

APPENDIX A

CORRESPONDENCE FROM SELECT PANEL DEMOCRATS TO HOUSE LEADERSHIP AND CHAIR BLACKBURN

Date	Recipient	Description
12/01/2015	Speaker Ryan	Requesting the Speaker disband the Select Panel following the shootings at a Planned Parenthood clinic in Colorado Springs, which killed three people and injured nine others, and was featured in the Daleiden/CMP videos.
01/21/2016	Chair Blackburn	Requesting that the Chair establish a fair and balanced investigative plan and clear rules to govern the Panel's work.
02/11/2016	Chair Blackburn	Requesting that the Chair set a date for an initial organizational meeting of the Panel at which a vote would be held on the proposed Democratic rules and investigative agenda.
02/12/2016	Chair Blackburn	Requesting that the Chair abandon her plan to issue unilateral subpoenas or immediately schedule a special meeting of the Panel to hold a vote prior to the issuance of subpoenas.
02/24/2016	Chair Blackburn	Requesting that the Chair reschedule the Panel's first public hearing to avoid a conflict with an Energy and Commerce Subcommittee hearing concerning the Zika virus.
04/07/2016	Chair Blackburn	Requesting that the Chair allow Panel Democrats access to documents provided to her by anti-abortion extremists.
04/25/2016	Chair Blackburn	Requesting that the Chair schedule a special meeting to enact rules that safeguard individual privacy and security after refusing to assure deponents that Panel Republicans would keep their names confidential.
04/28/2016	Chair Blackburn	Reiterating the request to schedule a special meeting to discuss rules to protect the names of individuals identified in the course of this investigation.
05/12/2016	Speaker Ryan	Requesting that the Speaker disband the Select Panel in light of Panel Republicans' continued and recent abuses.
05/13/2016	Clerk Haas	Requesting preservation of audio recordings of the Panel's depositions to ensure a complete and accurate depiction of the treatment of witnesses.
05/24/2016	Speaker Ryan	Requesting that the Speaker disband the Select Panel due to continued and escalating abuses that jeopardize Americans' safety.

Date	Recipient	Description
06/03/2016	Chair Blackburn	Requesting that the Chair immediately redact names, contact information, and other personally identifiable information of doctors and researchers from documents posted on the Panel Republicans' website.
06/07/2016	Chair Blackburn	Requesting an investigation into the possibility that information provided to the Panel is being leaked to anti-abortion extremists for steps to be adopted to prevent any future leaks.
06/14/2016	Chair Blackburn	Requesting that the Chair take steps to protect the names of clinic staff disclosed to the Panel and confirm that the requested steps have been taken.
06/16/2016	Speaker Ryan	Requesting that the Speaker meet with Panel Democrats before the House adjourns for its extended district work period to discuss concerns about the partisan, dangerous nature of the Panel.
09/20/2016	Chair Blackburn	Accepting the Chair's invitation to consult regarding the release of a deposition transcript while reserving the right to raise any applicable objections.
09/29/2016	Chair Blackburn	Objecting to the Chair's proposed unilateral release of a deposition transcript and requesting that this matter be referred to the Select Panel for a formal resolution as necessary.
11/02/2016	Chair Blackburn	Requesting that the Chair include Democratic requests in her subpoena to the Center for Medical Progress and issue additional subpoenas to obtain testimony from his accomplices.
11/18/2016	Chair Blackburn	Requesting that the Chair provide a draft of the Panel Republicans' proposed final report along with any documents or other information relied upon for that report that have not been provided to Panel Democrats.
12/01/2016	Chair Blackburn	Requesting that the Chair implement a coding system that sufficiently safeguards against the risk of harm to individual security prior to the release of deponent or witness interview transcripts.
12/05/2016	Chair Blackburn	Attaching the final report of Panel Democrats regarding this investigation's attacks on women's health care and life-saving research.
12/07/2016	Speaker Ryan	Requesting that the Speaker ensure that Panel Democrats have access to withheld documents and source information obtained by Panel Republicans.
12/28/2016	Chairman Upton	Forwarding the Final Report of the Democratic Members ("Setting the Record Straight: The Unjustifiable Attack on Women's Health Care and Life-Saving Research") for inclusion with any views expressed by Panel Republicans.

Congress of the United States

Washington, D.C. 20515

December 1, 2015

The Honorable Paul Ryan
Speaker
U.S. House of Representatives
H-232 The Capitol
Washington, D.C. 20515

Dear Speaker Ryan:

In the aftermath of the attack at a Planned Parenthood Clinic in Colorado Springs last Friday, we strongly urge you to disband the Select Investigative Panel of the Committee on Energy and Commerce.

We opposed the creation of the Select Panel because we believe it is unnecessary, a circumvention of regular order, and a misuse of taxpayer dollars to investigate charges that have already been debunked. Sparked by the release of videos manufactured by an ideological organization committed to ending safe and legal abortion services, three standing committees – the House Energy and Commerce, Judiciary, and Oversight and Government Reform Committees – have already exhaustively investigated Planned Parenthood and found no evidence of wrongdoing.

Even Oversight and Government Reform Committee Chairman Jason Chaffetz has admitted publicly that he has identified no evidence that Planned Parenthood has violated any laws:

Blitzer: “Is there any evidence in your opinion that Planned Parenthood has broken any law?”

Chaffetz: “No, I’m not suggesting that they broke the law.”¹

During a subsequent House Judiciary Committee hearing, the Chairman was even more emphatic, stating: “Did I look at the finances and have a hearing specifically as to the revenue portion and how they spend? Yes. Was there any wrongdoing? I didn’t find any.”²

Yet despite serious questions about the accuracy and legality of the videos, and the admitted failure to find any evidence of wrongdoing in their wake, Republican Members of Congress have continued to cite the videos as the basis for their inflammatory allegations and the purported rationale for the creation of the Benghazi-like Select Panel.

¹*Situation Room with Wolf Blitzer*, CNN (Sept. 30, 2015), <http://www.cnn.com/videos/us/2015/09/30/jason-chaffetz-entire-interview-tsr.cnn>

²*Hearing entitled “Planned Parenthood Exposed: Examining Abortion Procedures and Medical Ethics at the Nation’s Largest Abortion Provider,”* House Judiciary Committee (Oct. 8, 2015).

Announcing his appointment of Republican Members to the Select Panel, former Speaker Boehner explained that “recent videos exposing the abortion-for-baby-parts business have shocked the nation, and demanded action.”³

Following her appointment as Select Committee Chairwoman, Representative Marsha Blackburn cited more of those manufactured videos and asked: “Is this how babies should be treated? To be harvested for their heads?” She then went on to say “we now have a select panel that will examine the sale of baby body parts.”⁴

Since the release of the inflammatory, highly-edited videos, the FBI has reported a rise in attacks against Planned Parenthood and other facilities. The attack over the holiday weekend took three lives, injured nine others, and terrorized patients and their health care providers.

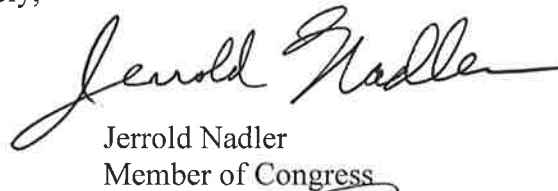
Enough is enough. No woman in this country should ever have to worry that a visit to her doctor will end in violence, and no health care provider should ever be targeted for ensuring access to health care services. Rather than demonizing a leading provider of vital health care services for women, Congress should be taking affirmative steps to support women and their families.

At this point, we urge you to disband the Select Panel, disavow these videos, and turn Congress’s attention to investigating extremist groups that are seeking to deprive women access to safe and legal abortion services by threats and violence.

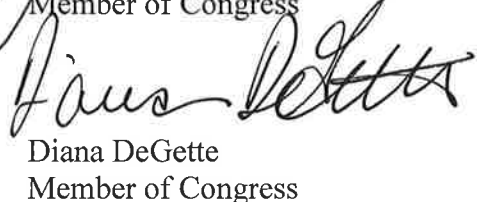
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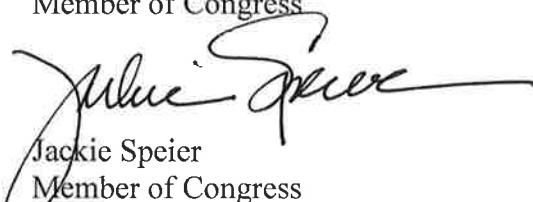
Jan Schakowsky
Member of Congress



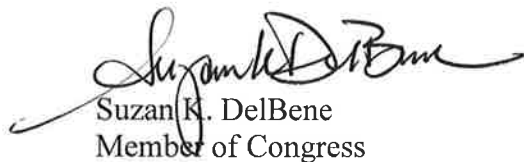
Jerrold Nadler
Member of Congress




Diana DeGette
Member of Congress



Jackie Speier
Member of Congress



Suzan K. DelBene
Member of Congress



Bonnie Watson Coleman
Member of Congress

³Boehner Appoints GOP Members to New Select Investigative Panel, Oct. 23, 2015, <http://www.speaker.gov/press-release/boehner-appoints-gop-members-new-select-investigative-panel>.

