On behalf of the National Conference of State Legislatures (NCSL), I write in strong opposition to H.R. 3315 the “Private Property Rights Protection Act of 2005” which is scheduled to be marked up on October 26. This ill-advised bill would severely chill state and local revitalization efforts for economic development and use of eminent domain power, and curtail many valid and constitutional state and local projects that require the use of the eminent domain power by pro-viding 100% funding through the Department of Justice. Congressmen should act as a catalyst for much needed job creation and only the commonsense approach is to amend H.R. 4128, even if amended, would still undermine important community and economic development activities across the nation and should not be adopted.

NAHRO believes that these amendments improve the legislation to varying degrees. I want to make clear that HR 4128, as amended, would still undermine important community and economic development activities across the nation and should not be adopted.

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Mr. SENSBRENNER. Mr. Chairman, I yield 2 minutes to the gentleman from Ohio (Mr. CHABOT).

Mr. CHABOT. Mr. Chairman, I thank the gentleman for yielding me time.

Mr. Chairman, I first want to thank the chairman of the Judiciary Committee, the gentleman from Wisconsin, and also the ranking member, the gentleman from Michigan, for their leadership in this area.

This is a very important issue before Congress, and I am very pleased that Congress is acting. The idea that a person’s home or business can be taken by the government and transferred to another private entity simply to allow the government to collect additional tax dollars is anathema to the values that Americans cherish. But the Supreme Court has now thrown its weight behind this distinctly un-American ideal by ruling that economic development can be a public use under the Fifth Amendment’s takings clause.

Few would question the Constitution provides a legitimate role for eminent domain when the purpose is a true public use and the property owner receives just compensation. That happens all the time, and that is appropriate. Properly used, eminent domain should give communities an option of last resort to complete the development of roads and schools and utilities and other essential public infrastructure projects.

As a former Cincinnati city councilman and Hamilton County commissioner myself, I would be remiss if I did not mention my concern for some unintended consequences that congressional action seems to have on communities if we do not act carefully, and I think we have acted carefully in this bill, and I thank, again, the chairman and the ranking member for doing that.

We had testimony by the mayor of Indianapolis. I also want to commend the former mayor of Dayton, Congress- man MIKE TURNER, who is head of the Saving America’s Cities Working Group, who has worked diligently to try to make this a better bill as well.

Many people have worked on this. I am very pleased that Congress is going to take this action to make sure that eminent domain is not used in an inappropriate purpose. If Kelo was left as it was ruled by the Supreme Court, it could be used in a way that could be dangerous, that could be to the detriment of communities all around this country.

So I am very pleased that we are acting on this today, and again want to commend the chairman and Congress for acting.

Ms. WATERS. Mr. Chairman, I yield 2 minutes to the gentleman from Oregon (Mr. BLUMENAUER).

Mr. BLUMENAUER. Mr. Chairman, I appreciate the gentlewoman yielding me the time and permitting me to speak on this legislation.

Mr. Chairman, I understand the frustration that we have heard on the floor, the reaction to the Kelo decision which I personally looked at those circumstances. I was very troubled in terms of what was proposed in that city.

But I am concerned that we have the big picture in mind, because we have been dealing with eminent domain for decades. We do not have a national crisis here. What we had was a State and local government that did not do their job appropriately.

The Supreme Court, appropriately, indicated that this was not a constitutional issue. There are tools. There are remedies.

I am a former local official. I dealt for years, as public works commissioner for the City of Portland, with things that dealt with redevelopment. We rarely if ever used eminent domain.

The fact that it was there made a difference to be able to do things the public wanted.

I hope that Members reflect on the dangers of having the Federal Government rush into something that is appropriately the province of State and local authorities. What the approach you are advocating here would have had on cleaning up Times Square. This was an area that for years was a center of violence and vice. Eminent domain was used to transform Times Square. There were rate quarantines, properties plummeting and changing the face of that area.

There are communities around the country where this has been done. Look at the Roxbury neighborhood in Boston or look out the door of the Capitol at Pennsylvania Avenue, where eminent domain was used in the 1960s and 1970s to reformulate the face of it. I understand the sensitivity. We do not want it abused. But, for heavens sake, we should be careful before we rush in with a Federal solution which may have unintended consequences.

Mr. SENSBRENNER. Mr. Chairman, I yield 2 minutes to the gentleman from Texas (Mr. GOHMERT).

Mr. GOHMERT. Mr. Chairman, I so much appreciate the chairman and the proponents of this bill bringing it to the floor. What brings this about is one more reason why it is critical that we do not have Supreme Court justices who read the Constitution while they are having visual hallucinations.

That is what has been happening. There is no need to read this, “Nor shall private property be taken for public use without just compensation,” that is in the Fifth amendment without realizing that means public use. It does not mean taking property from someone who has lived there for generations or some farmer that has been farming the land, to give it over to some developer just because he is going to give a bigger kickback to the local government.

That goes back to the days of King George when he says, gee, you have been a good friend, you have paid taxes, but this guy over here has promised me a bigger kickback, so I am kicking you off your property. We had a revolution to try to stop that kind of thing.

Anyway, I just want to put this question to my friends across the aisle. I know I have heard them express their concerns about constituents and the poor and those who cannot help themselves, and we ought to be helping them. Or you really want to go back to your constituents, do you really want to tell voters that you support this ridiculous Supreme Court notion that a government can take their property, not property that is a threat to the community, not that it is blighted, but take their property against their will to give it over to someone richer who is going to pay more taxes, and that is the only reason?

That is not the American way. That is not what the supporters and proponents of this bill want to see happen. We are sending a loud message, that is not what the Constitution says, it is not what is intended, it is not what we fought a revolution to end; and we will not stand by and allow a ridiculous Supreme Court decision to overrule that.

Ms. WATERS. Mr. Chairman, I yield 2 1/2 minutes to the gentleman from Tennessee (Mr. DAVIS).

Mr. DAVIS of Tennessee. Mr. Chairman, I rise today in strong support of H.R. 4128.

Mr. Chairman, the people of my home State of Tennessee know the stories of eminent domain all too well. They know the stories of when the Corps of Engineers and TVA condemned property of hard-working farmers to impound lakes. The folks I represent were willing to give up their land for the benefit of the valley.

They knew the public works projects would bring about much needed economic opportunity, that the readily available cheap power would spawn new industries and provide good jobs for hard-working individuals. Although the promised benefits did become a reality, many of my ancestors, like my grandfather, felt the government takeover of land was wrong. Often I would hear stories of dissatisfaction about the loss of lands that have been in families since their families moved to the Appalachians.

I firmly believe that the taken property had been given to another property owner, my ancestors would have felt like declaring war on the government. Fortunately, my grandfather and others were able to accept that the taking of their land was good for the public.

Mr. Chairman, there is no doubt in my mind that the Court’s decision in Kelo is wrongheaded and wrong-hearted. It is symptomatic of the basic founding principles of this country is the right to own private property. Since our founding, governments have had the leverage needed
to encourage capital and economic development for our communities, while still recognizing the intrinsic value of a family’s private property.

Mr. Chairman, I know that without a constitutional amendment our actions today are about as far as this Congress can go to dehorn the impact of the Kelo decision. Although this bill addresses and puts in place compelling penalties to cities, counties, and States that violate private property rights, I really do not go further.

It is my hope that some day we can bring about stricter penalties to local governments who choose to run roughshod over the property rights of private landowners. I know that is what my grandfather would have expected of me, and I hope that is what we can expect of this Congress as we work to solidify the intrinsic value of people who own private property.

Mr. SENSENBERGER, Mr. Chairman, yield to the gentleman from Georgia (Mr. PRICE).

Mr. PRICE of Georgia. Mr. Chairman, I thank the gentleman for yielding me time.

Mr. Chairman, the fifth amendment to the Constitution states that “no person shall be deprived of life, liberty or property without due process of law, nor shall private property be taken for public use, without just compensation.”

Thomas Jefferson said: “The true foundation of republican government is the equal right of every citizen in his person and property and in their management.”

However, that was then. We have heard a lot of talk about the Founding Fathers; and they are not turning in their graves, Mr. Chairman, they are spinning.

Jefferson warned: “A government big enough to give you everything you want is a government big enough to take away everything you have.”

It looks like we are at that stage. A school does not generate tax revenue, a church does not generate any tax revenue, but that does not mean that a school ought to become a Starbucks and that a church ought to become the next Costco.

Thanks to the recent Supreme Court decision on eminent domain, the fifth amendment has been vastly expanded. In the past, public use meant projects for the common good, not for the bottom line. With this decision, no citizen’s property is safe and the American dream of owning your own home is now at risk. Private ownership of property is a pillar of our freedom and our prosperity.

The Private Property Rights Act, H.R. 4128, will begin to right the wrong that was wrought on our Nation this past June. I urge all Members of this House to support this important legislation.

Ms. WATERS. Mr. Chairman, I yield myself 5 minutes.

Mr. Chairman, I rise in very strong support of H.R. 4128.

I was one of those individuals who was shocked at the Supreme Court decision. On June 23, 2005, Kelo v. The City of New London, the Supreme Court held in a 5 to 4 decision that the city’s use of eminent domain to implement its area’s redevelopment plan aimed at invigorating a depressed economy was satisfying the U.S. Constitution, even though the property would be turned over from private homeowners and businesses to private developers.

Never in my wildest imagination did I think there would be a Supreme Court ruling that would take private property and give it to private individuals for private use.

This decision was born out of what took place with the giant pharmaceutical company Pfizer. Pfizer built a plant next to an area called Fort Trumbull, and the city determined that someone else could make better use of the land than the people who actually lived there: the Fort Trumbull residents. The city handed over its eminent domain, that is, the ability to take private property for public use, to the New London Development Corporation, a private body; and that private body then exercised eminent domain to take the entire neighborhood from private development.

The Supreme Court decision is wrong, and I cannot see how any Member of the House of Representatives could support the taking of private property for private use. Someone spoke of this as being a pillar of democracy. It is a strong American value that we hold dear, and I do not think that we should do something, exercise our power in this House to deny the Supreme Court decision to be used by all of these cities and redevelopment agencies and other entities. I believe that we have to protect the American people.

As a matter of fact, one Member came and said, well, you know, this is the isolated case, I take it, I see over 125 cases throughout the United States where cities and other entities, community redevelopment agencies, in those cities where they can give the eminent domain rights to private developers, such as they did in this Kelo decision, are taking people’s private property.

What is more, many of these entities are trying to take private property, take homes and businesses to give over to the big-box developers who need a lot of land to put down these big-box shops.

I do not believe we can stand by and not do something. There are those who would argue that the Federal Government should not be involved. If not us, who will protect people? We know that you are getting lobbied. Members are getting lobbied by Members of city councils, even by mayors; but many of them are lying with these developers. They have relationships; money is changing hands. They are in bed with the very developers who want to take the private property for private development.

Again, we cannot afford to let this happen. What we do here today will help to slow down this taking of private property for private use. As far as I am concerned, the bill could have even been stronger because we have got a few exceptions in the bill that I question.

I wanted a pure bill with no exceptions. My chairman who worked so hard on this bill made a case for some takings for certain kinds of very, very important public use of private lands. And even though I do not like the bill, I could support an even stronger bill because I think there should be no exceptions, none, zilch, zero, no exceptions. I do not believe in taking private property to give to someone else for private use to make money off of.

You will hear this described in any number of ways, the taking of private property to get rid of blight. Whose blight? By whose definition? The taking of private property by economic development? Who is going to make the money? Who is going to suffer?

Your home is your castle. And for those people who save their money and invest in their homes, raise their children, that home should be their castle in toto. That home should never be in jeopardy because some city government, some redevelopment agency decides that they want to take it. I do not care what for. The gentleman from Virginia (Mr. SCOTT) came and talked about the taking for ballparks. I disagree with that.

Mr. Chairman, I reserve the balance of my time.

Mr. SENSENBERGER, Mr. Chairman, I yield 2 minutes to the gentleman from Alaska (Mr. YOUNG).

Mr. YOUNG of Alaska. Mr. Chairman, I ask that if we disagree about the taking for ballparks, I do not have any problems with the bill at this time, there is some concern that the bill may adversely affect our transportation projects, including those constructed under public and private partnerships.

There is also a concern that the bill may have unintentional effects on the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970.

I would like to thank the gentlelady for including the language changes that we have suggested in the manager’s amendment to help fix these problems. These changes are meant to clarify that this bill does not have any adverse impacts on issues under the jurisdiction of the Transportation and Infrastructure Committee.

Mr. Chairman, I ask that if we discover any additional problems with this legislation for transportation projects, you will agree to work with me in conference on a mutually agreeable solution.

Mr. SENSENBERGER, Mr. Chairman, will the gentlelady yield?

Mr. YOUNG of Alaska. I yield to the gentleman from Wisconsin.

Mr. SENSENBERGER. If unintended transportation consequences...
are discovered, I would be happy to work with the gentleman from Alaska (Mr. YOUNG) to fix them in conference.

Mr. YOUNG of Alaska. I agree with the gentleman’s goals and look forward to working with the entire delegation to make the goals of this conference. I thank you for doing this.

Mr. SENSENBRENNER. Mr. Chairman, I yield 1½ minutes to the gentleman from Texas (Mr. POE).

Mr. POE. As a former judge, I want to thank the chairman for leading the fight to protect private property rights.

One reason we started this country was because back in the days of England, the king and the nobles owned all the land, and regular folks like us had to work the land, but we could never own the land. That is one reason this country got started, because of the desire to own private property.

John Locke, the great philosopher who wrote much of the law that came into our Constitution, said that we are all born with the right of life, liberty, and property. And Thomas Jefferson incorporated that concept in the Declaration of Independence when he said that we are given by our creator liberty, life, and the pursuit of happiness. And then we put in our Constitution in the Fifth Amendment that basic right, that we all have life, liberty, and property and it will not be taken without due process of law.

That simple phrase is that in that Fifth Amendment, that private property shall not be taken for public use without due compensation, it is the American dream to own a part of America, own a part of the land. More Americans own land and houses than ever before in our history. Then the Supreme Court came around and misinterpreted this very simple rule in our Constitution, allowing private property to be taken by local governments so they can give it to somebody else all in the name of money. It is all about the money. It ought to be all about what is right.

This law will prevent government land-grabbing authorized by the Supreme Court. Their ruling was an error in judgment of constitutional proportions and hopefully the Supreme Court will find its way and reverse this absurd ruling.

Ms. WATERS. Mr. Chairman, I yield 2 minutes to the gentleman from Virginia (Mr. MORGAN).

Mr. MORGAN of Virginia. Mr. Chairman, I thank my good friend, the gentlewoman from California (Ms. WATERS). I must rise to object to this bill. I think it is too broad. The period of time within which you can take legal action is too long, and in some specific cases it is too restrictive. It will be subject to the law of unintended consequences.

Ms. WATERS. Mr. Chairman, I yield 1½ minutes to the gentleman from Texas (Mr. HENSARLING).

Mr. HENSARLING of Texas. Mr. Chairman, I thank the gentleman for yielding me time.

Mr. Chairman, private property has been among the most sacred rights of the American people since our founding as a Nation. Likewise, the government’s duty to protect private property has remained among its most sacred responsibilities.

John Adams once wrote, “The moment the idea is admitted into society that property is not as sacred as the laws of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence.”

Well, Mr. Chairman, the recent Supreme Court decision in Kelo v. New London has commenced the tyranny. It is laying siege to the idea that a man’s home is his castle.

While it is true that the principle of eminent domain is established in our Constitution, it exists for an extremely limited purpose.

The dissenters in the Kelo case correctly note that the Court has abandoned a “long-held basic limitation on government power. Under the banner of economic development, all private property is now vulnerable to being taken and transferred to another private owner.”

The Court essentially now gives local governments the power to seize property to simply generate tax revenue. Under their ruling, your local city council can now take your home and give it to Starbucks so they can sell you mocha lattes. Mr. Chairman, are we still in America?

By passing the Private Property Rights Protection Act, Congress can help secure this most sacred right. H.R. 4128 will rightfully increase the penalties for States. We should stand for freedom and private property and support this act.

Mr. SENSENBRENNER. Mr. Chairman, I yield 1½ minutes to the gentlewoman from Virginia (Mrs. DRAKE).

Mrs. DRAKE. Mr. Chairman, I am proud to be a cosponsor of H.R. 4128, and I strongly urge my colleagues to support this bill on behalf of property owners across our Nation.

The potential for greater profits and higher tax revenue is not what our Founding Fathers envisioned as public use.

Importantly, Mr. Chairman, one of those constitutional provisions is the protection of private property. The Founders of this nation knew that a government that can take a citizen’s property on a whim is a government that can take away everything else as well.

H.R. 4128 offers a reasonable solution, and I urge my colleagues to support this bill.

Ms. WATERS. Mr. Chairman, I reserve the balance of my time.

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Mrs. DRAKE. Mr. Chairman, I am proud to be a cosponsor of H.R. 4128, and I strongly urge my colleagues to support this bill on behalf of property owners across our Nation.
This legislation clearly prohibits economic development as a public use, period, with no room for misunderstanding. Eminent domain, for the purpose of economic development, is absolutely opposite our belief as Americans of our right to own private property.

Our role as Members of Congress is to protect the public. We have a responsibility to use legislative powers to clearly define private property rights.

I would like to thank the sponsors of the bill, the chairman and committees that have worked on it, and I urge my colleagues to vote in favor of H.R. 4128.

Ms. WATERS. Mr. Chairman, I yield 2 minutes to the gentleman from New York (Mr. NADLER).

Mr. NADLER. Mr. Chairman, I thank the gentlewoman for yielding me time.

Mr. Chairman, the power of eminent domain should never be abused to take private property for the private benefit of another, and I agree with the concept of the bill, but it is very poorly drafted. It goes too far and not far enough.

It will permit many of the abuses and injustices of the past, while bankrupting State and local governments.

It would allow highways to cut through homes and all the other public projects that have historically fallen most heavily on the poor and powerless.