⁴Blackburn Comments on Latest Planned Parenthood Video, Oct. 27, 2015, <http://energycommerce.house.gov/press-release/blackburn-comments-latest-planned-parenthood-video>.

Congress of the United States

Washington, D.C. 20515

January 21, 2016

The Honorable Marsha Blackburn
Chair
Select Investigative Panel
U.S. House of Representatives
Washington, D.C. 20515

Dear Madam Chair:

As Democratic Members of this Panel, we are writing to express our concerns about the direction of the new Select Investigative Panel and to urge you to work with us to establish a fair and balanced investigative plan and clear rules to govern our work.

We were disappointed that the very first official action of the Panel's Republican Majority was to issue a host of overbroad document requests without any consultation with Democratic Members. These document requests raise troubling questions about the course this investigation will take, and they pose grave privacy and security concerns.

It is not yet clear what, if any, legitimate goals this investigation will serve. Prior House investigations in the wake of the selectively-edited videos purporting to show the unlawful sale of fetal tissue by Planned Parenthood have been decidedly one-sided and marred by procedural irregularities. We are extremely concerned that this panel will follow that same path. Congress should not use taxpayer resources as a political weapon to attack women's health, target healthcare providers, and intimidate scientists who are working to increase our understanding of diseases that impact all Americans.

Complete Lack of Evidence for Allegations Against Planned Parenthood

Three months ago, House Republicans voted to establish the Select Investigative Panel in response to a series of videos, secretly-recorded and selectively-edited by David Daleiden of the anti-abortion group Center for Medical Progress. House Republicans seized on these videos to launch investigations of Planned Parenthood in three Committees: Energy and Commerce, Oversight and Government Reform, and Judiciary.

Planned Parenthood cooperated fully, producing more than 25,000 pages of documents and making its President available for more than five hours of public testimony. Other Planned Parenthood staff participated in an additional eight more hours of Congressional interviews.

After months of investigation, the three Committees uncovered no evidence of wrongdoing by Planned Parenthood. In fact, Oversight and Government Reform Chairman Jason Chaffetz—the top investigator in the House of Representatives—admitted not once, but

twice, on national television that he had identified absolutely no evidence that Planned Parenthood has engaged in any illegal activity.

In a September 30, 2015 appearance on CNN's *Situation Room with Wolf Blitzer*, Chairman Chaffetz had this exchange:

Blitzer: "Is there any evidence in your opinion that Planned Parenthood has broken any law?"

Chaffetz: "No, I'm not suggesting that they broke the law."¹

In the course of his investigation, Chairman Chaffetz demanded and obtained access to extensive documents, and he also claims to have obtained all of the videos from David Daleiden, yet he was not able to identify a single piece of evidence to support the allegations that many Republicans have made against Planned Parenthood. In addition, eight states have also concluded after their investigations that the allegations against Planned Parenthood lack merit.

We voted against the establishment of this Panel because we were concerned that this investigation, like those that preceded it, would not be fair or even-handed. We also worried that continued unwarranted investigations, and the heated rhetoric that has accompanied them, could inflame the passions of radical extremists and put doctors, scientists, and patients in harm's way.

Those concerns became a reality when an anti-abortion extremist murdered three people, injured nine others, and terrorized providers and patients at an abortion clinic in Colorado Springs on the day after Thanksgiving. A law enforcement official said that the shooter used the phrase "no more baby parts" to explain his attack, and he later admitted his guilt in open court, proclaiming himself a "warrior for the babies."²

Dangerous and Overbroad Document Requests

After formation of the Select Panel, Ranking Member Schakowsky asked for a meeting with you to discuss the path forward. During that meeting, which took place in December, you stated that you had not yet developed an investigative plan, but that you would begin by examining fetal tissue research. You also said that the Panel would have an organizational meeting in January to discuss these issues.

¹ *CNN's Situation Room with Wolf Blitzer*, CNN (Sept. 30, 2015) <http://www.cnn.com/videos/us/2015/09/30/jason-chaffetz-entire-interview-tsr.cnn>. See also House Committee on the Judiciary, *Hearing on "Planned Parenthood Exposed: Examining Abortion Procedures and Medical Ethics at the Nation's Largest Abortion Provider,"* House Judiciary Committee (Oct. 8, 2015).

² *Suspect in Colorado Planned Parenthood Rampage Declares 'I'm Guilty' in Court*, New York Times (Dec. 9, 2015) (online at <http://www.nytimes.com/2015/12/10/us/colorado-planned-parenthood-shooting.html>).

However, before holding any initial meeting or consulting at all with Democratic Panel Members, you then sent nine document requests on December 17 and 18, 2015—just as Congress was ending the session and heading out of town. These document requests sought compliance by the end of December, giving recipients only seven business days over the holiday season to respond. You did not notify or consult with any Democratic Members before you sent these requests. You then sent three more document requests as soon as Congress returned on January 6, 2016.

These document requests raise troubling questions about the direction of the Panel's investigation, and they pose grave privacy and security concerns. For example, one of your requests asks a healthcare provider to reveal the following information:

“A list of any students, residents, or other medical personnel affiliated with [a public university], including but not limited to its subdivisions listed in request 5 above, who participated in the performance of any method of abortion or prenatal or postnatal infant care, including related training exercises.”

It also asks the provider to disclose:

“All communications, correspondence, agreements, emails, telephone messages, and purchase orders or bills of sale between [healthcare provider] and any executive or legislative officials or other employees of the government of the United States, [any State, and any municipality of any State].”

These sweeping requests target medical students and healthcare providers who are providing pre- and postnatal care, and they appear to be a completely unjustified attack on women's healthcare. Whether intended or not, these requests would require a healthcare provider to turn over to Congress the personal medical information of any patient who happens to work for the federal government or any State.

Some of the individuals and organizations that received your document requests have raised legitimate concerns about their privacy and security. Those concerns are not unfounded. After Chairman Chaffetz issued a subpoena demanding video footage from David Daleiden, the footage was posted on the Internet. The editor of the website responsible for the posting said he obtained the videos from a high-ranking congressional staffer “who felt morally compelled to have them released.”³

That footage is subject to a court order preventing public release out of concern for the safety of those identified in the videos. Federal District Judge William Orrick permitted limited release to Congress, stating that courts “must presume that the committees of Congress will exercise their powers responsibly and with due regard for the rights of affected parties.”⁴ His

³ “*Confidential*” *Planned Parenthood Video Leaked*, Politico (Oct. 22, 2015) (online at <http://www.politico.com/story/2015/10/planned-parenthood-video-leak-215094>).

⁴ *National Abortion Federation v. Center for Medical Progress et al.*, No. 15-cv-03522-WHO, slip op. at 2 (N.D. Cal. Oct. 6, 2015).

confidence may have been misplaced. The release of this video footage, and the allegation that it came from a senior congressional staffer after being turned over to Chairman Chaffetz, obviously warrants investigation. To date, however, Chairman Chaffetz and Speaker Ryan have not responded to requests that they investigate this potential leak.

Since abortion became legal in this country, doctors and patients have been murdered, clinics have been vandalized, and ongoing threats have put doctors, scientists, and their families in fear for their safety.⁵ No body of Congress should target individuals or organizations as possible subjects of investigation—and demand information that has grave privacy and security implications—without a legitimate basis for doing so.

The Need for a Fair and Even-Handed Investigative Plan

To date, every Republican House investigation into Planned Parenthood and the alleged unlawful sale of fetal tissue has been overwhelmingly one-sided and marred by inflammatory rhetoric and procedural irregularities. For example, the title of the House Judiciary Committee's first hearing—“*Planned Parenthood Exposed: Examining the Horrific Abortion Practices at the Nation's Largest Abortion Provider*”—made clear that a verdict already had been rendered before the hearing even began.

During the Energy and Commerce Committee's investigation, Republicans broadcast heavily-edited video clips about Planned Parenthood, claiming that they were authentic and unedited. They made these claims after receiving the analysis of forensic experts who had concluded that the video clips do not present a complete or accurate record of events. During a subcommittee hearing on “*Protecting Infants: Ending Taxpayer Funding for Abortion Providers Who Violate the Law*,” Chairman Joe Pitts—who now serves as a Member of this Panel—introduced video footage without even consulting with other Members, depriving them of any opportunity to register their concern or opposition to his actions.⁶

After showing the video, Chairman Pitts stated:

This is the clip of the unedited conversation These clips have shown the gruesome reality we're talking about. They're available in the public domain No organization, especially one that receives millions of dollars from the federal government should be able to participate in such horrific actions. That's why we're here today, and that's why we're going to act.⁷

⁵ *Fetal Tissue Research Under Threat*, Nature (Dec. 7, 2015) (online at <http://www.nature.com/news/fetal-tissue-research-under-threat-1.18967>).

⁶ House Committee on Energy and Commerce, Subcommittee on Health, *Hearing on “Protecting Infants: Ending Taxpayer Funding for Abortion Providers Who Violate the Law,”* 114th Cong. (Sept. 17, 2015).

⁷ *Id.*

While each of these prior Republican-led investigations repeatedly referenced and relied on these selectively-edited videos, not one has investigated the potential wrongdoing of the makers of the videos: David Daleiden and the Center for Medical Progress. Nor have any of them taken up the broader practices of anti-abortion extremists who have threatened and committed acts of intimidation and violence against reproductive healthcare providers in this country. For this Panel to have any credibility, we must have a transparent, fair, and even-handed investigative plan that includes meaningful input from its Democratic Members.