It does nothing to protect displaced renters. They get no compensation, no day in court, and absentee slumlord, they get their day in court.

It allows a taking to give property to a private party “such as a common carrier, that makes the property available for use by the general public as of right.”

Does that mean a stadium? It seems to me that is privately owned. It is “available for use by the general public as of right” at least as much as a railroad; you can buy a seat. Does that mean shopping centers? You do not even need a ticket. So this would not even prevent the use of public domain, apparently, for sport stadiums and shopping centers.

The World Trade Center, on the other hand, could not have been built under this law. It was publicly owned, but leased as office and retail space.

Affordable housing, like the Hope VI program would be prohibited.

Local governments under this bill would have economic development funding for 2 years, even for unrelated projects. The financial cloud this would place over all cities would ensure that they could never issue a bond, for any purpose, and companies doing business with the city would face the threat of bankruptcy.

If we really want to help property owners, we should give them the right to stop the taking before it happens. This bill makes them wait until after the condemnation and offers them no damages. People do not want to bankrupt their communities. They want to keep their homes. This bill does not do that. I will offer an amendment that will at least change this part of the bill and solve that problem.

A bill to prevent takings for improper purposes makes sense. It does not make sense to say that if the government makes a mistake, instead of giving private injunctive relief in advance to the innocent private party, you put a cloud on the future finance of the State or city as they can never issue bonds for any purpose.

Let us protect property owners but not destroy our communities. We should do this right.

Mr. SENSENBRENNER. Mr. Chairman, I yield 2 minutes to the gentleman from Iowa (Mr. KING).

Mr. KING of Iowa. Mr. Chairman, I want to thank the gentleman from Wisconsin (Mr. SENSENBRENNER) for bringing this bill to the floor as chairman of the Judiciary Committee which I have the privilege of serving on.

I rise today in support of the Private Property Rights Protection Act.

This spring, the Supreme Court put a “For Sale by Government” sign in front of every American home, farm and business. It does not matter how many coats of paint you put on your house, or how much landscaping you do, no amount of your investment and upkeep can match the tax base provided by corporate America. If the government thinks that it can get more tax revenue from your property when put to a different use, a bigger house, a new factory, you are out of luck and out of your home.

We were taught as children and read in the Constitution that eminent domain meant that government could take property only for public use, like roads and railroads, but the 15 Connecticut citizens who had their homes and businesses taken away from them in the Kelo case found out that public use now means whatever the powerful want done with your home, as long as it might bring in more tax dollars.

Whatever happened to our rights to life, liberty and property, which were the very rights so important to the people who founded this country?

Mr. Chairman, the Supreme Court took that right away. The Framers had no intention of allowing Federal judges to impart their wisdom on this issue. That is why they put the eminent domain clause directly into the Constitution by the Bill of Rights.

The Constitution here in my pocket says, “nor shall private property be taken for public use without just compensation.”

If we do not act today, the consequences of that Supreme Court decision will not be hard to foretell. The winners are those with great influence, wealth and power. What happens when the potential buyer of a property is a foreign-owned entity? Or if a Nevada brothel?

Property Rights Protection Act, this legislation, is a strong first step in the fight against eminent domain abuse. However, I think we can do better. I think we need to pass stronger legislation to ensure that we curb all abuses of eminent domain.

I believe the Private Property Rights Protection Act, this legislation, is a strong first step in the fight against eminent domain abuse. However, I think we can do better. I think we need to pass stronger legislation to ensure that we curb all abuses of eminent domain. It is time to strengthen the Federal law that does otherwise ineligible for Federal financial assistance under any HUD program. It would also put in place appropriate safeguards to ensure that any eminent domain process is fair and transparent.

We have an obligation to protect our citizens as we revitalize our aging neighborhoods. We should not sit idly by and tolerate abuses of eminent domain in the name of economic revitalization. It is time to strengthen the Federal law to guarantee that homeowners throughout this great country are protected.

I am pleased to support the legislation before us which will send a strong message that taking private homes for economic development is intolerable. There is still much more for Congress to do to prevent eminent domain abuse, however, and I look forward to this bill passing and to working with my colleagues on both sides of the aisle.

It is very refreshing to see that this legislation has bipartisan support and that we are moving on this legislation today.
Ms. WATERS. Mr. Chairman, I yield 1 minute to the gentlewoman from Ohio (Mr. KUCINICH).

Mr. KUCINICH. Mr. Chairman, the question before us today is not really whether we agree or disagree with the Supreme Court's interpretation of the term "public use," but, rather, who we stand with and what we stand for. Do we stand with large private developers or with ordinary private citizens? Do we stand for government assistance for the powerful economic interests, at the expense of ownership of small interests?

Let it be clear, this debate is about condemnation of property. Will we condemn our constituents by allowing their land to be taken without just cause? Will we condemn small business owners by allowing their stores to be removed simply because a big developer has a different idea for what the economy should look like? Or will we stand with our constituents and condemn their property can be sacrificed for the sake of a big corporate company's development plans?

The Declaration of Independence holds that all people are endowed with the right to life, liberty and the pursuit of happiness. The Supreme Court’s Kelo decision would limit the right to the pursuit of happiness to large corporate developers at the expense of small businesses and private citizens.

We must take a stand today and reaffirm the unalienable rights of citizens and stand for our constituents and declare that everyone has the right to pursue happiness, and we cannot and will not take that right away.

I urge my colleagues to join me in standing with our constituents to support this bill.

Ms. WATERS. Mr. Chairman, I yield 1 minute to the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the distinguished gentlewoman for her leadership, and I am glad to be an original co-sponsor.

The bill before this body rejects the act of the Supreme Court majority, made a wrong decision and ratified the unconstitutional acts of a local government that was engaged in the pursuit of private profit.

I urge my colleagues to join me in standing with our constituents to support this bill.

Ms. WATERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Speaker, as you can see, this is not a Democrat-Republican issue. The people who care about property rights, the people who respect homeownership, the people who believe that this is an important value are standing up for the citizens of this country. Folks who believe that somehow the government has a right to take private property for private use are standing on the side of the developers.

While I respect Members on both sides of the aisle, I have had some Members on this side of the aisle talk about what they have done for poor people, and you will hear people talk about what they do for minorities, that they are doing this to get rid of blight, to create better communities. Well, on this one, I would like to say to all of my friends that are helping poor communities and minority communities, we do not need you on this one.

We need you to respect the right of those minorities and those poor people to hold on to what they own, whether it is a little, small business or whether it is a two-room shack or a one-room shack or whatever it is. It is theirs. They have a right to it. And no one, no mayor, no city council member, no one has the right to take what they own.

In the 1990's, a state agency declared that New London, CT was a "distressed municipality" after its unemployment numbers hit double the rate in the rest of Connecticut. The holding by the Supreme Court purported to defer to the city's judgment and that the development would be a "catalyst to the area's rejuvenation."

The takings provision of the Constitution was carefully intended to prevent the government from taking property for a public use, and thereby make it so. There should exist a public purpose for a taking of private property or not government can decide that there is a public use. The Framers of the Constitution were careful in addressing that issue, careful in the sense they wanted to make sure that the ruling powers that be could not come in and say, "I am going to take your property." That was not what the Framers envisioned free America.

A recently published law journal noted our dilemma quite well: "But still more unsettling to many than the notion that property might be taken for an obvious general public benefit is the suggestion that this power might be used for another private owner's profit, along with all the traditional rights that permit sale, use, rental, disposition, and other choices of fee simple ownership. Seemingly, if property can be forcibly passed from one private owner to another, 'public use' is a phrase with no meaning and no end."

"If property can be forcibly passed from one private owner to another, 'public use' is a phrase with no meaning and no end." This legislation allows us as legislators to draw a thicker line of demarcation between private property and property intended for public use. The threshold must be higher for the ownership rights of individuals to be usurped—when the underlying objective is merely to engorge the pockets of developers.

I would hope that my colleagues will support me in the land administration. The Rules Committee made in order Mr. Chairman, as No. 12. Kelo held "economic development" to be a "public use" under the Fifth Amendment's Taking Clause. The Taking Clause states that "nor shall private property be taken for public use without just compensation."

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The land use situation in the areas most affected by Hurricane Katrina is a situation that is most ripe for eminent domain takings under the guise of "economic development."

My amendment seeks to add the legislative intent to H.R. 4128 that the land seeks to put the people first even in the face of post-disaster reconstruction.

I thank the Chairman of the Committee on the Judiciary for his support of this amendment. It is critical that we continue the spirit of bi-partisanship that was started with the resolution disapproving the Kelo decision, of which I was an original co-sponsor, the Private Property Rights Protection Act of 2005, H.R. 3135.

New Orleans will be the center of a reconstruction project that will have a price tag in excess of $200 billion. Eminent domain will play a major role in the local governments' ability to assemble properties to carry out their rehabilitation, whether it is a yes or not.

NAACP representative Hillary Shelton stated that "the eminent domain process mostly targets racial and ethnic minorities because cities often want to redevelop areas with low property values and because minorities have less property and are more vulnerable."

My amendment seeks to clarify that, in redefining the boundaries of the federal government's Taking power, unfair practices will not be tolerated and that the rights of property owners will be given the highest regard.

Mr. Chairman, I ask that the Committee colleagues support this amendment.
undermine the people by supporting the taking of private properties for private use. I would hope even those Members who have been past mayors, who have been past city council members who agreed with the developers, indeed listen to what debate here on the floor today and agree that if we want to do anything to support the right of citizens to own property, we will support this bill.

Mr. Chairman, I yield the balance of my time to the gentlewoman from Nevada (Ms. BERKLEY).

Ms. BERKLEY. Mr. Chairman, I thank the gentlewoman from California for being so gracious in yielding me this time.

Mr. Chairman, our Nation’s eminent domain laws exist to help our communities, not to deprive Americans of their businesses and homes. For 11 years, Harry Pappas and his family battled, hoping that the judiciary would from them in downtown Las Vegas, property which they rightfully owned and that was home to seven shops that family leased to other businesses for more than 40 years. This was a 40-year holdout in Las Vegas. In 1994, the Las Vegas Redevelopment Agency notified Mrs. Pappas that they were condemning her property. At a hearing only 7 days later, it was decided that the agency would immediately possession of the property, and the family business promptly demolished.

The Pappas’ dreams were torn down with the building they lost that day, their dignity was taken from them as they were forced to watch as a for-profit parking garage was built on their family property.

The Pappas family took their case all the way to the United States Supreme Court, voting to limit the use of eminent domain for 2 years to any States or locality that attempts to use its condemnation power to take private property for essentially nonpublic use purpose and to turn around and resell it to another private developer who will bring in more tax revenue.

We have heard time and time again on this floor during the last time that this is wrong. But the Supreme Court has said that it is not wrong if a developer can convince a majority of one on a city council or local governing board to authorize the local attorney to go and commence condemnation actions. That is true if somebody has lived in a house for all their life and the city council puts them in the cross hairs; it is true for a church that has got a prime piece of property on the corner of a busy intersection that a developer wants to build a strip mall on; and it is true for someone who has run a small business in a prime area of town and has made a lot of money but does not pay a lot of property taxes because they have a small shop and they can get out of the business even for a competition that wants to have a larger and, thus, more tax-yielding facility on that piece of property.

Everything I have said is wrong, and everything I have said can be done with the use of Federal economic development funds under the Kelo decision. What we need to do now is pass this bill to right this wrong.

Mr. Chairman, very briefly, this bill attempts to do what the Federal Government can to reverse the impact of the Kelo decision, and the heart of this bill is to deny Federal economic development funds for 2 years to any States or locality that attempts to use its condemnation power to take private property for essentially nonpublic use purpose and to turn around and resell it to another private developer who will bring in more tax revenue.

We have heard time and time and time again on this floor during the last hour that this is wrong. But the Supreme Court has said that it is not wrong if a developer can convince a majority of one on a city council or local governing board to authorize the local attorney to go and commence condemnation actions. That is true if somebody has lived in a house for all their life and the city council puts them in the cross hairs; it is true for a church that has got a prime piece of property on the corner of a busy intersection that a developer wants to build a strip mall on; and it is true for someone who has run a small business in a prime area of town and has made a lot of money but does not pay a lot of property taxes because they have a small shop and they can get out of the business even for a competition that wants to have a larger and, thus, more tax-yielding facility on that piece of property.

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And I would just remind the membership, Mr. Chairman, that the author of the amendment that the member of the Committee on the Judiciary, John Paul Stevens, recently spoke to a local bar association in Nevada and said that if he was a legislator rather than a justice of the United States Supreme Court, he would have ruled the other way. So if Justice Stevens were sitting here as a representative in Congress today, he would be supporting this bill, too, and I think that is the reason why this bill should receive overwhelming support. We all should vote for it.

Mr. Chairman, I yield back the balance of my time.

The Acting CHAIRMAN (Mr. SIMPSON). All time for general debate by the Committee on the Judiciary has expired. It is now in order for general debate by the Committee on Agriculture, 30 minutes equally divided.

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

Mr. Chairman, I rise in strong support of this important piece of legislation. I want to thank Chairman SENSENBERGER for his leadership on this issue. I also appreciate the hard work of Congressman HENRY BONILLA, who introduced the STOPP Act, legislation that passed out of the Agriculture Committee, and Ranking Member PEKERSON on the Agriculture Committee, as well as Ranking MEMBER CONYERS on the Judiciary Committee.

I especially want to thank my colleague from South Dakota (Ms. HERSETH) who was the first Democrat to take a leading role on this issue. It is in part due to her leadership that we will have a very strong bipartisan vote on this legislation today.

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 gives the property owners just compensation.

However, the Supreme Court’s recent 5-4 decision in Kelo v. City of New London is a step in the opposite direction. The Court essentially eroded any ability of State and local governments to exercise eminent domain powers to seize properties 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
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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 SENSENBRINNER to introduce H.R. 4128, the Private Property Rights Protection Act. This important piece of legislation represents a merger between two pieces of legislation, H.R. 3135, introduced by Chairman SENSENBRINNER, and H.R. 3405, the STOPP Act, introduced along with the gentleman from Texas (Mr. BONILLA) and the gentlewoman from South Dakota (Ms. HERSETH) and which passed the House Committee on Agriculture by a strong bipartisan vote of 40 to 1.

I am pleased that H.R. 4128 incorporates many provisions from the STOPP Act. Specifically, this new legislation would prohibit all Federal economic development funds for a period of 2 years for any State or local government from using economic development as a justification for taking property from one person and giving it to another private entity. In addition, this new legislation would allow State and local governments to cure violations of 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. 4128 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 to 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.

Mr. Chairman, I reserve the balance of my time.

Ms. HERSETH. Mr. Chairman, I yield myself such time as I may consume.

I rise in strong support of the Private Property Rights Protection Act of 2005. I want to thank the Judiciary Chairman SENSENBRINNER and Ranking Member CONyers, as well as Agriculture Committee Chairman GOODLATTE and Ranking Member PETerson, for their hard work in moving this legislation to the floor today.

I would also like to acknowledge and thank the Agriculture Appropriations Subcommittee Chairman HENRY BONILLA for his strong leadership on this very important issue as well as the work of Chairman POMbo and Congresswoman WATERS who have been steadfast in their advocacy for private property rights in light of the threat posed by the Kelo decision.

This legislation is a priority for farmers and ranchers and landowners across my home State of South Dakota. I am extremely pleased that the Agriculture Committee acted swiftly on the legislation originally introduced by the gentleman from Texas (Mr. BONILLA) and myself, the Strengthening the Ownership of Private Property (STOPP) Act, and that Chairman GOODLATTE made a report out the bill from the Agriculture Committee a priority.

I am equally pleased by the determined, thoughtful attention demonstrated by the Judiciary Committee and the collaborative approach taken as we put together the Private Property Rights Protection Act. It is important, commonsense legislation that deserves our attention.

As my colleagues know, the Supreme Court’s decision in Kelo v. City of New London dealt a serious blow to the fundamental rights of property owners in the United States. The House overwhelmingly expressed its disapproval shortly after the decision by a vote of 365 to 33. This court ruling allows governments to take private property from one landowner and give it to another private individual so long as some economic development justification is given. In short, it means that governments can take your property and give it to someone else. This is wrong.

I have been impressed by the widespread support for the proposition that this decision requires prompt congressional action.

As I have said before, South Dakotans from all walks of life are outraged about the Supreme Court’s Kelo decision. As I have repeatedly noted in previous discussions of the case and as noted by Chairman SENSENBRINNER earlier today, even Justice John Paul Stevens, the author of the Kelo decision, has expressed the feeling that the use of eminent domain by the City of New London was wrong as a matter of policy. And I agree.

I am pleased to have been part of the effort to craft a good bipartisan response that addresses these policy shortcomings by discouraging State and local governments from arbitrarily taking land from private landowners and giving that land to another private party. I felt compelled to take a lead in this process because of the people I represent and my roots on my family’s farm in South Dakota. South Dakota is a rural State, and our population’s livelihood is deeply tied to the land. This is true for virtually all of the State’s citizens, whether they live in town or whether they live on the farm.

Because of this, the belief in private property rights runs strong and deep, and everyone I have talked to back home on this matter has delivered the same message: Landowners should not be vulnerable to the whims of a government that decides to take their land and offer them little or nothing in return.

This is true for virtually all of the State’s citizens, whether they live in town or whether they live on the farm. And of course, this belief in private property rights runs strong and deep, and everyone I have talked to back home on this matter has delivered the same message: Landowners should not be vulnerable to the whims of a government that decides to take their land and offer them little or nothing in return.

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Ms. HERSETH. Mr. Chairman, I yield myself such time as I may consume.
this bill originally fell, the STOPP Act that we filed, because so many of the programs that we are talking about here today that are funded come through the Agriculture Committee.

We would not have been able to come to this partnership with Ms. HERSETH and Chairman GOODLATTE; and I want to thank both of them, not just personally, but I know there are a lot of people out there that are very grateful for the support they have given this and have brought us to this point where we have a bill that, again, was reported out of the Agricultural Committee by a vote of 40 to 1 and then out of the Judiciary Committee with only three people voting against it. That is a profound statement across partisan lines in this Congress.