The Need for Clear Rules to Govern the Panel's Work

We understand that the resolution establishing this Panel provides you with certain authority, including the unilateral power to issue subpoenas. Until recent rule changes under Republican leadership, issuance of a subpoena required agreement of a Chair and Ranking Member or committee vote. Those basic steps—which governed Democrats and Republicans alike—ensured sufficient, good-faith efforts to obtain voluntary compliance with congressional requests and adequate debate and discussion before a subpoena would issue. For these reasons, we urge you to seek the concurrence of the Ranking Member or a vote of the Select Panel before issuing any subpoenas.

We are also aware that, under the resolution, the Select Panel is subject to the rules of the Energy and Commerce Committee. Unfortunately, those rules do not provide sufficient guidance on how your proposed “working group” meetings will be managed in a manner that ensures full Democratic input and participation. Those rules also do not explain how the Panel will handle sensitive information requested or gathered in the course of our investigation.

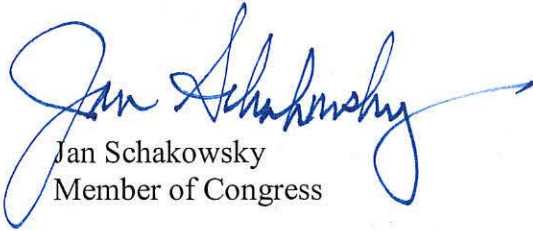
We urge you to work with us to adopt specific rules that, among other things, ensure meaningful Democratic involvement in all aspects of the investigation, prevent the collection of information that contains confidential patient information (including names and medical histories, diagnoses, or treatments), and otherwise allow for the redaction of information that might reveal the names, contact information, or identifying details of individuals involved in reproductive healthcare or fetal tissue research.

Conclusion

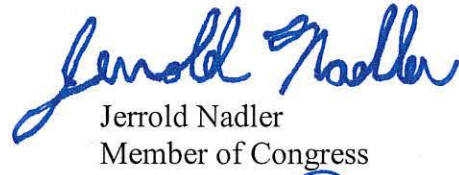
Republican and Democratic Members of this Panel fundamentally disagree on many of the issues that we will be investigating. We nonetheless firmly believe that the investigation must be balanced. We should look at the full range of issues that impact women and infant health. We must operate in a fair and transparent manner that respects the rights of individuals and organizations called upon to cooperate in our work. We owe this to the American people, whose taxpayer dollars are now paying for the fourth congressional investigation into Planned Parenthood and other healthcare providers.

Thank you for your consideration. We look forward to discussing this further with you in the near future.

Sincerely,



Jan Schakowsky
Member of Congress



Jerrold Nadler
Member of Congress



Diana DeGette
Member of Congress



Jackie Speier
Member of Congress



Suzan K. DelBene
Member of Congress



Bonnie Watson Coleman
Member of Congress

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927

Minority (202) 225-3641

February 11, 2016

The Honorable Marsha Blackburn
Chair
Select Investigative Panel
U.S. House of Representatives
Washington, D.C. 20515

Dear Madam Chair:

We are disappointed that you elected not to respond to the concerns raised in our letter last month regarding the dangerous actions of the Panel's Majority to date, and our request for an investigative plan and clear rules to guide our work. We write now to request that you set a date for an initial organizational meeting of the Panel and, at that meeting, hold a Panel vote on the rules and the investigative agenda outlined below and attached to this letter.

The House Majority should not use this Panel as a political weapon to harass or intimidate healthcare providers, medical students, patients, and the scientists who are working to increase our understanding of diseases that impact all Americans. The complete exclusion of Democrats and the lack of any investigative plan or rules to guide our work are extremely problematic. Taxpayer-funded congressional investigations must further legitimate legislative aims. None have been articulated or explained with regard to this Panel's work.

Exclusion of Democrats and Continued, Dangerous Demands

In your January 22 letter, you stated that our staff has been invited to "comment on, to improve, or to reconfigure the language of any and all of the Panel's document requests." In fact, we have been given copies of those document requests only after they have already been sent out, making the invitation to provide feedback a hollow one at best. Moreover, the suggestions that we have made – most importantly, that you not request the names of researchers, healthcare providers, residents or medical students, and patients – have been ignored.

After the first letters went out in December, we asked for a meeting to discuss what the Panel would be investigating and how the document requests fit into that plan. To date, your staff has refused to explain what allegations or issues are being investigated, why particular universities, healthcare providers, or other entities have been contacted, and how the information

being requested fits into the investigation. We have asked repeatedly to participate but have been excluded from discussions with recipients of the document requests.

During a meeting with your staff on January 15, we asked that the Panel not seek the names or other personally identifiable information of researchers, healthcare providers, residents and medical students, or patients and that, before issuing more requests or demanding compliance with the existing requests, the Panel put in place clear rules to protect individual privacy and security.

Six days later, you sent out twelve more document requests to public and private universities seeking, among other things, organizational charts identifying clinical and supervisory personnel involved in fetal tissue research. It is our further understanding that, even after we made that request, your staff has threatened compulsory process if recipients do not provide the information that you have requested.

Rules to Ensure Accountability and Protect Privacy and Security

Under H. Res. 461, the Select Panel must operate within the rules of the Energy and Commerce Committee. Those rules do not provide any guidance on how your proposed “working groups” or “working sessions” will be managed or how the Panel will safeguard any sensitive information that is requested or gathered in the course of our investigation.

Some of the information that you have requested – for example, names and communications of medical students, healthcare providers, and their patients – is the type of information that is generally protected from disclosure by state and federal laws such as the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Family Educational Rights and Privacy Act (FERPA).¹

It is not clear why this particular information is being requested and how, if at all, it furthers any legitimate functions of the Panel. At the same time, the information that you are requesting – whether released to the public by accident or on purpose – puts people’s privacy and safety at risk. There are no rules currently in place that prevent members or staff of the Select Panel from releasing this information once it is received.

We think it is critically important for the Panel to adopt rules that prevent collection of certain information and otherwise allow for the redaction of personally identifiable information before it is produced. Attached to this letter is our proposal, which will help limit and safeguard any sensitive information that we receive. Adopting and publishing these rules may also help

¹ Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1938 (1996); Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g. While these laws allow disclosure in certain limited circumstances, any such disclosure is usually permitted only after significant preconditions have been met – including, for example, notice to affected parties or entry of appropriate protective orders before the protected information is disclosed. See, e.g., 45 C.F.R. § 164.512(e)(1)(ii).

obtain voluntary cooperation in the Panel's work, thereby eliminating the need for and expense of compulsory process.

Our proposed rules also set out a process for convening the "working group" or "working sessions" that you are proposing. Existing House and Committee rules ensure equitable treatment of all members. They provide witnesses with a basic understanding of their rights and what to expect when called to appear. The rules also require transparency and public accountability, and provide very limited circumstances – instances where matters being discussed would endanger national security, compromise sensitive law enforcement information, risk defaming any person, or violate a rule of the House – for conducting committee business in non-public, executive sessions. The resolution creating this Panel calls for a full and complete investigation, a report on our work, and vests us with deposition authority. These are all hallmarks of a process governed by clear rules, not an ad hoc, informal process that can be operated as suits the unilateral interests of the Chair.

Therefore, to the extent that you plan to conduct this investigation through "working groups" or "working sessions," we believe that it is incumbent on you to set out the specific rules that would govern any such meetings. Those rules should be agreed to in advance by the Ranking Member, and provided to all of the Panel's members and individuals being asked to appear. If the Chair and Ranking Member cannot reach agreement on rules to govern any particular working group or session, the Panel has ample tools at its disposal under existing House and Committee rules and should use those instead.

Our rules also ask that you seek concurrence of the Ranking Member or a Panel vote before issuing subpoenas. We understand that the resolution establishing the Panel grants you unilateral subpoena authority. Until recent rule changes made under Republican leadership, issuance of a subpoena required agreement of a chair and ranking member or committee vote. Those basic steps — which governed Democrats and Republicans alike — ensured sufficient, good-faith efforts to obtain voluntary compliance with congressional requests and adequate debate and discussion before issuance of a subpoena. For these reasons, we urge you to seek the concurrence of the Ranking Member or a vote of the Select Panel before issuing any subpoenas.

We believe that our proposal ensures a more transparent and balanced investigation, which is something that the American taxpayers deserve. We are hopeful that you and the other Republican Members of the Panel will support these rules and ask that you hold a vote at the Panel's initial business meeting.

Proposed Investigative Plan

The resolution creating the Select Investigative Panel sets out several broad categories of potential inquiry. Thus far, invoking this resolution as empowering the Panel "to investigate issues related to fetal tissue research" but without any further explanation of what we are investigating, you have issued thirty two document requests.

These letters seek information about how fetal tissue is obtained and are clearly designed to pursue the inflammatory allegations that have sprung out of the deceptively-edited videos of anti-abortion activist David Daleiden, who is now under indictment by a Texas grand jury. Not a single request asks why fetal tissue research is important, or how it has helped advance our understanding and treatment of a range of diseases and conditions. Any objective and balanced inquiry into fetal tissue research must consider its past and possible future benefits. Yet your initial actions indicate that the Panel Majority plans to ignore these critical questions.

We have asked repeatedly that you share your investigative plan and work with us to create a balanced approach that also reflects meaningful involvement and input of the Panel's Democratic Members. To date, you have refused to do so. We are therefore attaching our proposed plan.

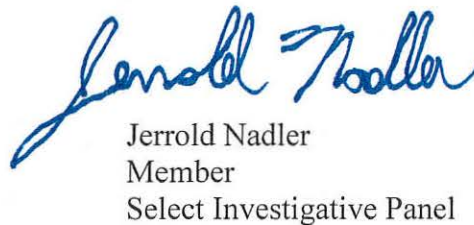
We understand that Republican and Democratic Members may not agree regarding the topics that this Panel should address. But taxpayer-funded congressional investigations should strike an appropriate balance between the interests of its Majority and Minority Members, who may be pursuing different priorities on behalf of the Americans that we serve. We therefore ask that you include our proposal in an overall investigative plan for the Panel and for a vote on the plan at the Panel's initial business meeting.

We look forward to discussing our proposals with you in the near future.

Sincerely,



Jan Schakowsky
Ranking Member
Select Investigative Panel



Jerrold Nadler
Member
Select Investigative Panel



Diana DeGette
Member
Select Investigative Panel



Jackie Speier
Member
Select Investigative Panel



Suzan K. DeBene
Member
Select Investigative Panel



Bonnie Watson Coleman
Member
Select Investigative Panel

Proposed Select Investigative Panel Rules¹

1. Documents:²

- a. Access: All members and Committee staff of the Select Investigative Panel (“Select Panel”) shall have equal and timely access to all requests for documents. Such members and staff shall also have timely and equal access to documents received by the Select Panel.
- b. Copies: Anyone being asked to provide documents to the Select Panel shall be asked to provide the majority and minority an identical set of documents.
- c. Release: The chair shall notify the ranking member at least five business days before any documents or portions of documents received by the Select Panel are released to the press or the public.

2. Protections for Individual Privacy and Safety

- a. The Select Panel will not request, or subpoena documents that reveal, patient information, including the names of individual patients or any other personally identifiable information, medical histories, diagnoses, or treatments.
- b. The Select Panel will not request, or subpoena documents that reveal, the names, contact information, or any other personally identifiable information for healthcare providers, clinical or supervisory personnel/staff, residents or medical students, researchers, or scientists.
- c. To the extent that any document responsive to a Select Panel request includes information that is protected from disclosure by federal or state privacy laws (including HIPAA or FERPA), such protected information may be redacted by the person or entity producing the document prior to its production to the Select Panel. Neither the majority nor minority shall be given information that has been redacted from a document unless both the majority and minority are given that information at the same time.
- d. Where the chair and ranking member agree that there is a compelling need for the Select Panel to obtain information that is otherwise protected by these rules, they may request such information by providing written notice and an explanation of a compelling need for the Select Panel to obtain the information to the person or

¹These rules augment rules and protocols of the House and of the Energy and Commerce Committee. These rules apply only to the Select Investigative Panel. They are not applicable to or binding on the Energy and Commerce Committee or any of its subcommittees and expire when the Select Investigative Panel ceases to exist under Sec. 6 of H.Res. 461.

²For purposes of these rules, the term “document” is as defined in the instructions on “Responding to Committee Document Requests” of the Energy and Commerce Committee.

entity from whom the information is requested. If produced to the Select Panel, such information will not be disclosed publicly without prior notice to and written consent from the person or entity that produced it.

- e. Anyone asked for documents or information by the Select Panel majority or minority will be provided with a copy of these rules.

3. Working Groups

- a. Notice: The date, time, place, and subject matter of any working group shall be provided to all Select Panel members at least one week in advance of the convening of the working group.
- b. Procedures: Specific rules applicable to each working group shall be agreed to by the chair and ranking member. At a minimum, those rules shall explain the amount of time and order in which Select Panel members will be recognized for questioning, the process for selection of majority and minority witnesses, whether the “working group” will be open to the public and transcribed or not, and the basic rights of any witness/panelist appearing before the Select Panel. The applicable rules will be provided to all Select Panel members at least three business days in advance of the convening of any working group.
- c. Equal Participation: No working group may be convened unless notice and an equal opportunity to participate has been afforded to all members of the Select Panel.
- d. “Working Group”: For purposes of these rules, the term “working group” means any meeting convened as part of the investigation and study authorized by H.Res. 461 and shall include, for example, “working groups,” “working sessions,” “forums,” or “roundtables.”

4. Subpoenas

- a. Ranking member concurrence or Select Panel vote: In the event that the ranking member does not concur with a proposed action of the chair under this section, a vote of the Select Panel shall be held at a business meeting in order to resolve the matter.

Proposed Investigative Plan
Democratic Members of the Select Investigative Panel
Energy and Commerce Committee

On October 7, 2015, the House passed H.Res. 461 and created this Select Investigative Panel of the Energy and Commerce Committee to study, among other things, all “relevant matters with respect to fetal tissue procurement,” and “Federal funding and support for abortion providers.” In conducting Panel business, the Chair has represented the Panel as “The Select Panel on Infant Lives.”

The Panel has been directed to conduct an investigation and issue a final report as well as any interim reports it deems necessary. To accomplish this task, the Panel will hold hearings and use other tools available under the existing rules of the House and of the Energy and Commerce Committee.

The Panel will reach conclusions based on an objective review of the facts, and will treat witnesses or others called upon to participate in our investigation fairly and in a manner that safeguards their privacy and safety. The Panel will request information in a responsible manner and appropriately limit its requests to information needed to meet a stated investigative purpose.

As described in more detail below with regard to the Panel’s study of matters related to fetal tissue procurement, Federal support and funding for abortion providers, and infant lives, this investigation will include:

- **The benefits of fetal tissue research.** No investigation of fetal tissue research is complete without full consideration of why this research is important and how scientists use these cells to develop vaccines and seek treatment for a host of ailments that afflict millions of Americans, ranging from vision loss and neurological disorders to cancer and HIV/AIDS. The Panel will explore unique aspects of fetal tissue, which divide rapidly and adapt to new environments easily, and how research using these cells enhances, among other things, our understanding of cell biology, human development, and fetal growth and anomalies.
- **The range of critical, life-saving services that reproductive healthcare professionals provide.** Healthcare professionals who provide safe and legal abortion services in this country also provide a wide range of other reproductive healthcare services such as family planning and counseling, birth control, screenings for cancer, and testing for sexually transmitted infections. Any examination of Federal funding and support for abortion providers must consider the range of other critical, life-saving services that these reproductive healthcare professionals provide. The Panel will examine the importance of reproductive healthcare on the health of women and their children, and the practical and legal implications of legislative efforts targeting abortion and abortion providers.

- **What is really needed to protect infant lives.** Any serious consideration of what is needed to protect “infant lives” must consider the full range of issues that impact the health of women and their families before, during, and after a pregnancy. The Panel will examine how programs designed to provide healthcare, food supplements, and educational opportunities are faring and whether additional congressional support is needed.
- **The conspiracy to attack women’s healthcare.** This is not the first time that anti-abortion activists have tried to entrap Planned Parenthood; and it is not the first time that they have used doctored audio or video recordings as “evidence” of their inflammatory, false allegations. In fact, this has happened at least nine times in the last fifteen years. Public policy should not be governed by false, manufactured allegations and this Panel will examine the impact that this coordinated effort has on women’s access to healthcare.
- **Protecting patients and providers from violence, harassment, and intimidation.** No woman should be afraid to go to her doctor, and no healthcare professional should have to risk being killed for ensuring that women get the healthcare that they need. The Panel will examine the history of violence against healthcare providers and patients and whether existing laws and law enforcement efforts are sufficient to protect women and their healthcare providers.

Matters Related to Fetal Tissue Procurement

Uses and Benefits of Fetal Tissue Research

This is not the first time that fetal tissue research – and the scientists performing this important work—have come under attack. Following the Supreme Court’s 1973 decision in *Roe v. Wade*, moratoriums were placed on the study of fetal tissue at several different times, as anti-abortion activists portrayed fetal tissue as part of a “so-called ‘abortion mentality’ that ‘dehumanized’ the fetus.”¹ However, after a blue-ribbon advisory panel, convened under President Ronald Reagan in 1988, voted overwhelmingly in favor of allowing fetal tissue research, the moratorium was finally lifted.

Any objective investigation of issues related to fetal tissue procurement must include an examination of why this research is being conducted. The Panel’s investigation will examine the uses and benefits of fetal tissue research, including how scientists use these cells to develop vaccines and seek treatments for a host of ailments that afflict millions of Americans, ranging from vision loss and neurological disorders to cancer and HIV/AIDS. The Panel will explore unique aspects of fetal tissue, which divide rapidly and adapt to new environments easily, and how research using these cells enhances, among other things, our understanding of cell biology, human development, and fetal growth and anomalies.