It also has widespread support among groups like the NAACP, the AARP, religious organizations, and the American Farm Bureau. I think people understand the impact this bill could have because it is very simple, Mr. Chairman. It says to communities that if they do not care about property rights, they are not going to get their money. No property rights, no money for 2 years. And that is what is going on with almost any local government or any State think long and hard before they take that first step toward trying to take someone’s property for private gain.

This bill, of course, does not do anything to the constitution’s rights and the constitutional history in this country of communities taking private property for public use, i.e., airports, roads, bridges, etcetera. It does not touch that at all. So I believe that is why we were able to come to this state. We have gone through the process, worked through regular order. We had our hearings. Attorneys scrubbed the bill. People asked questions, what if this happened, what if that happened. And we tried to address every issue that has come to us thus far.

Again, it is a great day when we have two committees coming together, two parties coming together. People from all over the country, whether they live in a rural area or whether they live in an urban area, have the same concern about property rights after the Kelo decision.

I look forward to a resounding victory today for the people of this country.

Ms. HERSETH. Mr. Chairman, I yield for the purpose of making a unanimous consent request to the gentlewoman from California (Ms. ZOE LOFGREN).

(Ms. ZOE LOFGREN of California asked and was given permission to revise and extend her remarks.)

Ms. LOFGREN of California. Mr. Chairman, I rise in support of the bill.

Mr. Chairman, as a member of the House Judiciary Committee I had the opportunity to review quite carefully this bill. While I disagreed with the Supreme Court decision, I must confess that the bill before us today is not drafted as carefully and clearly as I would have hoped. There will, in all likelihood, be litigation if this bill becomes law because the exemptions are written in such a way that reasonable people may disagree as to their meaning.

I hope that I can help clarify the application of this bill and the criticism of the meaning of the bill as it relates to affordable housing. What follows are the concurring views in the Committee Report accompanying this bill. It is my hope that by including them here today during our floor debate that in the future this clarification will be of value to public entities, litigants, and the courts.

At markup, I intended to offer an amendment to this legislation creating an exception to the definition of “economic development” for the development of affordable housing for low-income residents. I ultimately decided not to offer this amendment, however, based on my recognition, and the apparent recognition of my colleagues, that this bill as introduced does not in any way limit the ability of States and local governments to exercise their eminent domain powers for the building of affordable housing.

In fact, during markup, I pointed this out and received no objections from my colleagues.

The provision of low-income housing, whether by a for-profit or a non-profit entity, should not constitute “economic development” under the definition in this bill because such activity constitutes neither “commercial enterprise” nor an activity designed to “increase tax revenue, tax base, employment or general economic health.” Rather, the development of affordable housing for low-income residents constitutes a traditional public purpose for exercise of eminent domain powers for the building of affordable housing. I ultimately decided not to offer this amendment based on its apparent recognition of my colleagues, that this bill as introduced does not in any way limit the exercise of eminent domain powers for the development of affordable housing.

I concur in the Committee’s report.

Ms. HERSETH. Mr. Chairman, I yield 2 minutes to the gentleman from Colorado (Mr. SALAZAR).

Mr. SALAZAR. Mr. Chairman, I thank the gentlewoman from South Dakota for yielding me this time.

Mr. Chairman, in my district, the values of faith, family, and commitment to community are sacred. We also hold sacred the right to own property without fear of its being taken away by government.

Unfortunately, local governments are seizing property in the name of economic development and transferring ownership to other private individuals. American citizens are losing their homes in the interest of building strip malls or high-rise buildings. What is more disheartening is the fact that the U.S. Supreme Court has endorsed this behavior in what I feel is a misinterpretation of the takings clause of the fifth amendment to the Constitution.

I voted to prohibit this kind of action when I was a State representative in Colorado, and I have also voted my disapproval of the ruling in the case of Kelo v. New London.

I rise today in support of H.R. 4128, the Private Property Rights Protection Act. I am a copruiser of this bill, and I supported passage of the STOPP Act, H.R. 3405, in the Agriculture Committee just last month.

This important legislation will help prevent local governments from abusing their power of eminent domain. While local governments may be well intentioned, the fact is that people are losing their homes because of misguided economic development principles.

I urge my colleagues to join me in supporting this measure; and I thank Chairman SENSENBRENNER, Ranking Member CONYERS, Chairman BONILLA, and Congresswoman HERSETH for their leadership in preserving and protecting property rights.

The right to own property is a fundamental right of this country, and I will do whatever I can to ensure that it is preserved.

Mr. GOODLATTE. Mr. Chairman, I yield 2½ minutes to the gentleman from Nebraska (Mr. OSBORNE).

Mr. OSBORNE. Mr. Chairman, I rise in support of H.R. 4128, the Private Property Rights Protection Act. The Supreme Court decision of Kelo v. City of New London is one of the most unpopular decisions ever rendered. I believe more than 90 percent of United States citizens oppose this ruling, and it may be that the other 10 percent do not even understand it. So it has been certainly roundly denounced.

The Court states that “any property may now be taken for the benefit of another private property.” So if one party has a project that will yield more tax revenue than is currently provided by a piece of property, that property may be taken. This gives local governments broad powers. This creates great concern in the Agriculture Committee, as has already been noticed. Farm and ranch land can be taken very easily because a golf course, a shopping mall, an amusement park can easily be classified as being more important as far as economic development than agricultural land. Nonprofits, such as church, salvation army, Goodwill Industries, shelters, are very vulnerable. They generate little or no tax revenue. So almost any project can supersede them in this regard.

Small businesses are very vulnerable.

I had a farmer athlete who played for me who had worked very hard to develop a small business in an old building, a restaurant, and a new hotel was coming into the area. The local city council was thinking about shutting him down, destroying the building, tearing down a new hotel, which would be economic development. And this person was essentially very vulnerable. His whole life savings, his whole investment was going to be gone. So this bill would prevent that.

H.R. 4128 prevents States and local governments from receiving Federal economic development funds if they abuse their powers of eminent domain. These are important protections.

I would like to thank Chairman GOODLATTE, Chairman SENSENBRENNER, and others who have worked so hard on this bill; and certainly I urge adoption of it.
Ms. HERSETH. Mr. Chairman, I yield 2 minutes to the gentleman from Georgia (Mr. SCOTT).

Mr. SCOTT of Georgia. Mr. Chairman, I thank the gentlewoman from South Dakota for yielding me this time. It is a real privilege to work with her on this, and I appreciate the opportunity to speak on this important issue on the House floor today.

As we all know, on June 23, 2005, the Supreme Court handed down its decision in Kelo v. The City of New London. In Kelo, the Court addressed the city's condemnation of private property to implement its redevelopment plan aimed at invigorating a depressed economy. By a 5-4 decision, the Court held that the condemnation satisfied the Fifth Amendment requirement that property condemnations be for a "public use," notwithstanding that the property, as part of the plan, might be turned over to private developers.

The Supreme Court decision was indeed a wake-up call, Mr. Chairman, for many communities, and I have heard loud and clear from my own constituents in Georgia that they are worried that their property rights are in jeopardy. Today we are going to remedy this wrongful application of the law of eminent domain and restore important property rights to private citizens. This is very important, Mr. Chairman, what we are doing today. And as a co-sponsor of H.R. 4128, the Private Property Rights Protection Act, I believe that passage of this legislation will ensure that no Federal dollars will be used to unjustly take any property at the local and State levels. In addition, I will continue to support efforts to curtail the power of eminent domain in an effort to protect private property rights.

H.R. 4128 is important, and I support it because it prohibits State and local governments from using eminent domain to seize land for economic development purposes, except for the construction of public facilities such as hospitals or military bases, and for use by a public utility, aqueduct, or a pipeline.

In conclusion, Mr. Chairman, the States and local governments that take lands for private development could not receive Federal economic development funds from using eminent domain to seize land for economic development purposes, except for the construction of public facilities such as hospitals or military bases, and for use by a public utility, aqueduct, or a pipeline.

In the discharge of our duty to support and defend the Fifth Amendment to the Constitution, I urge my colleagues to say yes to H.R. 4128, the Private Property Rights Protection Act.

Ms. HERSETH. Mr. Chairman, I yield 2 minutes to the gentleman from Texas (Mr. GENE GREEN).

Mr. GENE GREEN of Texas. Mr. Chairman, I thank my colleague for yielding me time.

Mr. Chairman, I am proud to be a co-sponsor of H.R. 4128 and glad to rise in support of it.

The Private Property Rights Protection Act prohibits States and localities from using eminent domain powers for economic development purposes if the State or local governing jurisdiction received Federal economic development funds during the same year.

In the past, governments were only used for real public use, highways, roads, schools, parks, or to eliminate that property from the public. This did not happen. The Fifth Amendment, at least under State law, by-passing the private rights of eminent domain to sell land for economic development purposes, and we should do the same, at least as much as we can do under our Federal laws.

So this bill does give us that opportunity to defend our fundamental constitutional rights of our constituents.

Mr. GOODLATTE. Mr. Chairman, it is my pleasure to yield 2 minutes to the gentlewoman from North Carolina (Ms. FOXX).

Ms. FOXX. Mr. Chairman, Chairman SENSENBRENNER and ChairmanGOODLATTE are to be applauded for the excellent, prompt work they have done on this outstanding bill.

Fundamentally, this bill is truly one of the most important pieces of legislation that this Congress has or will consider. The Supreme Court's eminent domain decision contradicts the very ideals of liberty and property rights that have for 229 years defined the greatest form of government the world has ever known.
Property rights are a hallmark of what separates America from nations whose citizens live in fear of their own government. In fact, property rights and the opportunity for homeowner-ship are principal reasons that citizens come from other nations desperately to America. As a result of the atrocious decision made by the Supreme Court, those exact rights became jeopardized.

As Members of Congress, we have a responsibility to uphold the Constitution and protect the rights of our constituents. We also have the responsibility to carefully monitor the actions of the judicial branch.

The bipartisan support this bill has both in Congress and in our districts loudly proclaims the widely held opposition to the Supreme Court’s un-American eminent domain decision. I am proud to help ensure that such an appalling ruling will not be made again.

I hope and pray the newly appointed Supreme Court justices will never rule as irresponsibly as those five justices who supported the eminent domain decision did. We cannot let courts or local governments trample on property rights.

I urge all my colleagues to support this bill.

Mr. HERSETH. Mr. Chairman, I reserve the balance of my time.

Mr. GOODLATTE. Mr. Chairman, I am pleased to yield myself the balance of my time to the gentlewoman from Ohio (Mrs. SCHMIDT), the newest Member of Congress, who is standing up on this important issue.

(Mrs. SCHMIDT asked and was given permission to revise and extend her remarks.)

Mrs. SCHMIDT. Mr. Chairman, I rise today in strong support of H.R. 4128, of which I am a cosponsor, legislation to protect private property of all Americans. I would like to introduce William Howard Taft, the only person to serve as President and Chief Justice of the Supreme Court, said, “Next to the right of liberty, the right of property is the most important individual right guaranteed by the Constitution.”

When the Supreme Court decided in Kelo that the State and local governments can require homeowners to vacate their property to make way for commercial development, it failed property owners’ rights and our Constitution.

This legislation is important to me because of residents in Norwood, Ohio. In Norwood, Ohio, these residents are suing right now, saying that it misused the power of eminent domain by declaring a neighborhood was blighted and turning the property over to a private company for the development of a shopping center. The Ohio Supreme Court is taking this matter. We hope there is a better resolution than the one in Kelo.

I want to commend Chairman SENENBRENNER and Chairman GOODLATTE for their good work and their courageous effort in this most needed legislation.

Ms. HERSETH. Mr. Chairman, let me just conclude by commenting in my remaining time on some of the testimony that we heard in Chairman Pombo’s Committee on Resources, on which I serve. Among the compelling testimony of individuals, business owners, who have been victims of abuses of eminent domain for the purpose of a private-to-private transfer.

So not only have these two recent Supreme Court decisions set a new standard for eminent domain abuse, the most important of property owners’ rights, but they are also set a new standard for eminent domain abuse.

The bipartisan support this bill enjoys is evidence that it has the backing of the American people, because of residents in Norwood, Ohio.

I urge all my colleagues to support this bill.
economic development, or for property that is subsequently used for economic development, if the State is a recipient of Federal economic development funds that fiscal year. If a State or local government is in violation of this provision, it would be ineligible for Federal economic development assistance for 2 fiscal years following such violation.

Many farmers in my district have expressed particularly how harmful this court ruling could be to them if a local government wants to take their land for development. Many farms have been in the same family for generations. Under the Supreme Court’s ruling, a government could forcefully take all or a portion of the family farm so more tax revenue could be generated by a developer. This scenario is a real possibility that demands the Congress take action to prevent such an unjust land grab.

The same situation could arise for a house of worship or other non-profit organization. Entities that do not generate tax revenue are particularly vulnerable to land grabs by governments interested in generating more tax dollars.

Small businesses are also in support of this bill because it protects their property from being handed over to a larger company, even if it is a competitor. Small shop owners that may be struggling to survive would have an easy target for a local government. It is in their interest to pass legislation that helps protect small businesses. H.R. 4128 does just that by alleviating the threat a local body could pose to small businesses when it comes to supposed economic development.

I look forward to seeing this bill passed and signed into law. Support for this bill is support for home owners, small businesses, farmers, ranchers, houses of worship and anyone who believes in private property rights.

Ms. WOOLSEY: Mr. Chairman, today the House passed H.R. 4128, a bill that makes states and local governments ineligible for Federal economic development funds for 2 years if they exercise eminent domain in the name of economic development.

Protecting the rights of individual property owners is one of the utmost importance. However, there are certain circumstances when the best interest of a town is served by the responsible use of eminent domain. As a former City Council Member, I know how effective this tool can be when it is used judiciously. In my State of California there are restrictions on local governments’ use of eminent domain to ensure that situations like that of Kelo v. City of New London do not happen.

We have to trust local authorities to use this power responsibly and respectfully and only when the community is at large and when property owners are fairly compensated. By restricting the use of eminent domain, we take away our local governments’ ability to serve and improve their jurisdictions.

As the leaders of our neighborhoods and towns, we must trust them to know best how to use the resources and assets that are available.

Mr. Chairman, by restricting the use of eminent domain we have in fact impeded our local governments’ ability to make necessary progress.

Mr. BLUMENAUER, Mr. Chairman, the Supreme Court Ruling in Kelo v New London sparked many fears among citizens that their property was at risk of being taken away by the government. These fears, however, are unwarranted and stem from a fundamental misunderstanding of eminent domain.

Eminent domain is a power granted local governments by the Fifth Amendment. The Supreme Court decision in no way precluded the rights of the government to restrictions on eminent domain and to more narrowly define public use. The court leaves these rights to local officials and citizens for public debate.

In my experience as a local elected official, eminent domain was the absolute last resort, but it was an important tool to have if it was absolutely necessary.

In the discussion on the House floor today, my colleagues failed to recognize the many benefits we experience thanks to eminent domain. Twenty years ago, Times Square was a notoriously dangerous neighborhood in New York City. Eminent domain was used to take 13 acres of land, condemning 56 lots and moving 404 tenants. The public-private redevelopment included a highly successful mixture of for-profit and non-profit theaters, retail facilities, hotels, and office buildings. What was once a blighted neighborhood is now a safe and vibrant city center.

Connecting the U.S. Capitol and the White House, Pennsylvania Avenue is one of this country’s most important thoroughfares. Fifty years ago, however, it was a street bordered by run-down buildings that significantly detracted from its role in the life of Washington, D.C. and America. In 1972, Congress created the Pennsylvania Avenue Development Corporation, which in turn exercised the power of eminent domain to revitalize this important American institution.

This bill is a hasty political response to a narrow Supreme Court decision. I am concerned that it is overly broad and will have many unintended consequences for our States and communities and hamper their ability to build safer, healthier and economically secure neighborhoods.

I urge my colleagues to defeat this bill and allow local governments to reform eminent domain laws in manners consistent with their communities’ needs.

Miss MCMORRIS: Mr. Chairman, I rise today to offer my support of H.R. 4128 the Private Property Rights Protection Act of 2005.

I am pleased the House of Representatives recognizes the importance of protecting private property rights, and clarifying legitimate takings by the Federal Government and discouraging takings for private development.

Without a doubt, I am a strong defender of private property rights. Uncompensated regulatory takings of private property have become an immense problem across our Nation. As Federal, State, and local regulations proliferate, property owners have increasingly found themselves unable to use their property and unable to recover the losses that result.

In Kelo v. City of New London, decided June 23, 2005, the Supreme Court ruled 5-4 that the city’s condemnation of private property to implement its area redevelopment plan aimed at invigorating a depressed economy, was a “public use” satisfying the U.S. Constitution—even though the property might be turned over to private developers. The majority opinion was grounded on Supreme Court decisions holding that “public use” must be read broadly to mean “for a public purpose.”

This decision does not take into sufficient account the distinction between projects where economic development is only an instrumental or secondary aspect of the project, and those where economic development is the primary interest. I am concerned by this decision.

Our founding fathers believed so much in the sanctity and importance of private property that they felt it needed to be protected in the Constitution. However, due to the recent ruling, government officials can confiscate private property if they simply argue the local community will receive an economic benefit to do so.

In fact, the Institute for Justice estimates that over 10,000 homes nationwide are in danger of being destroyed by aggressive local governments. Now officials can seize the homes of private citizens to generate more tax income to fuel big government spending programs.

Mr. RUPPERSBERGER, Mr. Chairman, I rise today in support of this bill, H.R. 4128.

What we witnessed as a result of the Supreme Court’s ruling in Kelo vs. City of New London was unfortunate.

I believe now that across the country local governments are looking for ways to revitalize their communities. I believe these efforts are important and necessary to help their neighborhoods and families thrive, however, I believe that the City of New London acted inappropriately.

The Supreme Court’s ruling in the case went too far and made governments’ eminent domain powers too broad.

I am extremely concerned with the apparent disregard by a majority of the Supreme Court regarding the purpose of the Takings Clause under the Fifth Amendment. The Kelo ruling would allow the taking of private property for the benefit of another private entity.

When I was County Executive, I put forward a plan to use eminent domain for the purpose of public safety although there were private entities that would have benefited. My goal was to revitalize a deteriorating community area. I felt that eminent domain was the tool I needed to address revitalization of an area with high levels of poverty and a high crime rate.

As a consequence of the public debate on that experience, I have come to have a better appreciation of the severity of the right when inter-vening to benefit one private entity to the detriment of another private entity. I believe that using eminent domain to take private property should only be used in situations where there is an overwhelming public benefit such as roads, schools, hospitals, and public safety needs.

I understand this legislation as preventing the use of eminent domain for economic development and that any use of eminent domain for the purposes of public safety is permitted.

By prohibiting the Federal Government from using strictly economic development as a justification for condemnation of private property,
and by prohibiting States and local governments that receive Federal economic development funds from taking private property for strictly economic development purposes, the supporters of this legislation hope to prevent another New London.

This legislation should not prevent the Federal, State or local governments from exercising eminent domain for public facilities or other uses defined as public use.

It is vital that we protect the property rights of all Americans from arbitrary application of eminent domain. Passing this legislation would be a violation of that right.

I urge my colleagues to support the bill.

Mr. MURPHY. Mr. Chairman, the Private Property Rights Protection Act would hope-fully, once and for all, prohibit Federal, State and local use of eminent domain to take private property for economic development.

The Fourteenth Amendment’s due process clause gives eminent domain authority to States and localities if seizing property for a “public use.” However, in the Kelo decision, the Supreme Court ruled that New London, Connecticut’s use of eminent domain seemed constitutional and, in fact, for a “public use”—largely ignoring the reality that the property, as part of the plan, would be turned over to private developers.

The Fourteenth Amendment also contains what’s known as the equal protection clause, which makes it unlawful to make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws.” But the Kelo ruling deliberately declares that heretofore, certain persons and their property will in fact be protected Unequally. Or, in this case, not at all.

In addition to prohibiting any level of government from using economic development as a reason for exercising its power of eminent domain, H.R. 4128 would also provide assurances that those who are victimized by eminent domain property seizures will get their day in court. Eminent domain victims suffering injuries from a violation of the protections in H.R. 4128 will be allowed access to State or Federal court to enforce its provisions.

Mr. Chairman, the home ownership rate is at the highest level in our Nation’s history. Owning one’s home and property is the cornerstone of the American Dream. The Kelo decision sets a precedent that can turn the American Dream into a nightmare for victims of eminent domain.

I salute Chairman SENSENBRENNER and Chairman SMITH of the Judiciary Committee for developing this strong, bipartisan legislative defense of private citizens. I am proud to cosponsor the legislation, and urge my colleagues to support this legislation.

Mr. STARK. Mr. Chairman, I rise in opposition to H.R. 4128, which bars local governments from using eminent domain for economic development.

The urban renewal of the last decade has benefited every city of this country and many cities in the 13th Congressional District. The very purpose of government is to make tough decisions that benefit the community, and I cannot support Congress taking away this essential government function.

This bill would also “abridge the Federal Government’s power further into matters in which it doesn’t belong—in this case—real estate plan-nning and development. City councils are elect-ed and empowered to make the difficult choice when private property should be utilized for the good of the community. Congress cannot and should not tie the hands of locally elected leaders to do what they believe is in the best interest of their communities. If those local officials make the wrong choices, voters will no doubt respond.

Mr. LEVIN. Mr. Chairman, the bill before the House today is a good example of a legis-la-tive cure that is worse than the underlying dis-ease.

I want to say at the outset that there have been some very questionable uses of eminent domain. The fifth amendment to the Constitu-tion clearly states that private property may not be taken except for public use, and then only after just compensation has been paid to the property owner. In many cases, the use of eminent domain is justified, but it is invariably controversial. I remember the controversy that attended the construction of the Walter Reu-ther Freeway in my home State during the 1960s and 1970s. Some communities were furious about the project, but the摆 were designed to give the road a clear public use.

Other uses of eminent domain are much more questionable. In Washington, as in so many other places, a decision has been made to spend hundreds of taxpayer dollars to build a new stadium for the benefit of Major League Baseball and the future owner of the Washington Nationals. Indeed, the Dis-trict Government filed court papers the other day to seize $44 million worth of property from its current owner’s parcel to build this stadium. Is this a legitimate public use? Evidently, they must be since the legislation before the House con-tains an exception that would seem to allow the use of eminent domain to build such facil-ities.

While lucrative stadium deals apparently enjoy protection under this bill, there is a ban-keret prohibition placed on the use of eminent domain for economic development purposes. States and localities that take land for private, for-profit projects or those designed to in-crease the tax base or employment stand to lose all their Federal economic development funding for 2 years. The penalty would extend to all economic development funds, even those going to meritorious projects that do not meet the current definition. As the legislation is so broadly written, and the penalties are so severe, that it will tie our cities and States in knots. Any use of eminent domain could conceivably trigger the overly broad penalties contained in this legislation. The po-tential liability facing cities and States that use eminent domain is open-ended and could ex-tend for years or even decades into the future.

Land use planning is primarily a State and local function. Members of Congress fre-quently pay lip service to States’ rights and local control, but this bill would override the limitations that many States have placed on eminent domain and land transfers to private entities for economic development purposes. In the case of my own State, in 2004, the Michigan Supreme Court limited the use of eminent domain by narrowly interpreting the State constitution’s takings clause in County of Wayne v. Hathcock.

There is a lot of room for improvement in the use of eminent domain. Unfortunately, the legislation before the House is an unreason-able and unworkable solution.

Mr. ORTIZ. Mr. Chairman, I rise today in support of the Private Property Rights Protec-tion Act of 2005. I was disturbed—as were so many Americans—by the decision of a local Connecticut community to seize private property for area economic development and the Supreme Court’s upholding their right to do so.

Therefore, I believe our Constitution allows for State and local governments to execute the power of eminent domain for those purposes that specifically serve the public good, con-demning property solely to implement eco-nomic development plans is not serving the public good. Private property rights matter in this country, and violating those rights insults a very basic tenet of American fairness. For my constituents, owning a home is the cul-mination of many years of hard work and the realization of the American Dream. At no time should a local entity take those years of hard work solely to increase its tax revenue.

I am proud to support this bipartisan legis-la-tion.

Mr. MENENDEZ. Mr. Chairman, the Constitution and the fifth amendment allows the government to use “eminent domain” to condemn and take private property only if the owner receives “just compensation” and only if the property is taken for “public use.” Common sense and Supreme Court decisions tell us that public uses are schools, roads, parks, railways, hospitals, and military bases. That is sensible, and that is all we know.

Unfortunately, earlier this year, in Kelo v. City of New London, the Supreme Court em-powered the government to seize private prop-erty, including someone’s own home, and transfer it to another private owner as long as the government could provide an economic ben-efit to the community.

The hope of one day owning a home is the backbone of the American Dream. The house is the single most important purchase most Americans will ever make. The average family invests more in their homes than they invest in the stock market, the money market, or their retirement savings plans. There’s a good reason for that. Housing has been a safe, lever-aged investment, and one of the best in-vestments one can make.

The Federal government must not have a green light to seize our homes just because it believes it would be more profitable as some-thing else. While eminent domain has been used successfully throughout our history to ad-vance important public projects, it should never be manipulated to solely support the in-terests of private developers.

Increasingly, local governments are exploit-ing eminent domain powers to take property for retail, office or residential development. In my State of New Jersey, some localities have abused eminent domain so that beachfront homes can be replaced by luxury townhouses and condominiums.

That is why I support H.R. 4128, the Private Property Rights Protection Act. This legislation would deny States and localities from receiv-ing any Federal economic development funds if they abuse their eminent domain power. H.R. 4128 also bars the Federal Government from exercising eminent domain for economic development.

Mr. Chairman, over 200 years ago, James Madison said that “Government is instituted to protect property of every sort . . . This being the end of government, that alone is a just government which impartially secures to every man, whatever is his own.”
That is why this bill is so needed. I urge my colleagues to support H.R. 4128 to not only protect homeowners, but to also ensure that homeowner protection remains the hallmark of American life.

Mr. LARSON of Connecticut. Mr. Chairman, I rise to share the sentiments of my colleagues about the dangerous expansion of the eminent domain power and the Supreme Court's decision in Kelo v. City of New London. I firmly believe there need to be safeguards against the excessive and unfair use of the government's eminent domain power. Governors and legislators across the country, including those in my home State of Connecticut, are currently grappling with this important issue. As a former State legislator, I understand that these issues are best reviewed and addressed at the local level. The Federal approach is overly broad and although viewed and addressed at the local level. The Federal standard set in this bill. Unfortunately, I do not feel this bill brings justice to the people most affected by this punitive legislation. The bill also would give private property owners the right to bring legal actions seeking enforcement of these provisions and would waive States' immunity to such suits.

This is strong medicine, but I think the pre-scription appropriate. I found persuasive the views of Justice O'Connor who, dissenting in the Kelo case, warned that the decision could make more likely that eminent domain would be used in a reverse Robin Hood fashion—taking from the poor, giving to the rich—and that "The beneficiares are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms."

The bill is intended to make this less likely. It does so by attempting to replace State and local authority with Federal law. I do not think the Constitution gives us that power, and it would not be right to do it even if we could.

Instead, it would require the States and local governments to decide whether they are prepared to sacrifice certain Federal assistance for 2 years as the price for exercising their authority in ways covered by the bill. It is important to note that the bill would apply only to cases involving the taking of private property without the consent of the owner, and that it is the owner, in order to convey or lease it to another private person or entity for commercial enterprise, is carried on for profit, or to increase tax revenue, tax base, employment, or general economic health.

Thus, the bill would not apply to the types of takings that have traditionally been considered appropriate public uses, and it also includes exceptions for the transfer of property to public ownership, to common carriers and public utilities, and for related things like pipelines. It includes exceptions for the taking of land used in a way that constitutes an immediate threat to public health and safety and makes exceptions for incidental use of a public property by a private entity—such as a retail establishment on the ground floor in a public property; for the acquisition of abandoned property; and for clearing defective chains of title.

During the debate on the resolution about the Kelo decision, I noted that the States, through their legislatures by direct popular vote, can put limits on the use of eminent domain by their local governments and that I thought this would be the best way to address potential abuses. That is still my view, and I think the view of many Coloradans. Already, members of our State's legislature are acting to curb potential abuses in the use of the eminent domain power—an effort I support—and some have suggested that as a result there is no need for this bill.

I think there is some merit to that argument, and I have given careful consideration to the points made by some of its most thoughtful and respected proponents, such as Sam Mamet of the Colorado Municipal League, who are concerned about the potential that Congress could put unnecessary constraints on the ability of local governments to address the needs of our communities.

However, after careful consideration, I have concluded that Congress should act to provide an effective deterrent to abuses of eminent domain, while still allowing its use in appropriate circumstances. And I think this bill, while certainly not perfect, does strike a fair balance and deserves to be supported.

Mr. HEFLEY. Mr. Chairman, this bill attempts to right a great wrong.

The Supreme Court's June 23 ruling in the case of Kelo v. the City of New London struck at the heart of American liberties, effectively eliminating the pursuit of happiness or property as a basic unalienable right.

According the Institute for Justice, eminent domain reform legislation will be considered in 35 states over the next year.

Justice John Paul Stevens, who wrote an opinion in favor of the Kelo decision, recent said he was troubled by the policy implications of the ruling and that, if he were a legislator, he would work to change it. In a final stroke of justice, New London City Council recently fired the New London Development Corporation that was at the heart of the Kelo case. Unfortunately, this action came after $73 million in public dollars were spent and after it had razed virtually the entire Fort Trumbull neighborhood.

Akhil Reed Amar, a Yale law professor and author of the book America's Constitution, recently observed that the Supreme Court's extinct status as the infallible interpreter of the Constitution is a fairly recent phenomenon and that the Court has been proven wrong before.

He pointed to the Dred Scott decision as one example. This is another.

And when the Supreme Court is wrong, it is the duty of this body, the Congress, to correct it.

This bill goes a long way toward doing that. I’d like to see it go further. Because while I am a supporter of States' rights, I do not know whether individual States have the right to abrogate basic freedoms.

But I'll settle for this. We all took an oath to defend the Constitution and that's what this bill tries to do. Therefore, I urge its support.
Mr. WELDON of Florida. Mr. Chairman, I rise today in strong support of H.R. 4128, legislation to address the U.S. Supreme Court’s June 23, 2005, decision in Kelo v. City of New London. This ruling by the Court deeply concerns me, and that is why I rise in strong support of this bill.

It has long been established that the United States may invoke its power of eminent domain to take private property if it is for “public use.” However, in its Kelo decision, the U.S. Supreme Court has broken dangerous, new ground by redefining public use. Under Kelo, no longer is the government limited in its acquisition of private property to the creation of roads, military bases, parks, and so forth. Instead, the takings clause has been reinterpreted to allow a government to seize private property from one individual and give it to another private individual, if the local government deems that such condemnation and transfer of property serves a public purpose.

The result of such a decision played out to its logical extreme was seen days after the ruling, when Logan Clements took initial steps to build “The Lost Liberty Hotel,” which would leave copies of Ayn Rand’s Atlas Shrugged in each room, and have a museum exhibit on the loss of freedom in America.

While this may have been done more to make a point than with serious intent or concern for the economic development of Weare, NH, it does illustrate the dangers of the Kelo decision. There is nothing to prevent a local planning board from seizing homes, businesses, churches, or other property if, in the opinion of the decision makers, there is some economic or productive purpose for that land may be pursued. Private property rights are drastically eroded by Kelo and they must be restored.

Government should not be permitted to take property from one individual and give it to another. Thanks to the precedent of Kelo, the private property guarantee placed in the U.S. Constitution is no more. Legislation, like H.R. 4128, is needed to preserve the right to own private property, and I encourage my colleagues to vote for this bill.

Mr. SENSBRENNER. Mr. Chairman, I submit the following letter expressing the change for inclusion in the CONGRESSIONAL RECORD during floor consideration of H.R. 4128, the “Private Property Rights Protection Act.”

Mr. SENSENBRENNER. I recognize your desire to bring this legislation before the House in an expeditious manner. Accordingly, I will not exercise my committee’s referral. By agreeing to waive its consideration of the bill, however, the Energy and Commerce Committee does not waive its jurisdiction over H.R. 4128. In addition to these provisions, should a conference on any provisions of the bill that are within its jurisdiction during any House-Senate conference that may be convened on this or similar legislation, I ask for your commitment to support any request by the Energy and Commerce Committee to confer on H.R. 4128 or similar legislation.

I request that you include this letter in the Congressional Record during consideration of H.R. 4128. Thank you for your attention to these matters.

Sincerely,

JOE BARTON, Chairman.

DEAR CHAIRMAN BARTON: Thank you for your recent letter concerning the Committee on Energy and Commerce’s jurisdictional interest in H.R. 4128, the “Private Property Rights Protection Act.” This legislation was introduced on October 25, 2005, and referred solely to the Committee on the Judiciary. The Committee on the Judiciary conducted a mark up and ordered the bill reported on October 27, 2005. I appreciate your willingness to waive further consideration of H.R. 4128 to expedite consideration of the legislation, and acknowledge the Committee on Energy and Commerce’s jurisdictional interest in the legislation.

I agree that by foregoing consideration of H.R. 4128, the Committee on Energy and Commerce does not waive any jurisdiction it may have had over subject matter contained in this legislation. In addition, I agree to waive further consideration of provisions of H.R. 4128 determined to be within its jurisdiction in the event of a House-Senate conference on the legislation.

Finally, as requested, I will include a copy of your letter and this response in the Congressional Record during floor consideration of this legislation.

Sincerely,

F. JAMES SENSBRENNER, JR., Chairman.

DEAR MR. CHAIRMAN: I am writing to you concerning the jurisdictional interest of the Transportation and Infrastructure Committee in matters being considered in H.R. 4128, the Private Property Rights Protection Act of 2005.

Our Committee recognizes the importance of H.R. 4128 and the need for the legislation to move expeditiously. Therefore, while we have a valid claim to jurisdiction over certain provisions of the bill, I will agree not to request a sequential referral. This, of course, is conditional on our mutual understanding that nothing in this legislation or my decision to forego a sequential referral waives, reduces or otherwise affects the jurisdiction of the Transportation and Infrastructure Committee, and that a copy of this letter and of your response acknowledging our valid jurisdictional interest will be included in the Congressional Record when the bill is considered on the House floor.

The Committee on Transportation and Infrastructure also asks that you support our request to be conferees on the provisions over which we have jurisdiction during any House Senate conference.

Thank you for your cooperation in this matter.

Sincerely,

DON YOUNG, Chairman.
Mr. CANNON. Mr. Chairman, I rise today in support of H.R. 4128, legislation that would prohibit State and local governments that exercise eminent domain for economic development purposes from receiving federal funds. John Adams once said “Property must be secured or liberty cannot exist.” I join my colleagues in taking action to secure private property rights.

The recent Supreme Court decision Kelo v. City of New London eviscerated one of our most fundamental constitutional rights. This decision dealt a serious blow to property rights and it is incumbent upon Congress, as a co-equal branch of government, to remedy this erroneous decision.

Eminent domain, or the “despot power,” as Justice William Patterson called it in 1795, is the power to force citizens from their homes and from their lands and properties from one private owner to another. Simply put, this abuse has to stop! This bill, in addition to H.R. 4128, will help breathe life into the property rights movement.

Private property rights issues are not a class issue. It’s not a partisan issue. It’s an issue that concerns every property owner in the United States. As Justice Sandra Day O’Connor said in her dissent, “The specter of condemnation hangs over all property, nothing is to prevent the State from replacing any motel with a shopping mall, any home with a factory, or family with a shopping mall.”