¹ Rachel Benson Gold, Dorothy Lehrman, *Fetal Research Under Fire: The Influence of Abortion Politics* 21 FAMILY PLANNING PERSPECTIVES 6-11 (1989).

In the course of its work, the Panel will seek information and testimony from scientists involved in fetal tissue research, as well as individuals impacted by their work. The Panel will also explore how Mr. Daleiden's allegations of unlawful fetal tissue sales and congressional investigations have affected their work, whether they have been the target of violence, harassment or intimidation, and whether enhanced security measures have been necessary to address any threats against them.

The Conspiracy to Attack Women's Healthcare

This Select Investigative Panel was established following release of secretly-recorded and deceptively-edited videos created by David Daleiden and the Center for Medical Progress (CMP) that purport to show Planned Parenthood engaged in the unlawful sale of fetal tissue. Republican lawmakers have seized on these videos to launch a series of investigations against Planned Parenthood, including this one.

Three House Committees – Energy and Commerce, Oversight and Government Reform, and Judiciary – already investigated the allegations raised in Mr. Daleiden's videos and found no evidence of wrongdoing by Planned Parenthood. Not one of these investigations questioned or investigated Mr. Daleiden, despite requests from Democratic Members that they do so. Nor have any of these investigations paid any attention to the devastating consequences that these baseless attacks have on women's access to critical healthcare.

Mr. Daleiden is now under indictment by a grand jury in Texas as the result of an investigation that was supposed to indict Planned Parenthood. Republican Lt. Gov. Dan Patrick – an outspoken opponent of abortion and Planned Parenthood – asked for the investigation to look into wrongdoing by the nation's leading provider of reproductive healthcare. But after an exhaustive review of the actual evidence, the grand jury cleared Planned Parenthood of wrongdoing and, instead, returned criminal indictments against Mr. Daleiden and one of his associates at CMP. Yet even after these indictments were issued, Republican Members have continued to cite to the videos as support for their ongoing attack on women's healthcare.²

This is not the first time that anti-abortion activists have tried to entrap Planned Parenthood; nor is it the first time that they have used doctored audio or video recordings as alleged "evidence" of their inflammatory, false claims. In fact, this has happened at least nine times in the last fifteen years:

² Rep. Marsha Blackburn, *New Video Raises More Questions About Big Abortion Business Practices* (Feb. 3, 2016), <http://blackburn.house.gov/news/documentsingle.aspx?DocumentID=397866>.

- ***In 2000, video falsely claims Planned Parenthood sells fetal tissue for profit***³
- In 2002, telephone “sting” recordings falsely claim Planned Parenthood conceals the sexual exploitation of children⁴
- In 2008, videos falsely claim Planned Parenthood condones statutory rape⁵
- In 2009, videos falsely claim Planned Parenthood evades informed consent laws⁶
- In 2010, videos falsely claim Planned Parenthood coerces women to have abortions⁷
- In 2011, videos falsely claim Planned Parenthood condones sex trafficking⁸
- In 2012, videos falsely claim Planned Parenthood encourages sex-selective abortions⁹
- In 2013, videos falsely claim Planned Parenthood conducts illegal abortions¹⁰
- ***In 2015, videos falsely claim Planned Parenthood sells fetal tissue for profit***¹¹

Indeed, Mr. Daleiden’s specific copycat tactics and claims revisit those of an alleged “whistleblower” who, fifteen years ago, secretly recorded videos to falsely allege that Planned Parenthood sells fetal tissue for profit.¹² Then – as now – the false “evidence” sparked Congressional and law enforcement investigations. The case against Planned Parenthood

³ Tony Pugh, *Secret Videos in Abortion Wars are Nothing New*, MCCLATCHYDC (Aug. 20, 2015), <http://www.mcclatchydc.com/news/nation-world/national/article31660535.html>.

⁴ *Pro-Life Group Launches Undercover Sting*, FOX NEWS (May 31, 2002), <http://www.foxnews.com/story/2002/05/31/pro-life-group-launches-undercover-sting.html>. See also Memorandum from George Grob, Assistant Inspector General for Evaluations and Inspections, Dept. of Health and Human Services (Apr. 25, 2005), <http://oig.hhs.gov/oei/reports/oei-02-03-00530.pdf>.

⁵ Ryan Grim, *Behind the Assault on Planned Parenthood*, HUFFINGTON POST (Feb. 25, 2011), http://www.huffingtonpost.com/2011/02/24/planned-parenthood-funding_n_827886.html. See Also, Transcript, Live Action Video Footage (Feb. 13, 2011), available at <http://big.assets.huffingtonpost.com/Indianapolis.pdf>.

⁶ Transcript, Live Action Video Footage (Feb. 13, 2011), available at <http://big.assets.huffingtonpost.com/Omittingfootage.pdf>.

⁷ *Id.*

⁸ Devin Dwyer, *Abortion Activists Attempt to Discredit Planned Parenthood with Second Video*, ABC NEWS (Feb. 4, 2011), <http://abcnews.go.com/print?id=12831614>.

⁹ Laura Bassett, *Sex-Selective Abortion Ban Fails in House as Live Action Releases Second Video*, HUFFINGTON POST (May 31, 2012), http://www.huffingtonpost.com/2012/05/31/sex-selection-abortion-vote-fails-house-gop_n_1559827.html.

¹⁰ Simon Maloy, *Live Action’s Latest Abortion Clinic Undercover Video a Bust*, MEDIA MATTERS FOR AMERICA (Apr. 28, 2013), <http://mediamatters.org/blog/2013/04/28/live-actions-latest-abortion-clinic-undercover/193812>.

¹¹ Dave Levitan, *Unspinning the Planned Parenthood Video*, FACTCHECK.ORG (July 21, 2015), <http://www.factcheck.org/2015/07/unspinning-the-planned-parenthood-video/>.

¹² *Supra* n. 3.

collapsed, however, when the alleged “whistleblower” featured on the secretly-recorded video admitted under oath before Congress that he had lied.¹³

In each of these instances, Planned Parenthood has been cleared of wrongdoing when the facts are revealed. Often, however, the exonerations do not get near the attention of the initial false allegations and, even when confronted with the actual facts, continued claims of wrongdoing by Planned Parenthood persist.

This pattern – the manufacture of false “evidence” by anti-abortion extremists and the reflexive rush from lawmakers to investigate (and often condemn) Planned Parenthood – warrants serious investigation. Congressional and law enforcement investigations of Planned Parenthood that repeatedly have been proved baseless have cost millions in taxpayer dollars. More importantly, they have diverted time and resources that would otherwise go to healthcare for American women and their families.

The Panel will examine the history of smear attacks against Planned Parenthood – including investigation into Mr. Daleiden and the Center for Medical Progress – and how legislative and law enforcement officials have responded to these attacks. The Panel will also examine how these false campaigns have affected reproductive healthcare providers and their patients, including the impact on access to care, whether they have been the target of violence, harassment or intimidation, and what (if any) enhanced security measures have been necessary to address any threats against them.

In the course of its work, the Panel will seek information and testimony from Mr. Daleiden and others who have been involved in campaigns against Planned Parenthood and other reproductive healthcare providers. The Panel will also hear from organizations and individuals adversely impacted by these persistent attacks – including fetal tissue researchers, healthcare providers, and patients – as well as legal experts and law enforcement officials.

Federal Support and Funding for Abortion Providers

Life-Saving Healthcare Provided by Planned Parenthood and Others

Healthcare professionals who provide safe and legal abortion services in this country also provide a wide range of other reproductive healthcare services, including family planning and counseling, birth control, screenings for cancer, and testing for sexually transmitted infections. Funding for these services is threatened or lost when funding for Planned Parenthood and other reproductive healthcare providers is reduced or eliminated.

When targeting abortion providers for unfavorable legislative action, lawmakers refuse to consider the broader health consequences of their actions. This is starkly apparent in Texas

¹³ Fetal Tissue: Is it Being Sold in Violation of Federal Law?: Hearing Before the Subcomm. On Health and the Environment of the H. Comm. on Commerce, 106th Cong. 72 (2000).

where – in their zeal to drive Planned Parenthood out of the State – the Republican-dominated legislature eliminated funding for any clinic associated with an abortion provider and passed regulatory requirements that single out abortion clinics and doctors (commonly referred to as TRAP – Targeted Regulation of Abortion Providers – laws).

Texas’s defunding decision slashed the State’s family-planning budget by two-thirds.¹⁴ It eliminated programs that help pay for physician visits, ob/gyn care, and cancer screenings. Two years after these budget cuts, the State’s women’s health program served less than half as many women as it had before the cuts.¹⁵ The Legislature’s own researchers predicted that defunding would result in an additional 20,000 unplanned births and cost more than a quarter billion dollars in federal and state Medicaid support.¹⁶ After political uproar over the cuts ultimately required the Texas legislature to restore funding, the State has struggled to find sufficient, qualified healthcare professionals to rebuild the network that it destroyed.