I urge my colleagues to join with me in support of H.R. 4128 to prevent further abuse of government power.

Mr. Chairman, I rise in support of the Eminent Domain Property Act of 1998. This bipartisan-supported bill was introduced in response to the Supreme
Court's 5–4 decision in Kelo vs. City of New London, which conduced the use of eminent domain to take private property and transfer it to another private entity for the stated purpose of economic development.

Mr. Chairman, the Kelo decision put home-owners and non-agricultural property owners across the country at risk of losing their property to this expansion of the government's eminent domain powers.

The Fifth Amendment of the U.S. Constitu- tion allows local government to use eminent domain powers to condemn property for public use. The only requirement is that owners are given “just compensation” and that the land in question goes to a “public use.” Traditionally, the “public use” requirement in eminent domain cases allowed the local government to condemn property to build railroads, or bridges, or highways. But in a 1954 case, Berman v. Parker, the Supreme Court found that “public use” could include condemning blighted neighbor- hoods to build better ones as a means to raise more tax revenue. But, whereas the Ber- man case was predicated on the property being used for a public use, the Kelo decision was taken down the slippery slope and rested solely on whether the condemnation would improve tax revenues.

I would assert, as Justice Scalia did in the Kelo case, that any conceivable commercial development can be done at a church, house, or farm will produce more tax revenue, and that once condemned land is passed off to private developers, it is no longer going to “public use.” That is why I strongly believe Congress must act to limit States’ eminent domain actions and put the public’s interest first. This is the reason for the Eminent Domain Prevention Act.

The Eminent Domain Prevention Act of 2005 will prohibit the Federal Government from using eminent domain for private economic development and also prohibits States from using eminent domain for private economic development if the State receives any Federal economic development funding. A violation by any State will result with the State being ineligible for a Federal economic development for two years. By denying municipalities all Fed- eral economic development funds when they abuse their eminent domain authority, H.R. 4128 provides a strong economic disincentive to prevent munici- palities and local governments from taking private property for the purpose of private eco- nomic development.

Lastly, Mr. Chairman, my district in western Wisconsin is largely rural and dependent on the agricultural economy of its many small family farmers. As the sense of Congress portion of this legislation points out, the unfortunate truth is that agricultural lands are particu- larly vulnerable to the abuse of eminent domain powers. Rural lands tend to have a lower fair market value than surrounding com- mercial and residential properties, making them a prime target for growing communities. It is hard enough, for our struggling farmers who are facing softening commodity prices and weather related disasters, is also hard to contend with losing their way of life so that others can have yet another shopping mall.

Mr. Chairman, I commend my colleague, Chairman SENSENBRENNER on crafting this bi- partisan legislation and I urge it's adoption and support.

Mr. COSTELLO. Mr. Chairman, today I rise in strong support of H.R. 4128, the Private Property Rights Protection Act. The bill is in response to the recent Supreme Court deci- sion, Kelo v. City of New London, which con- doned the use of eminent domain to take pri- vate property and transfer it to another private entity for the stated purpose of economic de- velopment. This decision puts all property owners at risk. In rural communities and in urban communities alike, deep- ly rooted to the land and our belief in private prop- erty rights runs strong and deep. Landowners should not be vulnerable to the whims of a government that decides to take their land away.

I am opposed to the ruling because it threat- ens to make all private property subject to the highest bidder. In response to the Supreme Court decision, I am pleased to lend my sup- port to this legislation because it protects Americans’ constitutional rights and punishes those who abuse those rights.

The bill does not change state law, nor does it affect the traditional use of eminent domain for the construction of roads, military bases, hospitals, or other truly public uses. Rather, H.R. 4128 provides an effective deterrent that will prevent local governments from eminent domain authority for private economic development and I urge my colleagues to support its passage.

Mr. POMBO. Mr. Chairman, H.R. 4128, the “Private Property Rights Protection Act” is a timely response to the horrendous Kelo deci- sion and can fit its expended passage. I want to thank Chairman SENSENBRENNER for his leadership on this issue and look forward to working with him and others to see this bill as it moves through the House and Senate.

Property is the heart of the individual freedom and the foundation for all other civil rights guaranteed to Americans by the Constitution. Without the freedom to acquire, possess and defend property, all other guar- anteed rights are merely words on a page.

The Fifth Amendment holds that private property shall not be taken by the government for public use without compensation. These safeguards have been under assault for dec- ades and until now, the typical victims were family farmers and ranchers in the West.

The Supreme Court in the Kelo v. City of New London case to allow local gov- ernments to declare eminent domain in this case goes beyond compensation; it wholly perverts the intent of public use, and in so doing, may turn the American dream of home ownership into a nightmare. It has delivered the property rights assault from rural America right to the doorsteps of suburbia.

In New London, Connecticut, city planners essentially decided that evicting 15 home-owners from their homes was in the “greater public good” and resale those properties to private entrepreneurs as part of a city-ap-proved plan aimed at raising the land value and increasing the city’s tax base. The court justified the ruling by arguing that the city had the right to seize the private property under the “public use” clause of the United States Constitution’s 5th Amendment. The 5th Amendment reads as follows:

No person shall be held to answer for a cap- ital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in ac- tual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compen- sation.

No longer will public use correctly be de- fined as a road, bridge, or hospital. Now it can be defined as an abstract good, such as in- creased tax revenue or economic develop- ment. Private property can now be taken at will by government and reallocated to another private entity if it runs contrary to the bureau- crat’s notion of public use and greater good. H.R. 4128 would greatly discourage this be- havior and the total disregard for private prop- erty protections.

Fortunately, Congress maintains the power over the purse strings. We will act to minimize the effects of this ruling to the greatest extent possible. This bill will prevent States and local- ities from ever doing this again by withholding economic development funds. However, many States and local communities alike are recog- nized and deserve praise for their unshakable notion of public use and greater good. H.R. 4128 would greatly discourage this be- havior and the total disregard for private prop- erty protections.

We have a chance at real reform here and this legislation should be passed. Again, I would like to thank Chairman SENSENBRENNER for bringing this to the Floor as quickly as you did and I look forward to working with you in every step of the process to see this com- mendable legislation enacted. I have been fighting these injustices since before I was elected to this body and will continue to do so in the future.

Mr. BOEHNER. Mr. Chairman, I rise today in support of H.R. 4128, the Private Property Rights Protection Act of 2005.

I was alarmed by the United States Su- preme Court’s 5–4 decision to allow private property to be seized in the name of “eco- nomic development.” On June 23, 2005, the Court ruled that the City of New London, Con- necticut could seize a series of privately owned homes, offer the homeowners “just compensation” and re-sell those properties to private entrepreneurs as part of a city-ap-proved plan aimed at raising the land value and increasing the city’s tax base. The court justified the ruling by arguing that the city had the right to seize the private property under the “public use” clause of the United States Constitution’s 5th Amendment. The 5th Amendment reads as follows:

No person shall be held to answer for a cap- ital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in ac- tual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compen- sation.
November 3, 2005

CONGRESSIONAL RECORD—HOUSE

H9589

No one has ever denied the fact that in certain rare cases, a government (federal, state, or local) must exercise its Constitutionally limited power to seize land in order to complete a public project like a road, school, military base, or court house. That power is known as “eminent domain.” America’s Founding Fathers acknowledged it as an unfortunate, but sometimes necessary, evil and it has historically been pursued in America with great reservation. According to a majority of the Court however, seizing private property in the name of “public purpose” does not necessarily mean that the property seized must be used for the public. Instead, the land seized could merely be used in the name of a “public purpose.” While the concurring justices never actually define what constitutes a “public purpose,” they write that the elected politicians on the local, state, and federal level are more than capable of making such determinations on their own. In this particular case, the “public purpose” happened to be a pharmaceutical research facility, a waterfront hotel, and a series of new commercial buildings.

As a result of the Court’s 5–4 ruling, any government body (city council, state assembly, Congress) with a good enough lawyer or simply a one vote majority can now take any citizen’s private property, offer “just compensation,” and dispense with it as it sees fit. In other words, your property is now only your property in name. It is the ability to offer shape to your highest promise but from the ability of each and every citizen to dispense with his property as he saw fit. Those who would take that right away often try to assure us that by surrendering the freedom to control the supposedly less important aspects of our lives, we shall somehow obtain freedom in the pursuit of higher values. I could not disagree more. The ability to control your own property, whether it be your home, your car, or even a simple trinket, is not simply some marginal aspect of life which can be separated from the rest. It is the means to express your values and strive for your dreams.

Now the human right to property seems relegated to a mere afterthought. The Institute for Justice, the American Civil Liberties Union, the Landowner Legal Defense and Education Fund in residents in court, released a study showing some 10,000 cases between 1998 and 2002 where local governments in 41 states used or threatened to use eminent domain to take property from one private owner and give it to another. The New York State Supreme Court has already seized homes in the name of “economic development”—be it a shopping mall or a new factory. And now the highest court in the land has confirmed that this is all completely legal.

The Kelo decision merely confirmed a depressing trend where those who wish to “govern” property have the power to seize property rights and therefore liberty yield. I believe that government which governs best is that which governs least. I believe in property rights and the rule of the written law that is the Constitution.

I am proud to support the Private Property Rights Protection Act of 2005. But this bill is merely a first step. The only truly effective way to stop these abuses of power is for every American citizen to remain vigilant in observing that every government official that has sworn an allegiance to uphold the written law of the Constitution remains true to his word. That fight however, begins here, today. I urge my colleagues to take the first step toward once again defending every American’s basic human right to his or her property by voting for this important bill.

Mr. POMBO. Mr. Chairman, as a fourth generation rancher, my life has been shaped by the traditions and values associated with property stewardship of the land. Our Constitutional rights put property ownership of capital importance in the Fifth Amendment.

The right to own property is the backbone of our free-market system. With eminent domain becoming an expanding practice, a bipartisan approach bridging urban, suburban, and rural communities is necessary to uphold the rights of the individual.

The regulatory takings that have been plaguing America’s farmers, ranchers, and communities is necessary to uphold the Constitution, and on the property rights of United States citizens, the Constitution is clear. The need for H.R. 4128 has never been greater.

Mr. GOODLATTE. Mr. Chairman, I yield back the balance of my time.

The Acting CHAIRMAN (Mr. SIMPSON). All time for general debate has expired.

Pursuant to the rule, the amendment in the nature of a substitute printed in the bill shall be considered as an original bill for the purpose of amendment under the 5-minute rule and shall be considered read.

The text of the amendment in the nature of a substitute is as follows:

H.R. 4128

Be 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 2005”.

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

(a) IN GENERAL.—No State or political subdivision shall exercise its power of eminent domain, or allow the exercise of such power by any political subdivision of such State, to take property from one private owner and give it to another, unless the private property owner has been provided with just compensation for the taking of such property and is reimbursed for the reasonable cost of过户 property to such State or political subdivision when such property is subsequently used for economic development, or in the case of Federal economic development funds distributed to such State or political subdivision when such funds are subsequently used for economic development.

(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 economic development funds distributed to such State or political subdivision shall be withheld for such 2-year period, and any such funds distributed to such State or political subdivision shall not be used for economic development.

(c) OPPORTUNITY TO CURE VIOLATION.—A State or political subdivision that is made ineligible for any Federal economic development funds distributed to such State or political subdivision is entitled to an opportunity to cure the violation in accordance with subsection (a).

(d) NOTIFICATION TO PROPERTY OWNERS.—In an action brought under this Act, the court shall provide notification to the property owners of the action to enforce any provision of this Act in the appropriate Federal or State court, and a State shall not be immune under the eleventh amendment to the Constitution of the United States from any such action in a Federal or State court of competent jurisdiction. Any such property owner may also seek appropriate relief through a preliminary injunction or a temporary restraining order. In an action brought under this Act, the court shall provide notification to the property owners of the action to enforce any provision of this Act in a Federal or State court of competent jurisdiction. Any such property owner may also seek appropriate relief through a preliminary injunction or a temporary restraining order. Identify the error in the proposed bill and provide a solution.

(e) ATTORNEYS’ FEE AND OTHER COSTS.—In any action or proceeding under this Act, the court shall award attorneys’ fees as part of the costs, and include expert fees as part of the attorneys’ fees.

(f) NOTIFICATION TO STATES AND POLITICAL SUBDIVISIONS.—Not later than 30 days after the enactment of this Act, the Attorney General shall provide to the chief executive officer of each State a list and any successive revisions of such list as necessary. Such list shall include a list of the Federal laws under which Federal economic development funds are distributed to each State and political subdivision and a list of the Federal laws under which Federal economic development funds are distributed to each State and political subdivision. The Attorney General shall also provide a list of the Federal laws under which Federal economic development funds are distributed to each State and political subdivision and a list of the Federal laws under which Federal economic development funds are distributed to each State and political subdivision.

This Act may be cited as the “Private Property Rights Protection Act of 2005”.

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

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(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 economic development funds distributed to such State or political subdivision shall be withheld for such 2-year period, and any such funds distributed to such State or political subdivision shall not be used for economic development.

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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 under this Act.

SEC. 6. REPORT.
Not later than 1 year after the date of enactment of this Act, and every subsequent year thereafter, the General Counsel 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 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 States or political subdivisions that have used eminent domain as a result of a State’s or political subdivision’s violation of this Act;

(2) 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;

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

SEC. 7. SENSE OF CONGRESS REGARDING RURAL AMERICA.

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

(1) The founders realized the fundamental importance of property rights to the American way of life.

(2) Rural lands are unique in that they are not traditionally considered high tax revenue-generating properties for State and local governments to acquire.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that ownership rights in rural land are fundamental building blocks for our Nation’s agriculture and other property in rural America, which continues to be one of the most important economic sectors of our economy.

(c) 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 the property rights of all private property owners, including rural land owners.

SEC. 8. DEFINITIONS.

In this Act the following definitions apply:

(A) conveying private property to public ownership, such as for a road, hospital, or military base, or to an entity, such as a common carrier, that makes the property available for use by the general public, including such as a railroad, or public facility, or for use as a right of way, aqueduct, pipeline, or similar use;

(B) removing harmful uses of land provided that such removal is immediately threat to public health and safety;

(C) leasing property to a private person or entity that occupies part of that 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 titles of title; and

(F) taking private property for use by a public utility.

SEC. 9. SEVERABILITY AND EFFECTIVE DATE.

The provisions of this Act are severable. If any provision of this Act, or any application thereof, is found unconstitutional, then said provision or application of the Act not so adjudicated.

SEC. 10. 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. 11. 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.

The Acting CHAIRMAN. No amendment to the committee amendment is in order except those printed in House Report 109–266. Each amendment may be offered only in the order printed in the report, shall be considered read, shall be debatable for the time specified in the report, equally divided and controlled by the proponent and an opponent, shall not be subject to an amendment, and shall not be subject to a demand for division of the question.

Amendment No. 1 offered by Mr. SENSENBRENNER

Mr. SENSENBRENNER. Mr. Chairman, I offer an amendment. The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 1 printed in House Report 109–266 offered by Mr. SENSENBRENNER:

Page 9, strike lines 1 through 7, and insert the following:

(A) conveying private property—

(i) to public ownership, such as for a road, hospital, 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 toll;

(iv) for use as an aqueduct, flood control facility, pipeline, or similar use;

Page 8, line 7, after “States,” insert the following: “The taking of private property for private commercial use shall not include the power of eminent domain to take rural property without the consent of the owner, and condemned property will have a direct impact on existing irrigation and reclamation projects. Furthermore, the use of eminent domain to take 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.”

Add at the end the following new section:

SEC. 12. LIMITATION ON STATUTORY CONSTRUCTION.

Nothing in this Act may be construed to—

(1) limit the ability of States or political subdivisions of States to take private property for public use, without the consent of the owner, and condemned property will have a direct impact on existing irrigation and reclamation projects. Furthermore, the use of eminent domain to take 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.”

Ms. WATERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the manager’s amendment simply makes clear that private roads and those that are open to the public, free or by toll, and flood control facilities are covered under the exceptions of the bill. It also includes a savings clause making clear that nothing in the legislation shall be construed to affect the Uniform Relocation Assistance for Minered and Other Property Acquisitions Act of 1970, which requires the Federal Government to pay the displacement costs of those adversely affected by the Federal Government’s use of eminent domain.

The manager’s amendment also incorporates into the bill’s sense of congress section some language provided by the Resources Committee regarding the effect of the abuse of eminent domain on irrigation and reclamation projects and on public lands.

I urge my colleagues to support the improvements made by this manager’s amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Chairman, I am not opposed to the amendment, and I ask unanimous consent to claim the time in opposition.

The Acting CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

The Acting CHAIRMAN. The gentleman from California is recognized for 5 minutes.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in support of the amendment offered by the gentleman from Wisconsin.
Mr. SENSENBRENNER. Mr. Chairman, I yield back the balance of my time.

Mr. NADLER. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 2 offered by Mr. NADLER:

Page 2, line 8, strike “(a) IN GENERAL.—”.

Page 2, strike line 16 and all that follows through line 17 on page 3.

Page 4, beginning in line 1, strike “to enforce any provision of this Act” and insert “to obtain appropriate injunctive or declaratory relief.”

Page 4, beginning in line 6, strike “Any” and all that follows through line 16.

Page 4, line 17, strike “(c)” and insert “(b)”.

The Acting CHAIRMAN. Pursuant to House Rule 527, the gentleman from New York (Mr. NADLER) and the gentleman from Wisconsin (Mr. SENSENBRENNER) each will control 5 minutes.

The Chair recognizes the gentleman from New York.

Mr. NADLER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, my amendment is very straightforward and, in my opinion, will better protect the rights of property owners than the way the bill is designed.

Under the bill, if the government takes your property for a prohibited purpose, you could sue, and if you win your lawyers get paid and your town gets paid, no damages, and if you think the town will bulldoze the new downtown and rebuild your house, you are fooling yourself.