Texas’s TRAP law has similarly dire consequences for women’s health. That law requires doctors who perform abortions to have admitting privileges at nearby hospitals. Under the law, abortion clinics must meet standards for ambulatory surgical centers. These requirements are burdensome and costly, and serve no legitimate health or safety purpose. The Supreme Court will consider and rule on Texas’s law this term.¹⁷ If enforced, the law would reportedly result in the closure of 30 of the State’s 40 abortion clinics.¹⁸ This would leave only 10 clinics to serve a state with 26 million people.¹⁹

As this experience shows, any examination of Federal funding and support for abortion providers must consider the range of other critical, life-saving services that these reproductive healthcare professionals provide as well as the network of legislative efforts that now threaten access to these services. This Panel will therefore investigate:

- the importance of access to the full range of reproductive health services, including family planning and counseling, sex education, and birth control;
- the importance of access to life-saving preventive care, including screenings for cancer and testing for sexually transmitted infections;

¹⁴ Wade Goodwyn, *Texas Tries to Repair Damage Wreaked Upon Family Planning Clinics*, NPR, (Jan. 29, 2016), <http://www.npr.org/2016/01/28/464728393/texas-tries-to-repair-damage-wrought-upon-family-planning-clinics>.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Adam Liptak, *Supreme Court to Hear Texas Abortion Law Case*, NEW YORK TIMES (Nov. 13, 2015), <http://www.nytimes.com/2015/11/14/us/politics/supreme-court-accepts-texas-abortion-law-case.html>.

¹⁸ *Id.*

¹⁹ James McAuley, *Texas’s TRAP for Women*, WASHINGTON POST (July 18, 2013), <https://www.washingtonpost.com/blogs/post-partisan/wp/2013/07/18/texass-trap-for-women/>.

- the importance of access to safe and legal abortion services – what it was like for women in America before abortion was safe and legal and what it would mean to return to those days;
- the concerted legislative effort to enact laws and regulations that threaten or eliminate women’s access to this critical care; and
- the impact that shuttering clinics – through defunding or targeted regulatory requirements – has on women’s health.

In the course of its work, the Panel will seek information and testimony from healthcare providers and their patients – doctors and women who experienced what it was like in the days before abortion was safe and legal, and those who seek to provide or obtain critical reproductive healthcare today. The Panel will also hear from researchers, public health and legal experts about the importance of reproductive healthcare on the health of women and their children, and the constitutional and other legal implications of legislative efforts targeting abortion and abortion providers.

Violence Against Abortion Providers and Patients

Since abortion was recognized as a Constitutional right in this country, doctors and patients have been murdered, clinics have been vandalized, and ongoing threats have put doctors, scientists, and their families in fear for their safety.²⁰ Over the past six months – and in the aftermath of Mr. Daleiden and CMP’s release of their highly-edited and inflammatory videos in July – the FBI has reported a rise in attacks against Planned Parenthood clinics and others.²¹

The day after Thanksgiving, an anti-abortion extremist murdered three people, injured nine others, and terrorized providers and patients at an abortion clinic in Colorado Springs. A law enforcement official said that the shooter used the phrase “no more baby parts” to explain his attack, and the gunman later admitted his guilt in open court, proclaiming himself a “warrior for the babies.”²²

No woman should be afraid to go to her doctor; and no healthcare professional should have to risk being killed for ensuring that women can get the full range of safe and legal

²⁰ Liam Stack, *A Brief History of Deadly Attacks on Abortion Providers*, NEW YORK TIMES (Nov. 29, 2015), http://www.nytimes.com/interactive/2015/11/29/us/30abortion-clinic-violence.html?_r=0; *Fetal Tissue Research Under Threat*, NATURE (Dec. 7, 2015) <http://www.nature.com/news/fetal-tissue-research-under-threat-1.18967>.

²¹ Emily Crockett, *Attacks on Abortion Providers Have Increased Since the Planned Parenthood Videos*, VOX (Nov. 28, 2015), <http://www.vox.com/2015/11/28/9810572/abortion-attacks-planned-parenthood-colorado>.

²² Richard Pausset, *Suspect in Colorado Planned Parenthood Rampage Declares ‘I’m Guilty’ in Court*, NEW YORK TIMES (Dec. 9, 2015) <http://www.nytimes.com/2015/12/10/us/colorado-planned-parenthood-shooting.html>.

reproductive healthcare services that they need. These Americans – like all others – deserve the support of their federal government against acts of violent extremists.

This Panel will investigate violence against abortion providers and patients, the steps that law enforcement agencies have taken and should be taking to investigate and bring to justice those who commit violent acts, and whether existing laws provide sufficient protection and support for women and their doctors.

In the course of its work, the Panel shall seek information and testimony from healthcare providers and patients affected by extremist violence, researchers and legal experts who have long studied and tracked anti-abortion extremists and groups, and law enforcement officials.

Enhancing Infant Lives

Any serious interest in protecting “infant lives” must consider the full range of issues that impact the health of women and their families before, during, and after a pregnancy. Our interest in protecting infant lives cannot, and should not, begin and end with childbirth.

According to the Centers for Disease Control and Prevention, a woman’s health is the most important factor for pregnancy-related health outcomes.²³ Good pre-conception health and healthcare and appropriate prenatal care during pregnancy improve birth outcomes. Pregnant women also need financial security and stability, warranting examination of current federal support and laws, including the lack of a clear prohibition against discrimination or requirement of reasonable workplace accommodations for pregnant workers.

Women and families also need adequate support following childbirth. This Panel will investigate how programs designed to provide healthcare, food supplements, and educational opportunities have fared since 2010, including the Children’s Health Insurance Program (CHIP) and Medicaid, the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), the Title V Maternal and Child Health Block Grant program, Early Head Start, and the Maternal, Infant, and Early Childhood Home Visiting (MIECHV) program. The Panel will also consider the needs for additional federal funding and support.

²³ CENTERS FOR DISEASE CONTROL AND PREVENTION, MATERNAL AND INFANT HEALTH, *available at* <http://www.cdc.gov/reproductivehealth/maternalinfanthealth/>.

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives

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Minority (202) 225-3641

February 12, 2016

The Honorable Marsha Blackburn
Chair, Select Investigative Panel
U.S. House of Representatives
Washington, D.C. 20515

Dear Madam Chair:

We are writing to request that you abandon your plan to issue subpoenas or immediately schedule a special meeting of the Select Panel in order to vote on your proposed use of compulsory process to force healthcare providers and others to disclose the names of doctors, medical students, and clinic personnel. We firmly believe that this is an abusive and unjustifiable use of the chair's unilateral subpoena authority.

The Democratic Members of the Panel repeatedly have asked you not to seek this type of personally identifiable information and to put in place clear rules that would govern the Panel's handling of any sensitive information that it receives. We have done so out of serious concern that any disclosure of names jeopardizes individual privacy and safety. To date, you have ignored our requests to meet and have refused even to discuss the issue with us.

You have also excluded us from discussions with recipients of your document requests. It is our understanding, however, that the organizations that are about to receive your subpoenas have been in negotiations with your staff and have taken substantial voluntary steps to comply with your requests. In fact, counsel for one of these organizations assured us that he had reached agreement on every paragraph of your document request letter and his production is not due until next Tuesday, February 16, 2016. The decision to use your unilateral subpoena authority – even before the due date for production of the documents that you have requested – is an abuse of the position of the chair.

Existing rules of the Energy and Commerce Committee require more than mere notification of your intent to issue subpoenas. Those rules obligate you to “consult with the ranking member at least 72 hours in advance of a subpoena being issued.”ⁱ You advised the ranking member during floor votes late yesterday afternoon that you are issuing subpoenas. The ranking member responded immediately that doing so would be dangerous, as it puts people's privacy and safety at risk. We then immediately asked for additional information and an opportunity to discuss these subpoenas. Those requests went unanswered and, a few hours later, you issued a press release announcing that “after consultation with Ranking Member Jan Schakowsky” you would be issuing subpoenas early next week. Advising the ranking member

on the floor of the House that you intend to issue subpoenas and refusing to speak further with us does not constitute consultation.

Exercising your unilateral subpoena authority in this manner is exactly the type of abuse that we were concerned about when we asked you to adopt rules for the Select Panel. Our rules would require concurrence of the ranking member or a Panel vote, ensuring sufficient, good-faith efforts to obtain voluntary compliance before any subpoena could be issued. Unfortunately, your actions here mirror the abusive exercise of unilateral subpoena authority that has become all-too common under House Republican leadership.

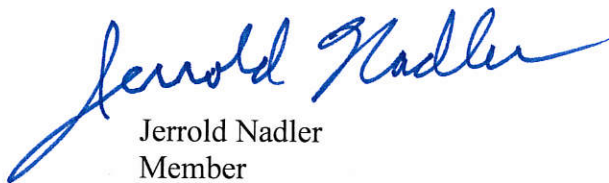
Just over two months ago – on the day after Thanksgiving – an anti-abortion extremist murdered three people, injured nine others, and terrorized providers and patients at an abortion clinic in Colorado Springs. In December, another extremist was indicted for offering cash to kill an executive at one of the organizations that you are now threatening to subpoena. In that case, an anti-abortion extremist posted online that the “[company executive] should be hung by the neck using piano wire and propped up on the lawn in front of the building with a note attached.”ⁱⁱ It is appalling that, in this atmosphere, you have elected to use your unilateral subpoena authority in a manner that may increase the risk for healthcare providers, clinic personnel, medical students, and researchers.

We urge you to abandon your plan to issue these subpoenas and to start working with us in a bipartisan way to ensure that we are not putting the privacy and safety of any Americans at risk.

Sincerely,



Jan Schakowsky
Ranking Member
Select Investigative Panel



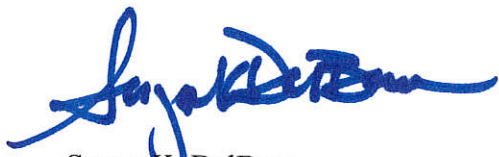
Jerrold Nadler
Member
Select Investigative Panel



Diana DeGette
Member
Select Investigative Panel



Jackie Speier
Member
Select Investigative Panel



Suzan K. DelBene
Member
Select Investigative Panel



Bonnie Watson Coleman
Member
Select Investigative Panel

ⁱ Rules of the Committee on Energy and Commerce, 114th Congress, 10 (Jan. 14, 2015), available at <https://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/analysis/114CommitteeRules.pdf>.

ⁱⁱ Jessica Glenza, *Man charged for online violent threats against company over Planned Parenthood fetal tissue*, THE GUARDIAN (Dec. 17, 2015), <http://www.theguardian.com/us-news/2015/dec/17/planned-parenthood-online-violent-threats-stemexpress-fetal-tissue>.

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February 24, 2016

The Honorable Marsha Blackburn
Chair
Select Investigative Panel
U.S. House of Representatives
Washington, D.C. 20515

Dear Madam Chair:

As the Ranking Member of this Select Panel and the Ranking Member of the Oversight and Investigations Subcommittee, we are writing to ask that you move next week's Select Panel hearing to a later date and make it possible for us – and you – to participate fully in a hearing on the Zika virus.

We brought this conflict to your attention and asked that you move the Select Panel hearing. A few hours later, the Energy and Commerce Committee issued hearing notices for next Wednesday, March 2, 2016, showing that your Select Panel hearing is still scheduled to conflict with the hearing on Zika in the Oversight and Investigations Subcommittee.

The Zika virus has been linked to microcephaly, a serious and incurable condition. The World Health Organization has declared Zika-linked birth defects a "Public Health Emergency of International Concern" and the Centers for Disease Control (CDC) has issued travel warnings to pregnant women. While it already is clear that Zika is transmitted by mosquitos, just yesterday the CDC reported that it is also now investigating fourteen new cases of potential sexual transmission of the virus. A number of these cases involve pregnant women who were infected here in the United States, making it additionally clear that addressing this problem is a high priority, time-sensitive matter for Congress.

Our standing committees must play a critical, immediate role in addressing the Zika virus. Yet the current scheduling conflict between the Select Panel and the Oversight and Investigations subcommittee means that you will not be able to participate fully in the Zika hearing. It also means that Representative DeGette – who serves as the Ranking Member of the Oversight and Investigations Subcommittee – will likely miss substantial portions of the Select Panel hearing because she will be in the Zika hearing. Two other Select Panel Members –

Ranking Member Schakowsky and Representative Larry Bucshon – face the same unfortunate, and unnecessary, choice.

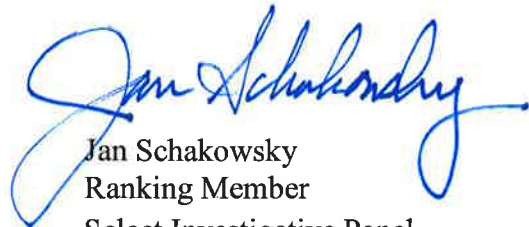
You have proclaimed this to be the “Select Panel on Infant Lives.” Given the disproportionate and devastating impact of the virus on women and infants, having our members fully engaged and participating in congressional work on Zika should be a shared interest for all of us. Indeed, it would be unfortunate if members of the Select Panel were unable to attend a hearing on a matter with such clear, negative impact on infants.

While addressing the Zika virus is of utmost urgency, a short delay of a few weeks to hold the Select Panel hearing should not impede the Select Panel’s ability to complete its work, particularly given the lack of any investigative plan or timeline for doing so. We therefore ask that you move the Select Panel hearing to a date later in the month so that we – and you – can participate fully in the Oversight and Investigations Subcommittee hearing on the Zika virus.

Sincerely,



Diana DeGette
Ranking Member
Subcommittee on Oversight and Investigations



Jan Schakowsky
Ranking Member
Select Investigative Panel

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April 7, 2016

The Honorable Marsha Blackburn
Chair
Select Investigative Panel
U.S. House of Representatives
Washington, D.C. 20515

Dear Madam Chair:

We are increasingly concerned that, rather than following the fact-based standard that you set for this investigation, you are basing your investigation on allegations of anti-abortion extremists. This was true of the prior House investigations, which relied on deceptively-edited videos created by David Daleiden and the Center for Medical Progress (CMP) to justify investigating and defunding Planned Parenthood. It appears to be equally true of this Panel's work.

We know that at least one anti-abortion group claims to have provided the Select Panel with "documentation" that has not been shared with Democrats. That group has spent the past five years conducting a campaign of targeted harassment against a health care provider and university that you have chosen to target with the issuance of unilateral subpoenas despite their voluntary efforts to respond to your demands.

Continued Reliance on False "Evidence" from David Daleiden

During the Panel's first hearing, held on March 2, 2016, you asserted that "last summer's videos revealed that something very troubling is going on related to fetal tissue in research... procuring and transferring baby body parts."¹ Even more recently, during a March 22 interview on C-SPAN, you encouraged viewers to "go online and look at some of the raw footage" from these videos.²

¹ Select Investigative Panel of the Committee on Energy and Commerce, Hearing on Bioethics and Fetal Tissue (March 2, 2016).

² C-SPAN, *Washington Journal* (Mar. 22, 2016), available at <http://www.c-span.org/video/?406478-3/washington-journal-representative-marsha-blackburn-rtn>.

We have known for months that these videos are not factually accurate and do not show the unlawful sale of fetal tissue. In fact, they do not show anyone – other than the makers of the videos – doing anything unlawful.

In response to the Energy and Commerce Committee’s investigation last year, Planned Parenthood submitted the analysis of forensic experts who reviewed the so-called “full footage” of the Daleiden videos. Those experts concluded that the videos “cannot be relied upon for any official inquiries” and that even the underlying transcripts are “useless as ‘evidence’” because they contain “numerous errors, discrepancies, and omissions.”³ You, along with other Members of the Select Panel, serve on the Energy and Commerce Committee and received that report in August 2015.

Then, on January 27, 2016, a Texas grand jury that was asked by Republican lawmakers to investigate Planned Parenthood instead indicted Mr. Daleiden for breaking the law through his efforts to entrap Planned Parenthood. The District Attorney handling the case refused to represent the case to another grand jury, explaining that “we must go where the evidence leads us.”⁴ She made clear that this obligation applies regardless of one’s personal views about abortion: “Anyone who pays attention knows that I’m pro-life. I believe abortion is wrong. But my personal belief does not relieve me of my obligation to follow the law.”⁵

A few weeks later, a federal judge also confirmed that the videos provide no evidence of wrongdoing by healthcare providers: “Having reviewed the records or transcripts in full and in context, I find that no [National Abortion Federation] attendee admitted to engaging in, agreed to engage in, or expressed interest in engaging in potentially illegal sale of fetal tissue for profit.”⁶ That judge went on to find that Mr. Daleiden’s conduct and videos “have not been pieces of journalistic integrity, but misleadingly edited videos and unfounded assertions (at least with respect to the NAF materials) of criminal misconduct. Defendants did not – as Daleiden repeatedly asserts – use widely accepted investigatory journalism techniques.”⁷

You have stated that this Panel will conduct a serious, fact-based inquiry. In an interview with FOX News shortly after being named Chair of the Select Panel you explained:

³ Fusion GPS, *Analysis of Center for Medical Progress Videos* (Aug. 25, 2015).

⁴ ABC 13, *Harris County Grand Jury Indicts Anti-Abortion Activists Behind Planned Parenthood Videos* (Jan. 25, 2016), available at <http://abc13.com/news/grand-jury-wont-take-action-against-planned-parenthood-gulf-coast/1173356/>.

⁵ KHOU, *Harris County DA responds to indictments of filmmakers* (Jan. 27, 2016), available at <http://www.khou.com/videos/news/local/2016/01/27/79436706/>.

⁶ Nat'l Abortion Fed'n v. Ctr. for Med. Progress, No. 15-cv-03522-WHO, 2016 U.S. Dist. LEXIS 14485 at *28-29 (N.D. Cal. Feb. 5, 2016) (granting motion for preliminary injunction).

⁷ *Id.* at *84.

*You're going to see us work as a fact-finding information gathering committee ...we're going to do our job to get the facts, and then we're going to follow where those facts take us in finding answers for the American people.*⁸

Three House Committees, twelve states, and a Texas grand jury have already investigated the inflammatory allegations against Planned Parenthood fueled by Mr. Daleiden's false videos and found no wrongdoing by healthcare providers. If finding fact-based answers for the American people is the goal, then admitting when the facts do not support particular allegations or partisan narratives must be part of our work. It is long past time to correct the record on Mr. Daleiden and his videos.