Mr. Chairman, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this is a gutting amendment. It is a gutting amendment because it removes the constitutional hook that this Congress and the Federal Government have to prevent the abuses that have been sanctioned by Kelo, and that is the Federal funds that have been used for economic development.

The amendment strikes out all the penalties in the bill that would prevent the government officials from abusing eminent domain. No penalty, no tap on the wrist. We say you should not do it; but if you go ahead and do it, then you should not be penalized. Without these penalties in the bill, the government could take private property from one person and simply give it to a wealthy corporation. Because this amendment guts the entire bill, it ought to be opposed.

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

There is an entirely appropriate connection in the base bill between the Federal policy of protecting private property rights from eminent domain abuse and making sure that the Federal Government does not subsidize eminent domain abusers. The amendment should be defeated for these reasons.

Mr. Chairman, I reserve the balance of my time.

Mr. NADLER. Mr. Chairman, I offer an amendment.

Mr. Chairman, this is not a gutting amendment. The constitutional basis for granting the injunction against the taking in question is the fact that the State is accepting Federal funds. The bill, on lines 12 through 15 on page 2, says clearly: “if that State or political subdivision receives Federal economic development funds during any fiscal year in which it does so.” That is the constitutional basis for saying, you cannot do certain kinds of takings as this bill prohibits and, if you do, you can establish penalties or injunctive relief.

All I am saying is, we are using the Federal jurisdictional hook that the chairman mentioned and instead of penalizing later, which does not help the homeowner who has lost his home, you say you can stop it now, get an injunction for stopping it now, because the State has agreed not to use its power in this way as a condition of taking Federal funds. There is well-established constitutional law that we can condition Federal funds on that.

That being the case, you can go into Federal or State court and get an injunction if you do my amendment. With the injunction penalized. Without the taking, you do not have to worry about punishing anybody 10 years later, because there is no taking in the...
first place. It is a much better protection for the property owner. We prohibit the taking. The court says you cannot do it. There is no constitutional problem with that.

It does not gut the bill because it says you do not have to punish what cannot have occurred. It cannot have occurred because the bill would now say you may not do it; and if you may not do it, the court will prohibit you from doing it, because we are establishing the right to go into court in advance and get an injunction against it. You do not have to worry about fouling up the State or city's ability to float bonds or the State or city finances later; you do not punish all the citizens of the city because the mayor is paying off some campaign contributor with a private taking, just prohibit the mayor from doing so in the first place and enforce that by letting the property owner. We establish an injunction, period.

Mr. Chairman, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Chairman, I yield 1 minute to the gentlewoman from California (Ms. WATERS).

Ms. WATERS. Mr. Chairman, I respectfully offer this statement against the amendment offered by the gentleman from New York. Essentially, this amendment eliminates the teeth of this bill: the denial of Federal funds for 2 years to those States and cities that have violated this act. The denial of Federal economic development funds should serve as a real deterrent for those States and cities that want to exercise eminent domain for development, that is, the taking of private property for private use. Without this provision, this bill will not be an effective deterrent, nor will it serve any deterrent for those States and cities that have violated this act. The denial of Federal economic development funds should serve as a real deterrent for those States and cities that have violated this act. The denial of Federal economic development funds should serve as a real deterrent for those States and cities that have violated this act.

Mr. SODREL. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from New York will be postponed.

AMENDMENT NO. 4 OFFERED BY MR. SODREL

Mr. SODREL. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 4 printed in House Report 109-266 offered by Mr. SODREL: Page 4, line 6, after “jurisdiction.” insert “in such action, the defendant has the burden to show by clear and convincing evidence that the taking is not for economic development.”

The Acting CHAIRMAN. Pursuant to House Resolution 127, the gentleman from Indiana (Mr. SODREL) and a Member opposed each will control 5 minutes. The Chair recognizes the gentleman from Indiana.

Mr. SODREL. Mr. Chairman, I yield myself such time as I may consume.

I thank the chairman and ranking member for bringing this bill forward, a bill that I was proud to cosponsor. H.R. 4128 is a good bill. It addresses a fear of many of my colleagues, the fear that the new-found power of government that is the new economic development will be used to take the home or business involuntarily taken to be given to someone else to build some other business or development that government may prefer. Compounding that fear is the fear of having to go to court and pay to prove that the government violated the provisions of this bill, having to pay a lawyer and possibly hire experts to prove that the taking of their property is for economic development in violation of the act.

My amendment clarifies that the burden of proof is on the State or the agency seeking to take the property, and the evidence it has provided must go beyond merely saying so. This issue is important enough that a court reviewing the taking should not give deference to the government assertions that the ultimate use of the property is for other than economic development as outlined in the act. The burden of proof should rightly be placed on the government entity that initiated the action, not on the property owner. I urge the adoption of this amendment.

Mr. Chairman, I yield back the balance of my time.

Mr. SENSENBRENNER. Mr. Chairman, I will claim the time in opposition, even though I am not opposed.

The Acting CHAIRMAN. Without objection, the gentleman from Wisconsin will control the time in opposition.

There was no objection.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this amendment would help property owners by putting the burden of proof on the government to show that it is not abusing eminent domain by taking private property for a private use. It is a good amendment, and I support it.

Ms. WATERS. Mr. Chairman, will the gentleman yield?

Mr. SENSENBRENNER. I yield to the gentlewoman from California.

Ms. WATERS. Mr. Chairman, I support this amendment also. I am tired of poor people and working people having to go and find lawyers and pay them. Who can afford $250 and $300 an hour? The average poor person certainly cannot. So you are right, let us put it on the entity that is trying to pull these tricks in the first place to take these properties away from these citizens.

So I support the amendment.

Mr. SENSENBRENNER. Mr. Chairman, I yield back the balance of my time.

The Acting CHAIRMAN. The question is on the amendment offered by the gentleman from Indiana (Mr. SODREL).

The amendment was agreed to.

AMENDMENT NO. 5 OFFERED BY MR. MORAN OF VIRGINIA

Mr. MORAN of Virginia. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 5 printed in House Report 109-266 offered by Mr. MORAN of Virginia: Page 8, strike line 17 and all that follows through line 19 on page 9 and insert the following:

ECONOMIC DEVELOPMENT.—The term “economic development” means taking private property, without the consent of the owner, and conveying or leasing such property to another private person or entity, or from such private person or entity to another private person or entity, where the grantee or lessee person or entity is to use the property for commercial enterprise carried on for profit, or where the conveying or leasing is for the primary purpose of increasing tax revenue, tax base, employment, or general economic health, except that such term shall not include—

(A) conveying private property for a public use, such as—

(i) for a road, hospital, or military base; or
(ii) for use by the general public as of right, such as a railroad or public facility; or
The Acting CHAIRMAN. Pursuant to House Resolution 527, the gentleman from Virginia (Mr. Moran) and the gentleman from Wisconsin (Mr. Sensenbrenner) each will control 5 minutes.

The CHAIRMAN. The gentleman from Virginia (Mr. Moran). Mr. Chairman, I yield myself such time as I may consume.

Mr. Moran of Virginia. Mr. Chairman, I yield myself such time as I may consume.

Well, here we have those folks who are considered to be on the far left and those just right of center and those just right of center; everybody agrees that this bill should be passed. It reminds me of a comment or observation that Plato once made: “The minority are oftentimes wrong, but the majority always are.”

Now, I can understand why we are reflexively doing this bill, but I cannot understand why we would make this bill so broad with such an interminably long period of time with which to take any grievance to the courts, that it will create unintended consequences which will cause very severe consequences and economic problems for localities all over our country.

We do not have one dictatorship at the local level of American government. Every single official at every single level is elected, so all of them are responsible to the voters; and that is where this should be decided.

But I am going to suggest two changes that will be achieved by my amendment. They address the two major deficiencies of this bill: first, it is much too broad; and, secondly, the period of time within which a government can be sued is much too long.

The broad definition of “economic development” in section 8 includes a conveyance or lease of property that is “to increase tax revenue, tax base employment, or general economic health.”

Unfortunately, practically every conveyance of condemned property can have at least an incidental or secondary purpose and effect of increasing taxes, creating jobs, or otherwise producing economic impact virtually everything that a local government may need to do even though that might not be the primary purpose of the taking.

So the bill has the potential of prohibiting virtually every taking which occurs as part of public-private partnerships that are not for economic development purposes at all, for example, the conveyance or lease of condemned property as part of a public-private partnership to a private entity that could be used for a waste-to-energy facility.

The processing of solid waste would be prohibited under this. Delivering recreational services in a public area, a public park. Supplying affordable housing. I could give you any number of examples of condemned property that could be used—under this. Providing a parking facility in a downtown that is desperately needed in many communities.

These projects may well produce tax revenues, new jobs, a healthier economy, but that is not the primary purpose of these projects. Their primary purpose is simply to deliver a service that the local community needs and to do so by partnering with a private for-profit entity. Yet the broad language of the bill would prohibit virtually all such public-private partnerships.

My amendment addresses this problem by making clear that the bill reaches the conveyance or lease of condemned property definition only when the primary purpose of the transaction is the increase of taxes, jobs or economic benefits. That is a change that is very much needed to this legislation.

Secondly, the time to file suit under the bill is much too long. Under the bill, a property owner could go to court no later than 7 years following the conclusion of condemnation proceedings and the subsequent use of such condemned property for economic development. Where you have a property that was condemned, say, next year, in 2006, and the owner believes its economic development use begins in 2011, the owner has until 2018, 12 years after the primary purpose of the transaction, to challenge its validity. In many cases, the statute would extend the right to sue for generations to come.

There is no need or reason to provide such a lengthy statute of limitations. The validity of a condemnation action has to be put to rest in some reasonable time; and the Judiciary Committee has, in other contexts, agreed with that principle.

The 7 years should be measured from the conclusion of the condemnation proceeding. At this time, a property owner or her heirs for her property has been taken, knows the reasons for the taking, and can judge whether the taking is subject to the bill’s prohibition. My amendment would reduce the statute of limitations to 7 years from the end of the condemnation proceeding, not 7 years after the property’s economic development.

Mr. Chairman, this bill needs additional clarification, and I do think this amendment would provide it. I have substantial problems with this bill. So I am reluctant to fix it, but I know it is going to pass. If it passes, it should be a bill that does not cause the kind of unintended consequences that this will impose on every locally elected government.

Third, the bill defines “economic development” as conveying or leasing condemned property from one private party to another private party—but not from the condemning government to a private party. However, in the real world, many economic development projects involve the conveyance of condemned property from the condemning authority to a private person or entity—a project the bill does not reach. For instance, the bill would not reach the conveyance by a city or county of an office building to a private party. The Marriott Corporation for the use as a convention center, even though the primary purpose of the conveyance is the production of increased tax revenue and jobs.

The amendment addresses this problem by including in the definition of “economic development” conveyances and leases from the condemning government to a private party. In addition, the bill makes some corresponding technical changes to the definition of economic development in light of the other changes I have just explained.

Mr. Chairman, to conclude, this bill is too broad, too unclear, and overreaching. I urge you to adopt this amendment.

Mr. Sensenbrenner. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, unlike the characterization that my friend from Virginia has made in this bill, this is a bill that is supported by the mainstream of Members of Congress. And how many times in anybody’s congressional career would you see Jim Sensenbrenner and Maxine Waters supporting the same bill? That means that we have a very, very big tent of people who are supporting it, because it is the right thing to do.

The amendment should be defeated because it would gut the bill. Because it completely goes back to the definition of public purpose that the Supreme Court allowed this terrible misapplication of justice to occur in the Kelo case.

The Kelo decision held that the term public use could actually mean a private use such that the government can take perfectly fine property from one person just to give it to another wealthier person. And the amendment would put back into the bill an exception for any public use, I would submit, as defined by a majority vote of the city council, which in the wake of the Kelo decision means a private use as well.

This amendment would put property owners everywhere back to where they were before the Kelo decision, and that is way behind the eight ball, subject to the mercy of a majority vote of their city council. The whole point of this legislation is to counter the Supreme Court’s reading of public use in a way that includes private use as well, and the amendment guts the bill by allowing exceptions for private uses as well. And that amendment is a giant step backwards in the protection of property rights, it should be soundly defeated.
With respect to the comments the gentleman made on the statute of limitations, yes, it is a long statute of limitations. Because the city has the time and the money to wait until the property owner simply by putting it on the shelf until the time expires, and we should have a longer statute of limitation, rather than a shorter one, so that the city cannot be tempted by the siren song of using its power and using its money to run roughshod over the owner of private property.

Mr. Chairman, I yield 1 minute to the gentlewoman from California (Ms. Waters).

Ms. Waters. Mr. Chairman, I respectfully offer this statement against the amendment offered by the gentleman from Virginia (Mr. Moran).

Mr. Chairman, this amendment seeks to prohibit a taking of private property only when the taking’s primary purpose is economic development. And we should adopt this Act, by arguing that the economic benefits of the taking were incidental rather than primary.

Also, this amendment seeks to confine property owners to a 7-year period in which they must bring a suit under this Act. This means that an owner who has had his or her property taken better hope that the State or the city puts the property to use in 7 years. If a State or city takes property for a public purpose, sits it for 8 years and then puts it to use for economic development, the owner has no recourse.

Mr. Chairman, I do not think that you can argue that the statute of limitations is too long. These people, citizens, have to live in them for life. They do not expect someone to come along and say that we have decided that we are going to give it to someone else, a developer, to develop for private purposes to make money.

So I would ask my colleagues to reject this amendment.

Mr. SENSENBRNNER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the Supreme Court in Kelo v. City of New London went too far in allowing the taking of private property for private development. Congress must take action to protect property rights of individuals. However, we must be careful not to prohibit traditional pre-Kelo justifications for eminent domain.

Mr. Chairman, my amendment enumerates harmful effects which constitute a threat to public health and safety. These harmful effects are traditional justifications for cities, municipalities, and other governmental entities to acquire property to protect public health and safety. In fact, the list of harmful effects in my amendment includes elements from several State laws.

The amendment is derived from the State definitions from Wisconsin, the home of Chairman SENSENBRNNER; Texas, the home of our President; Illinois, the home of our Speaker; Missouri, the home of Majority Leader BLUNT; and Virginia, the home of Chairman GOOLDLATTE.

I have also included an exception for brownfields in my amendment. Brownfields, which are contaminated properties, are a dangerous problem for cities and must be redeveloped to protect the current residents of these communities and also bring people back into our cities.

This amendment, in order to protect public health and safety, has been endorsed by the National Association of Home Builders, the International Association of Shopping Centers, the National Association of Industrial and Office Properties, the International Economic Development Council, the Building Owners and Management Association International, the Real Estate Roundtable, the American Institute of Architects, the American Planning Association, the National Association of Local Government Environmental Professionals, the United States Conference of Mayors, the International City County Management Association, and the National League of Cities.

This amendment, Mr. Chairman, is necessary. Without this amendment, our States will lose their pre-Kelo authority.

Mr. Chairman, I reserve the balance of my time.

Mr. SENSENBRNNER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this amendment must be defeated because it uses undefined terms that would gut this vital legislation designed to protect the property rights of all Americans from abuse of Government land grants.

The list of organizations that the gentleman from Ohio read off in support of his amendment shows why it ought to be defeated, if we want to stand up for the property rights of individual landowners.

The terms used in this amendment are broad in their scope, and consequently, the amendment would subject just about any property owner in America to the threat of having their property taken by a government official willing to abuse the power of eminent domain to take property from one American citizen and give it to another wealthier developer.

The amendment would allow the taking for “excessive land coverage,” “lack of ventilation,” “lack of light,” and “obsolescence,” just to name a few. None of these terms are defined in the amendment, and each would be subject to tremendous abuse.

No home in the country would be safe if a government official were allowed to use those concepts to take private property.

If a government bureaucrat thinks your porch is too big, they can take your whole house and all of your land under the amendment. If your barn has only one light bulb in it or no artificial light at all, then your barn and all of the farm land surrounding it could be confiscated by the government. Webster’s Dictionary defines obsolete, which is one of the terms used in this amendment, as of a kind or style no longer current. Under the amendment, the definition of obsolete is out of fashion in the eyes of government officials, you could lose both your house and your property; and that is wrong.
The base bill already includes a reasonable exception that allows the government to take property when property is being used in a way that imposes an immediate threat to the public health and safety. And the base bill does not absolutely nothing, although nothing that the States and localities from enforcing public nuisance laws under its police powers and tearing down an unsafe building.

But the amendment goes much further in a way that threatens low-income communities. Traditionally, property owners think that such neighborhoods are single area, even though many planter's and subject them to the will of the government. If legislative proposals continue covering this amendment. Listen to what actual practitioners in the field have to say about it. This is from the Institute for Justice, the public interest law firm that represented Suzette Kelo and the other New London homeowners who took their fight to keep their homes from being taken for private commercial development all the way to the Supreme Court.

The Institute for Justice states, “In our experience litigating eminent domain cases all over the country, we have seen each of the terms in the amendment applied in such a way as to allow the use of eminent domain on properties that are blighted or low-income communities. Dilapidation can mean that a building has chipped mortar or needs a new handrail. Obsolescence can be a single-family home that lacks three bedrooms, two full bathrooms, and a two-car attached garage. Overcrowding and lack of ventilation, light and sanitary facilities were routinely used during urban renewal to remove poor and minority communities from their neighborhoods. Deleterious land use can mean a combination of residences and businesses in a single area, even though many planners think that such neighborhoods are ideal. Time and time again, the terms found in this amendment have served as vehicles for the abuse of eminent domain.

Both overcrowding and lack of ventilation, light and sanitary facilities were routinely used during urban renewal to remove poor and minority communities from their neighborhoods. Deleterious land use can mean a combination of residences and businesses in a single area, even though many planners think that such neighborhoods are ideal. Time and time again, the terms found in this amendment have served as vehicles for the abuse of eminent domain. Dilapidation can mean that a building has chipped mortar or needs a new handrail. Obsolescence can be a single-family home that lacks three bedrooms, two full bathrooms, and a two-car attached garage. Overcrowding and lack of ventilation, light and sanitary facilities were routinely used during urban renewal to remove poor and minority communities from their neighborhoods. Deleterious land use can mean a combination of residences and businesses in a single area, even though many planners think that such neighborhoods are ideal. Time and time again, the terms found in this amendment have served as vehicles for the abuse of eminent domain.

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This amendment should be defeated.

Mr. Chairman, I reserve the balance of my time.

Mr. TURNER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, wow, light bulbs burnt out, paint peeling, those are scary things that the chairman has said would be held for eminent domain, but not in America. That is not what the eminent domain pre-Kelo has been in America.

The 49 States who have definitions of harmful effects that are in this amendment are from States that have legislated over this issue and that have taken into consideration the issue of property rights, the issue of the property right of individuals that live next to abandoned factories, the people who have children that attend in neighborhoods that have property that near them that has an impact on the public health and safety. The ability for them to enjoy their property and to enjoy it where they are living next to public health and safety threats are what the amendment would rise to.

It does not permit anybody to take any property because a light bulb is burned out. In fact, again it is based on 49 States and the exact language that is used by them in defining harmful effects. The chairman's own State's language includes from Wisconsin, dilapidation, obsolescence, sanitation, light, air. These are not terms of burnt-out light bulbs. These are issues where they rise to the level of a safety and health threat to the individuals of the communities, of the people whose properties are next to them. It is not Kelo.

We all believe that Kelo has gone too far and that an individual's property rights of his home should be protected. But similarly, the home that stands next to a property that is abandoned and is a health threat or the property that is next to a factory for which there are health and safety issues for a community needs to be addressed. Forty-nine States have passed legislation permitting eminent domain in public health threats. Certainly we should acknowledge this and not take away from these communities the pre-Kelo rights of eminent domain.

Mr. Chairman, I reserve the balance of my time.

Mr. SENSIBRENNER. Mr. Chairman, I yield 1 minute to the gentleman from California (Ms. WATERS).

Ms. WATERS. Mr. Chairman, I rise in strong opposition to the amendment offered by the gentleman from Ohio (Mr. TURNER). This is the most dangerous of all the amendments that have been offered today.

We take up the Private Property Rights Protection Act today in an effort to provide all property owners with greater protection. The Turner amendment will essentially create a blight exception. By prohibiting the use of eminent domain for economic development in almost all instances except blight, we make blighted communities an easy target for States and cities. This is why the NAACP supports this bill also. Too many of our communities, the minority, the elderly and the low-income have witnessed an abuse of eminent domain powers. Given this abuse, we would like all legislative responses to Kelo to be sensitive to that.

Historically and today, it has been too easy to characterize minority, elderly or low-income communities as blighted for eminent domain purposes and subject them to the will of the government. If legislative proposals contain language that could potentially excluding these communities from protection against eminent domain abuses, we have failed to be sensitive to the interest of this constituency. These communities should be afforded the same rights and protections all homeowners, business owners, and other property owners will be afforded in a Federal policy response to Kelo.

The Acting CHAIRMAN (Mr. SIMPSON). The gentleman from Ohio has 1 minute remaining.

Mr. TURNER. Mr. Chairman, I yield 40 seconds to the gentleman from California (Mr. FARR).

Mr. FARR. Mr. Chairman, I have mixed emotions about this bill, but I see it as an environmental bill. This is a great bill. This stops growth, particularly in the sense of Congress on the use of eminent domain funds to take farmland or other real property for economic development. It just says you cannot do that.

But what really bothers me in this bill is the fact that the terms of Federal economic development means any Federal funds distributed to or through States or political subdivision of the States under Federal laws designed to improve or increase the size of economies of the State or political subdivisions.

As I look at it, those laws mean all the BRAC money that comes to reuse of military bases. It means transportation monies. It means sewer and water monies. It essentially is a no-brainer. For those on the environmental side this is good. For those who want to see some economic development, we need this amendment.

Mr. TURNER. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, in communities all across this country, there are buildings that represent a public health and safety threat to a community. Many times people drive by those buildings and they say to their elected officials, someone ought to do something about that. It is not a Kelo decision of saying we ought to have something better. It is saying that there is something damaging to our community and damaging to our neighborhoods.

The Acting CHAIRMAN. The question was raised on the amendment offered by the gentleman from Ohio (Mr. TURNER).

The question was taken; and the Acting Chairman announced that the noes appeared to have it.

Mr. TURNER. Mr. Chairman, I demand a recorded vote.

The Acting CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Ohio will be postponed.

AMENDMENT NO. 7 OFFERED BY MR. GARY G. MILLER OF CALIFORNIA

Mr. GARY G. MILLER of California. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 7 printed in House Report No. 109-266 offered by Mr. GARY G. MILLER of California:

Page 9, line 17, strike "and".
Page 9, line 19, strike the period and insert "and".
Page 9, after line 19, insert the following:

(G) redeveloping of a brownfield site as defined in the Small Business Liability Relief
I rise today to offer a modest amendment to ensure the Federal Government continues to work with local communities to promote and encourage Brownfields redevelopment in America.

**Protecting Private Property Rights is Important**

Threaten the right to own private property is one of the cornerstones of American freedom.

Governmental regulatory takings are becoming more and more prevalent in today’s society and Congress must do everything possible to protect that right that is acquired by private means are protected. As more and more Americans are working to purchase property and become homeowners, the threat of governmental takings must not overshadow the pursuit of the American dream.

The recent United States Supreme Court decision set the precedent that local governments may be afforded wide latitude in seizing property for land-use decisions. I strongly disagree with the implications of this decision. Private property has been the foundation of our society, and I believe it is unwise for government to deprive citizens of this most basic tenet of the American dream.

I am pleased that we have a bill before us today to respond to the Supreme Court’s ill-advised decision. This is an important step to protect private property rights, it could have the unintended consequence of inhibiting the redevelopment of Brownfields sites.

**Bill’s Exemptions Do Not Cover Brownfields**

The bill has a list of exemptions that recognize eminent domain is sometimes used for legitimate purposes. These exemptions in H.R. 4128 are not sufficient to address Brownfields sites.

While the bill is an important step to protect private property rights, it could have the unintended consequence of inhibiting redevelopment of brownfields sites.

My amendment corrects the oversight of the bill. Brownfield redevelopment as specifically defined in the Small Business Liability Relief and Brownfield Revitalization Act of 2001. Owners of brownfield sites are frequently unwilling to sell them for fear of cleanup and cost of contamination they find. Eminent domain can often help break through legal and procedural barriers to the sale of the land.

To address this, local governments can take advantage of the liability protection in CERCLA for acquiring potentially contaminated sites “through the exercise of eminent domain authority by purchaser or condemnation.”

Without using eminent domain as provided for in CERCLA, a local government would be held strictly liable for all costs and cleanup of polluted land as the owner and operator of the site.

I want to stress strongly that brownfield sites are not residential properties. They are abandoned, idle, or underused industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination.

Let us make sure the cities have the tools they need to clean up brownfield sites. It is a reasonable amendment, and I ask for an “aye” vote.

Brownfields pose obstacles to redevelopment that sometimes can only be overcome by eminent domain.

Owners of Brownfield sites are frequently unwilling to sell them for fear of the cleanup costs of any contamination found. Eminent domain often can help break through legal and procedural barriers to the sale of the land.

To address this, local governments can take advantage of the liability protections in CERCLA for acquiring potentially contaminated property through the exercise of eminent domain authority by purchase or condemnation.” Without using eminent domain as provided for in CERCLA, a local government would be held strictly liable for all costs of cleaning up polluted land as an “owner or operator” of the site. As a result, local governments would be less likely to redevelop a Brownfield site.

By promoting Brownfield redevelopment, we are not throwing people out of their homes.

Brownfields are not Residential Properties. They are abandoned, idle, or underused industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination.

Cities will not be able to abuse the Brownfields legislation.

The Brownfields Revitalization Act creates a specific scientific standard for determining whether a former industrial site is a potential Brownfield site.

The real problem is that when a property is a Brownfield, it is in legal limbo. It is the “possibility” of contamination alone that results in the lack of redevelopment. The land might not be contaminated, but if the owners have reason to believe it might be, it will likely sit, unutilized.

Without the city’s ability to exercise eminent domain, many contaminated properties that can be redeveloped would instead continue to impose heavy environmental, financial, and social burdens on communities.

We must give cities the opportunity to minimize urban sprawl and preserve existing green space by allowing communities to work with local developers and builders to utilize previously developed properties.

This amendment preserves the ability of cities to take ownership of Brownfields and work with their development community to design projects that utilize existing infrastructure.

Most importantly, it is estimated that up to $2.4 billion in new tax revenues can be generated through Brownfield redevelopment. Let’s make sure cities have the tools they need to clean up Brownfield sites.

I urge my colleagues to support this crucial amendment to demonstrate that we support Brownfield redevelopment.

Mr. Chairman, I reserve the balance of my time.

Ms. WATERS. Mr. Chairman, I claim time in opposition to the amendment.

The Acting CHAIRMAN. The gentleman from California, I believe, has the floor.

Ms. WATERS. Mr. Chairman, I claimed this time to raise some concerns about the amendment offered by the gentleman from California. I believe the gentleman from California and the gentlewoman from Texas have a sincere interest in furthering this nation’s development of brownfields, land that is difficult to expand because of environmental contamination. However, I believe that such development is already protected under the bill.

First, this bill will provide an exception for removing harmful uses of land.
Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Chairman, I proudly join the gentleman from California in supporting this amendment.

I appreciate the response that H.R. 4128 is attempting to convey. We just feel that there is a possibility that it might cause some unintended consequences.

In 2002, President Bush signed the Small Business Liability Relief and Brownfields Revitalization Act, and that all 200 million annually for Federal assistance to States and local communities to assess brownfield sites and to conduct cleanup where the assessment indicates the cleanup was warranted.

The measure represented the centerpiece of the administration’s environmental agenda. It was widely praised and received broad bipartisan support, and rightfully so. According to the Government Accountability Office, there are well over 500,000 brownfields in our country; and brownfields represent the economic opportunity wherever they exist.

These abandoned and underused industrial sites pose heavy economic, financial, and social burdens on the community. These burdens include land contamination, deterioration of neighboring properties and property values, neighborhood health hazards from contamination, and increased need for fire and police protection to limit the nuisance effect of brownfields, and increased sprawl as individuals and families and businesses relocate to the suburbs, farmland, and open space.

Over the past decade, communities across the country have realized that the city of Dallas that I represent was one of the first cities to be designated as a brownfield showcase community by the Environmental Protection Agency. Dallas has used assessments and remediation grant programs to redevelop 35 sites in the core of the city.

Although the city has not used eminent domain to date in its brownfield redevelopment projects, they have shared with me that they certainly can anticipate perhaps a situation where the city might want to do this to acquire property, I fully and strongly support the amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. GARY G. MILLER of California. Mr. Chairman, I yield myself the balance of my time.

The gentlewoman from California said a few things that I think I have to address. She said she believed this is included within the bill. It is not. The other thing she said is that the cities should work within the marketplace to acquire these properties.

The problem you have with cities doing that is without eminent domain that is provided for in CERCLA, a local government would be held strictly liable for all costs of cleanup of the polluted land as the owner-operator of the site. That is a complete different liability that the city would accept through eminent domain.

Mr. Chairman, I yield back the balance of my time.

Ms. WATERS. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN (Mr. SIMPSON). The question is on the amendment offered by the gentleman from California (Mr. GARY G. MILLER). The amendment was agreed to.
The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 8 printed in House Report 109-206 offered by Mr. Gingrey:

Add at the end the following new section:

SEC. 12. 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 religious or nonprofit organizations for a period of 2 fiscal years following a final judgment on the merits by a court of competent jurisdiction that such subdivision has been violated, and any such fund 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.

(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 subdivision has been violated, and any such fund 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 nonprofit organization by reason of the non-profit or tax-exempt status of such organization, or any quality related thereto if that property of a religious or nonprofit organization cannot be used for a taking under the Kelo decision that the Federal Government or any authority of the Federal Government has offered it.

Mr. Gingrey. Mr. Chairman, I yield myself such time as I may consume.

I rise today in support of this amendment, which has the support of the gentleman from Georgia (Mr. Gingrey) and a number of my colleagues.

The Acting CHAIRMAN. The Clerk will designate the amendment.

Mr. Gingrey. Mr. Chairman, I yield myself such time as I may consume.

I rise today in support of this amendment, which has the support of the gentleman from Georgia (Mr. Gingrey) and a number of my colleagues.

The Acting CHAIRMAN. The Clerk will designate the amendment.

Mr. Goodlatte. I appreciate the gentleman’s willingness to work with us; and, on that basis, we will support the amendment.

Mr. Gingrey. Mr. Chairman, with the indulgence of the chairman of the Judiciary Committee, I yield 1 minute to the gentleman from Maryland (Mr. Bartlett), who has asked for time on this amendment.

Mr. Bartlett. Mr. Chairman, I urge my colleagues to support the Gingrey amendment.

Before Kelo, a Christian church, after spending 5 years acquiring property, had the city intercede when it learned there would be a church built on the property. The city initiated eminent domain to give the land to Costco. The church prevailed, but that was before Kelo.

In Justice O’Connor’s Kelo dissent, she warned that in expanding the definition of “public use,” the majority had come close to embracing “the absurd argument that any church might be replaced with a retail store.” She continued to state that this “is inherently harmful to society.”

Because of Kelo in general and this situation in particular, the fifth amendment takings clause has been stretched beyond the bounds that the Framers intended. By expanding the fifth amendment’s definition of “public use,” it could limit the scope of the “free exercise” of religion guaranteed in the first amendment.

Kelo shattered the constitutional protection of private property rights. Today, by passing H.R. 4128, Congress will help pick up the pieces. Congress must act to prevent the denial of our rights, our homes, our businesses and our religious freedom.

The Acting CHAIRMAN. The question is on the amendment offered by the gentleman from Georgia (Mr. Gingrey).

The amendment was agreed to.

Amendment No. 9 offered by Mr. Cuellar

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 9 printed in House Report 109-206 offered by Mr. Cuellar:

Add at the end the following new section:

SEC. 13. 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 adequacy of that department or agency to bring its rules, regulations and procedures into compliance with this Act.
The Acting CHAIRMAN. Pursuant to House Resolution 527, the gentleman from Texas (Mr. CUellar) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Texas.

Mr. CUELLAR. Mr. Chairman, I yield myself as much time as I may consume.

Mr. Chairman, I thank the gentleman from Wisconsin and the gentlewoman from California for this opportunity to present this amendment. I believe this amendment is acceptable to the chairman and the gentlewoman from California.

Chairman SENSENBRENNER and Congresswoman WATERS, thank you for this opportunity to present my amendment to H.R. 4128, the Private Property Rights Protection Act of 2005. I will not spend much time describing my amendment, which is acceptable to the Chairman and Congresswoman WATERS, because the concept is simple. My amendment will require all Federal agencies and departments to submit a report to the Attorney General verifying that all rules, regulations, and procedures of that agency are in compliance with the provisions of H.R. 4128.

There is a saying in business: “what gets measured gets done.” H.R. 4128 is an important and, if it will do a great deal to help protect private property rights in this country. My amendment will strengthen H.R. 4128, by making sure that the practices and procedures of Federal agencies are quickly and uniformly brought into compliance with the new law.

My amendment will require all Federal agencies and departments to review their practices with regard to eminent domain, and to submit a report to the Attorney General verifying all rules, regulations, and procedures of that agency are in compliance with the provisions of H.R. 4128. This amendment will help to make the transition clearer, and will introduce an added dimension of accountability into the process.

As a believer in responsible government, I always have and will continue to hold our bureaucracy accountable for knowing the law and following it correctly. This simple reporting requirement will ensure that it is done in a timely fashion. H.R. 4128 is a good bill, and my amendment will help to ensure that it is enforced quickly, uniformly, and fairly.

Mr. SENSENBRENNER. Mr. Chairman, will the gentleman yield? Mr. CUELLAR. I yield to the gentleman from Wisconsin.

Mr. SENSENBRENNER. Mr. Chairman, I am happy to accept the amendment because it requires the Federal Government agencies do whatever they need to do to come into compliance with the bill’s prohibition on abuse of eminent domain. It is a good amendment, and I hope we accept it.

Mr. CUELLAR. Mr. Chairman, I yield back the balance of my time.

The Acting CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. CUellar).

The amendment was agreed to.

AMENDMENT NO. 10 OFFERED BY MS. JACKSON-LEE OF TEXAS

Ms. JACKSON-LEE of Texas. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment. The text of the amendment is as follows:

Amendment No. 10 printed in House Report 109-266 offered by Ms. JACKSON-LEE of Texas:

Add at the end of SEC. 10.

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.

The Acting CHAIRMAN. Pursuant to House Resolution 527, the gentlewoman from Texas (Ms. JACKSON-LEE) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentlewoman from Texas.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield myself such time as I might consume.

Might I just for my colleagues read very briefly the language of this amendment, and I hope that we can join in a bipartisan manner in the spirit of this underlying legislation.

Mr. SENSENBRENNER. Mr. Chairman, will the gentlewoman yield?

Mr. SENSENBRENNER. Mr. Chairman, I thank the gentlewoman for yielding.

I am happy to accept this amendment that amends the sense of Congress section of the bill that says that victims of Hurricane Katrina cannot have their property condemned simply because it was damaged by the hurricane. Unless the amendment is adopted, then victims of Hurricane Katrina end up getting penalized twice. That is twice too many times. We can take away one of those times by adopting the amendment, and I urge the House to support it.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I cannot thank you enough, and I would ask your kind indulgence if I could reclaim my time to put these items in the RECORD, and I would like to yield a moment to the gentlewoman from California, but let me just say this.

The chairman is so very right. Let me make these points. It is legislation to, in fact, make a very pronounced statement that we are very, much watching and seeking to protect the Hurricane Katrina survivors from unreasonable taking of property away from them for economic development or for private use.

Let me like this paragraph: New Orleans will be the center of a reconstruction project that will have a price tag in excess of $200 billion. Eminent domain will play a major role in the local government’s ability to assemble properties to carry out their plans, whether residents like it or not.

The NAACP, which the chairman cited in another debate, stated that the eminent domain process mostly targets, in many instances, racial and ethnic minorities because cities often want to redevelop areas with low property values because minorities have less political clout and are less able to fight back. That is one aspect, but the rural community and the surrounding New Orleans metropolitan area and other areas are equally victims, and so this amendment speaks to the wholeness of the region that will be under attack for economic development.

Might I close by these words: “South-of-Boston residents, especially those in colonial towns, need not be concerned about the nasty implications of the recent Supreme Court decision in a post-Katrina era. If a Category 5 hurricane wipes houses from Houghs Neck, Minot, Humarock, Marion, or Mattapoisett, might not the remaining citizens take kindly to an offer to replace the houses with a resort hotel?”

I want to remind my colleagues that the eminent domain theory came when the British soldiers wanted to place the soldiers in American homes or colonial homes, and so this has the underpinnings of a long history. This is an important step for us to take for the Katrina survivors, and I thank the chairman for supporting it.

Mr. Chairman, I have an amendment to H.R. 4128, the Private Property Rights Protection Act of 2005, that has been reported by the Committee on Rules, #12 as printed in the Congressional Record and captioned as Jacks.177. This legislation seeks to curtail the decision handed down by the U.S. Supreme Court in Kelo v. City of New London on June 23, 2005. Kelo held “economic development” to be a “public use” under the Fifth Amendment’s Taking Clause. The Takings Clause states that “nor shall private property be taken for public use without just compensation.”

In the 1990’s, a state agency declared that New London, CT was a “distressed municipality” after its unemployment numbers hit double the rate in the rest of Connecticut. The holding by the Supreme Court purported to defer to the city’s judgment and that the development would be a “catalyst to the area’s rejuvenation.”

To lay the foundation for the relevance of my amendment, I cite an article in the Tulsa World:

The situation in New London is a time-extended version of the crisis in New Orleans. When New Orleans saw its demise in the course of days, not decades. There was no choice but to create a package of initiatives that would bring the private sector in on the rebuilding effort. In some areas, eminent domain may be the only answer. The urgency of government planning, however, is offset by the fact that the first contracts have gone out to some of the usual suspects—namely, corporations with strong ties to the administration in Washington.

The land use situation in the area most affected by Hurricane Katrina presents the situation that is most ripe for eminent domain takings under the guise of “economic development.” My amendment seeks to add to the legislative intent to H.R. 4128 that the law seeks to put the people first even in the face of post-disaster reconstruction.
I thank the Chairman of the Committee on the Judiciary for his support of this amendment. It is critical that we continue the spirit of bi-partisanship that was started with the resolution disapproving the Kelo decision, of which I was an original co-sponsor, the Private Property Rights Protection Act of 2005, H.R. 3135.

New Orleans will be the center of a reconstruction project that will have a price tag in excess of $200 billion. Eminent domain will play a major role in the local governments’ ability to assemble properties to carry out their plans. Whether the residents like it or not. NAACP representative Hillary Shelton stated that “the eminent domain process mostly targets racial and ethnic minorities because cities often want to redevelop areas with low property values and because minorities have less political clout and are less able to fight back.” My amendment seeks to clarify that, in redefining the boundaries of the federal government’s taking power, unfair practices will not be tolerated and that the rights of property owners will be given the highest regard.

Mr. Chairman, I ask that my colleagues support this amendment.

Mr. Chairman, I yield such time as she may consume to the distinguished gentlewoman from California (Ms. Waters).

Ms. WATERS. Mr. Chairman, I would first like to thank Chairman SENSENBRINNER for accepting the gentlewoman’s amendment, and I would like to thank her for this very timely amendment.

While we began to work on this simply because of the Supreme Court decision and the danger that American citizens’ homes and lands were placed in with this decision, the gentlewoman is absolutely right: We have to take another step to protect those victims of Katrina.

There has been a lot of discussion from homeowners and others who are observing what is going on and what could possibly happen, wondering if there are not schemes already going on that would deny these homeowners who have lost their homes the ability to hold on to that land, whether or not the speculators are cooking up schemes with those in local government even. So this amendment would protect the victims of Katrina, and they will be very grateful for this, and they will be very, very thankful that the gentlewoman provided the leadership in thinking about them as this legislation was winding its way through the government of the United States of America.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I ask my colleagues to support this amendment, and it lays further precedent for the victims of Hurricanes Rita and Wilma. I thank the chairman for accepting it, and I yield back my time.

The Acting CHAIRMAN. The question is on the amendment offered by the gentlewoman from Texas (Ms. Jackson-Lee).

The amendment was agreed to.

AMENDMENT NO. 11 OFFERED BY MR. WATT

Mr. WATT. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 11 printed in House Report 109-266 offered by Mr. Watt. Page 2, strike line 3 and all that follows through line 25 on page 6. Page 6, strike line 15 and all that follows through line 4 and insert the following:

SECTION 1. SENSE OF CONGRESS. The Acting CHAIRMAN. Pursuant to House Resolution 527, the gentleman from North Carolina (Mr. WATT) and the gentleman from Wisconsin (Mr. SENSENBRINNER) each will control 5 minutes.

The Chair recognizes the gentleman from North Carolina.

Mr. WATT. Mr. Chairman, I yield myself 1 minute.

First of all, I am fully aware that it is a dangerous combination to be opposing both the chairman of the full Judiciary Committee and the gentlewoman from California (Ms. Wattens), but I simply think this bill is an overreaction.

This amendment would strike all the provisions of the bill except the sense of Congress which I believe adequately conveys the legitimate concerns with the decision of the Supreme Court in Kelo and does what we should appropriately do, express our concern about it and any possible abuse of it but not go so overboard as this bill does in my opinion.

Mr. Chairman, I reserve the balance of my time.

Mr. SENSENBRINNER. Mr. Chairman, I yield myself 15 seconds.

The amendment guts the bill by striking out every provision of it except the sense of Congress and the report requirement. If we are for the bill, we ought to vote against the amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. WATT. Mr. Chairman, I yield 1 minute to the gentleman from Oregon (Mr. Blumenauer).

Mr. BLUMENAUER. Mr. Chairman, we can all agree that Federal powers should not be used to enrich the powerful and the wealthy, but the first response to Kelo should be from responsible local and State governments, not the United States Congress. One narrow Supreme Court decision should not be the basis for an overbroad Federal amendment that will have many unintended consequences.

Earlier I asked what would be the impact if this legislation had been passed for the revitalization of Times Square, where eminent domain transformed one of the most notorious places in America or the Dudley Street neighborhood initiative in the Roxbury Dorchester area in Boston or just outside our window where we have had Pennsylvania Avenue restored using eminent domain.

I would strongly suggest that the gentleman from North Carolina’s approach is a more reasonable and prudent one. We do not have a crisis at this point. State and local governments should be dealing with this in an appropriate fashion. We should not have overbroad legislation that could have many unintended consequences.

Mr. WATT. Mr. Chairman, I yield myself such time as I may consume.

First of all, I want to thank the gentleman from Oregon for his thoughtful approach to this and express my desire that all of the Members of the Congress have an equally thoughtful approach to it.

The Kelo decision was met with a tremendous uproar, with many echoing the view that all private property is now vulnerable to condemnation as long as the new use of the land will produce additional tax revenue. While I appreciate that concern and share the view that private property should not be taken solely for the purpose of increasing State coffers or local coffers the additional amendment does not believe that the Court’s decision leads to that result.

What is even more important is I do not believe that this bill does much, if anything, to address that concern even if I do that. We have been shown to a determination of what removal of blight is, and this bill does nothing to do that, local communities are still going to be able to condemn property, as they should, for public purposes. There really is nothing inconsistent with that in the Kelo decision.

Flexibility by local communities in determining whether the public use requirement has been served by ensuring that condemned property creates a public benefit or advantage has long existed, and I believe should continue to exist, as the gentleman from Oregon (Mr. Blumenauer) has so eloquently stated. I feel like State and local officials have as much intellect and discretion and are as accountable, probably even more so, to their constituents than Members of Congress; and they should be answering to their constituents on these issues.

Again, while I believe that the power of eminent domain must be exercised judiciously, I think this bill goes too far in limiting the power of States and local governments. In addition, the punitive measures included in the bill will visit additional harms on the very distressed communities that are often the target of eminent domain proceedings.

I would just point out that apparently after this bill is passed, if it is passed, a local government, a State government could still condemn blighted property. The problem now is that it would just have to sit there vacant with nothing developed on it, otherwise they would be in violation of the provisions of this bill if there were any kind of private development, even a public-private partnership.

So I think we are going too far and we need to take a giant step back, take a deep breath, and pass the sense of
Mr. CONyers. Mr. Chairman, I yield the chairman of the committee for yielding me this time.

This is an unusual note to end the debate on a very important subject like this, because the last amendment from my friend from North Carolina is to strike everything in the bill except the sense of Congress provisions expressing support for property rights. Well, that is a vote on the bill. Why do we not just have a vote on final passage and skip this? Because that is what this is.

And I would like to emphasize the fact that the people, the citizens, are in support of this amendment. I am proud that we have the civil rights organizations supporting me and not my friend from North Carolina. The NAACP is not known to take issues against the Congress part of this resolution except the sense of Congress provisions expressing support for property rights. We know that hotels and private takings. We know that.

So let us be careful. Let us control this. Let us not overdo it, but let us support the measure of 4128, which tries to finally answer what happened to us in Detroit. Our experiment that we had thousands of residences, businesses, and churches that were taken to develop an automobile plant. That is not what my idea of an eminent domain should be about. That is all we are saying here. It is not that complicated.

Now, I am not pitting somebody’s intellectual abilities at the local level versus the national level or who is more dedicated. I am dealing with a Supreme Court case that has forced us into this action. This measure would not have been here if the Supreme Court had not given us one of the most shocking rulings that just came out this year. So I urge not only my friend from North Carolina’s amendment be rejected but that this bill be supported on final passage.

The Acting CHAIRMAN (Mr. SIMPSON). The question is on the amendment offered by the gentleman from North Carolina (Mr. Watt).

The question was taken; and the Acting Chairman announced that the noes appeared to have it.

Mr. Watt. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

Mr. CONYERS. Mr. Chairman, I yield briefly to my friend from North Carolina, contrary to my best interest.

Mr. WATT. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield briefly to my friend from North Carolina, contrary to my best interest.

Mr. WATT. I just want to clarify for the gentleman that the NAACP has advised me that they are concerned about the abuse of eminent domain, as everybody else is, and the sense of Congress part of the resolution would continue to express that concern. They do not endorse the bill, however.

Mr. CONYERS, Mr. Chairman, reclaiming my time, I thank the gentleman from North Carolina.

Mr. WATT. I am supporting many of my friends on the other side of the aisle, but we have this unusual division here. What I am saying is that the concept of not using private takings for private use should not be allowed. We know that casinos benefit from these takings. We know that hotels and private developments benefit. And all I am saying, and I thought that everybody would mostly agree with this in the Congress, that is wrong. That is a misuse. That is an abuse.

Now, I am not pitting somebody’s intellectual abilities at the local level versus the national level or who is more dedicated. I am dealing with a Supreme Court case that has forced us into this action. This measure would not have been here if the Supreme Court had not given us one of the most shocking rulings that just came out this year. So I urge not only my friend from North Carolina’s amendment be rejected but that this bill be supported on final passage.

The Acting CHAIRMAN (Mr. SIMPSON). The question is on the amendment offered by the gentleman from North Carolina (Mr. Watt).

The question was taken; and the Acting Chairman announced that the noes appeared to have it.

Mr. WATT. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The Acting CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from North Carolina will be postponed.

The point of no quorum is considered withdrawn.

SEQ uential VOTES POSTED IN COMMITTEE OF THE WHOLE

The Acting CHAIRMAN. Pursuant to clause 6 of rule XVIII, proceedings will now resume on those amendments on which further proceedings were postponed, in the following order:

Amendment No. 2 by Mr. NADLER of New York.

Amendment No. 5 by Mr. Moran of Virginia.

Amendment No. 6 by Mr. Turner of Ohio.

Amendment No. 11 by Mr. Watt of North Carolina.

The Chair will reduce to 5 minutes the time for any electronic vote after the first vote in this series.

AMENDMENT NO. 2 OFFERED BY MR. NADLER

The Acting CHAIRMAN. The pending business was the posted vote on the amendment offered by the gentleman from New York (Mr. Nadler) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

RECORDED VOTE

The Acting CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 63, noes 355, not voting 15, as follows:  

[Roll No. 564]

AYE S—63

[Signature]
NOT VOTING—15

NOT VOTING—16

Mr. BAIRD and Mr. ENGEL changed their vote from “no” to “aye.”
So the amendment was rejected.

The result of the vote was announced as above recorded.

RECORDED VOTE

The Acting CHAIRMAN. A recorded vote has been demanded. A recorded vote was ordered.

The Acting CHAIRMAN. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—aye 49, noes 368, not voting 16, as follows:
So the amendment was rejected.

The result of the vote was announced as above recorded.

Stated against:
Mr. GIESECKE of Texas. Mr. Chairman, on rollcall No. 566, I was detained. Had I been present, I would have voted "no."

AMENDMENT NO. 1 Offered by Mr. WATTS

The Acting CHAIRMAN. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from North Carolina (Mr. WATTS) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The Acting CHAIRMAN. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 44, noes 371, not voting 18, as follows:

[Roll No. 567]

AYES—44

Borden (KS)        Greenwood (SC)        Gutierrez (TX)
Boehlert (NY)      Grijalva (AZ)        Hartzler (MO)
Boehner (OH)       GuintHER (NC)        Hirsch (CA)
Bonner (CA)        Green (IN)          Hittalman (WV)
Boren (OK)         Greene (AL)          Hinojosa (TX)
Boehlert (NY)      Grisham (NM)        Hiyam (MD)
Boehner (OH)       Grothman (WI)       Hoeven (ND)
Bono (CA)          Grothman (WI)       Holt (NE)
Bond (NY)          Grijalva (AZ)        Hoeven (ND)
Boehlert (NY)      Grijalva (AZ)        Holland (SM)
Bono (CA)          Graham (NC)         Holifield (GA)
Bond (NY)          Graham (NC)         Holmberg (SD)
Boehlert (NY)      Grothman (WI)       Holt (NE)
Bono (CA)          Grijalva (AZ)        Hinojosa (TX)
Bond (NY)          Graham (NC)         Holmberg (SD)
Boehlert (NY)      Grothman (WI)       Holt (NE)
Bono (CA)          Grijalva (AZ)        Hinojosa (TX)
Bond (NY)          Graham (NC)         Holmberg (SD)
Boehlert (NY)      Grothman (WI)       Holt (NE)
Bono (CA)          Grijalva (AZ)        Hinojosa (TX)
Bond (NY)          Graham (NC)         Holmberg (SD)
Boehlert (NY)      Grothman (WI)       Holt (NE)
Bono (CA)          Grijalva (AZ)        Hinojosa (TX)
Bond (NY)          Graham (NC)         Holmberg (SD)
Boehlert (NY)      Grothman (WI)       Holt (NE)
Bono (CA)          Grijalva (AZ)        Hinojosa (TX)
Bond (NY)          Graham (NC)         Holmberg (SD)
Boehlert (NY)      Grothman (WI)       Holt (NE)
Bono (CA)          Grijalva (AZ)        Hinojosa (TX)
Bond (NY)          Graham (NC)         Holmberg (SD)
Boehlert (NY)      Grothman (WI)       Holt (NE)
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Bond (NY)          Graham (NC)         Holmberg (SD)
Boehlert (NY)      Grothman (WI)       Holt (NE)
Bono (CA)          Grijalva (AZ)        Hinojosa (TX)
Bond (NY)          Graham (NC)         Holmberg (SD)
Boehlert (NY)      Grothman (WI)       Holt (NE)
Bono (CA)          Grijalva (AZ)        Hinojosa (TX)
Bond (NY)          Graham (NC)         Holmberg (SD)
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Bono (CA)          Grijalva (AZ)        Hinojosa (TX)
Bond (NY)          Graham (NC)         Holmberg (SD)
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Bono (CA)          Grijalva (AZ)        Hinojosa (TX)
Bond (NY)          Graham (NC)         Holmberg (SD)
Boehlert (NY)      Grothman (WI)       Holt (NE)
Bono (CA)          Grijalva (AZ)        Hinojosa (TX)
Bond (NY)          Graham (NC)         Holmberg (SD)
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Bono (CA)          Grijalva (AZ)        Hinojosa (TX)
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Bono (CA)          Grijalva (AZ)        Hinojosa (TX)
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Bono (CA)          Grijalva (AZ)        Hinojosa (TX)
Bond (NY)          Graham (NC)         Holmberg (SD)
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Boehlert (NY)      Grothman (WI)       Holt (NE)
Bono (CA)          Grijalva (AZ)        Hinojosa (TX)
Bond (NY)          Graham (NC)         Holmberg (SD)
Boehlert (NY)      Grothman (WI)       Holt (NE)
Bono (CA)          Grijalva (AZ)        Hinojosa (TX)
Bond (NY)          Graham (NC)         Holmber...
The SPEAKER pro tempore. The question is on the passage of the bill.

The result was announced as above recorded.

The Acting CHAIRMAN (Mr. Davis of Kentucky). The question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The Acting CHAIRMAN. Under the rule, the Committee rises.

So the amendment was rejected.

Accordingly, the Committee rose, and the Speaker pro tempore (Mr. TERRY) having assumed the chair, Mr. Davis of Kentucky, Acting Chairman of the Committee of the Whole House on the State of the Union, reported that Committee, having had under consideration the bill (H.R. 4128) to protect private property rights, pursuant to House Resolution 527, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous amendment is ordered.

Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.