Newfound Reliance on Anti-Abortion Extremists

In addition to the continued reliance on the debunked videos from last summer, we are also concerned that this investigation is being fueled by additional "documentation" from anti-abortion extremists.

For example, the anti-abortion group Protest ABQ advertises on their website that it "submitted documentation, compiled over 5 years of research, to the panel..."⁹ Yet this information has not been shared with Democratic Members, in violation of House and Committee rules, and despite our repeated requests that you share all information being received or collected in the course of this investigation.

The activists leading Protest ABQ are associates of Troy Newman, a leader of the anti-abortion movement who orchestrated Operation Rescue's targeted harassment of Dr. George Tiller in Wichita, Kansas.¹⁰ Mr. Newman was also a founding board member of the Center for Medical Progress who "counseled [David] Daleiden on the efforts to set up the fake company, to infiltrate meetings, and to secure recordings in support of the Project."¹¹

⁸ Fox News Channel, *Vote to de-fund Planned Parenthood to take place Friday* (Oct. 25, 2015), available at <http://video.foxnews.com/v/4577591986001/vote-to-de-fund-planned-parenthood-to-take-place-friday/?#sp=show-clips>.

⁹ Protest ABQ, *Southwestern Women's Options and UNM Refuse to Comply with U.S. House Investigation* (Feb. 12, 2016), available at <http://www.protestabq.com/news/southwestern-womens-options-and-unm-refuse-to-comply-with-us-house-investigation>.

¹⁰ Rick Nathanson, *Albuquerque's anti-abortion crusaders*, Albuquerque Journal (Jan. 31, 2016), available at <http://www.abqjournal.com/715311/news/couple-are-albuquerques-antiabortion-crusaders.html>; Operation Rescue, *How Troy Newman Rescued Operation Rescue* (accessed online Apr. 4, 2016), available at <http://www.operationrescue.org/about-us/history/how-troy-newman-rescued-operation-rescue/>.

¹¹ Nat'l Abortion Fed'n v. Ctr. for Med. Progress, No. 15-cv-03522-WHO, 2016 U.S. Dist. LEXIS 14485 at *9 (N.D. Cal. Feb. 5, 2016) (granting motion for preliminary injunction).

Operation Rescue's campaign of targeted harassment against Dr. Tiller lasted seven years and included blockading his clinic, tailing him with hidden cameras, sending death threats, and bombing his clinic.¹² In 2009, Scott Roeder murdered Dr. Tiller at his church during Sunday morning services.¹³ Mr. Roeder had posted multiple times on Operation Rescue's blog, and contact information for Operation Rescue was found in his car at the time of his arrest.¹⁴

Following Dr. Tiller's murder and the closure of his clinic, Operation Rescue dispatched members of their Wichita team to continue their targeted harassment of healthcare providers in Albuquerque, New Mexico.¹⁵ That team later became the lead organizers of Protest ABQ, an organization that the pro-life Republican Mayor of Albuquerque has denounced for aggressive tactics that have left school children "traumatized."¹⁶ In their five-year campaign, Protest ABQ has targeted Southwestern Women's Options and the University of New Mexico – the healthcare provider and university that you are now focusing on through this Panel's investigation. Two of your three initial unilateral subpoenas went to them, as did three of your four initial deposition demands. Yet you have never explained why they are being targeted and have not shared with Democrats "documentation" that Protest ABQ claims to have submitted to the Panel.¹⁷

Continued Failure to Provide Any Objective Basis for the Panel's Work

We are not aware of any legitimate basis for this Panel to target these providers, and you have refused to provide any. Abortion is legal in this country. The fact that some providers perform this service is not a legitimate reason to use the power of the Congress to harass, intimidate, or target them.

¹² David Barstow, *An Abortion Battle, Fought to the Death*, New York Times (July 25, 2009), available at http://www.nytimes.com/2009/07/26/us/26tiller.html?_r=0.

¹³ Joe Stumpe and Monica Davey, *Abortion Doctor Shot to Death in Kansas Church*, New York Times (May 31, 2009), available at <http://www.nytimes.com/2009/06/01/us/01tiller.html?pagewanted=all>.

¹⁴ Amanda Terkel, *Operation Rescue Tries to Distance Itself from Roeder's Activities on Behalf of the Group*, Think Progress (June 1, 2009), available at <http://thinkprogress.org/politics/2009/06/01/43207/roeder-operation-rescue/>.

¹⁵ Pro-Life Witness, *About Page* (accessed online Apr. 4, 2016), available at <http://prolifewitness.org/about-page/>.

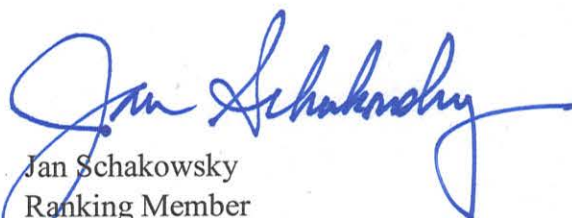
¹⁶ Joey Peters, NM Political Report, *ABQ mayor denounces tactics from anti-abortion group* (Sep. 25, 2015), available at <http://nmpoliticalreport.com/14825/abq-mayor-denounces-tactics-from-anti-abortion-group/>.

¹⁷ Rule XI, clause (2)(A) of the House of Representatives plainly states that each Member shall have access to all committee records and files. Furthermore, Rule X, clause (9)(g) specifies that Minority staff members are "accorded equitable treatment with respect to. . . the accessibility of committee records." To the extent that one might claim that this information was provided to the Panel by a "whistleblower" on a "confidential" basis, that claim is not credible where the organization has touted its efforts to aid our work on its public website.

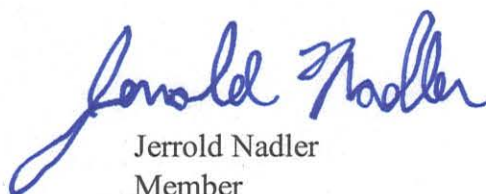
Republicans should not use this Panel to advance the work of anti-abortion extremists. We seek access to the documents you have been provided and we ask that you hold a public meeting when the Congress returns this month and explain to us – and the American people – what you are investigating and why.

The eagerness of Republican officials to follow the lies being peddled by anti-abortion extremists like Troy Newman and David Daleiden has wasted millions of taxpayer dollars and put vital research and health care at risk. Republicans owe it to the American people to prove that this Panel has a legitimate basis or bring this partisan witch hunt to an end.

Sincerely,



Jan Schakowsky
Ranking Member
Select Investigative Panel



Jerrold Nadler
Member
Select Investigative Panel



Diana DeGette
Member
Select Investigative Panel



Jackie Speier
Member
Select Investigative Panel



Suzan K. DelBene
Member
Select Investigative Panel



Bonnie Watson Coleman
Member
Select Investigative Panel

ONE HUNDRED FOURTEENTH CONGRESS
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House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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Majority (202) 225-2927
Minority (202) 225-3641

April 25, 2016

The Honorable Marsha Blackburn
Chair
Select Investigative Panel
U.S. House of Representatives
Washington, D.C. 20515

Dear Madam Chair:

We are writing to address your latest threat to the privacy and safety of scientists and doctors who provide life-saving research and care and to request a special meeting of the Select Panel to adopt rules to safeguard individual privacy and security, as we proposed in February.

Democrats have repeatedly objected to your dangerous demand for a database of names and have asked for rules, which you have refused. Your staff has now candidly confirmed that you have no intention of safeguarding the names that you are demanding and, instead, may publicly release them.

Doctors and clinic staff who provide reproductive health care are at grave risk. Their workplaces are picketed and bombed, they and their families are targeted on web sites and receive harassing mail and phone calls, and some have been murdered. From the outset, we have raised concerns that this baseless investigation into what you constantly describe as the unlawful sale of “baby body parts” is increasing the danger that these individuals already face.

You have publicly acknowledged that “we know that it’s important that we act responsibly with each and every name.”¹ Yet you have refused even to discuss with us the enactment of enforceable rules to achieve this aim. After it was publicly reported that you were proposing to outside parties that they could “use pseudonyms or other designators” and that you

¹ Kelsey Harkness, *Here’s Why Republicans Are Demanding Names in Fetal Tissue Probe*, THE DAILY SIGNAL (Apr. 6, 2016).

The Honorable Marsha Blackburn

April 25, 2016

Page 2

would keep identifying information “locked in a safe,”² we asked your staff for more details, only to be told that there were no real details and that Republicans would continue to exclude Democrats from these discussions.

These public statements have now proved inaccurate. As explained in a letter sent to the Panel today, when asked to confirm what steps would be taken to protect the names of individuals identified in the course of this investigation, your staff made the following statement:

“We will not assure that [the deponent’s] name or any of the other names used in the deposition will remain private. It is entirely possible that the deposition could be made public...”³

Since the outset, Republicans have used this Panel to threaten and harass researchers and health care providers. You have targeted individuals – like this one – without any objective, fact-based reason for doing so.

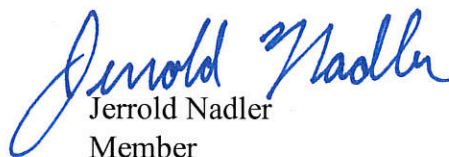
The Panel has known since January that there is no possible profit from the sale of fetal tissue at the clinic where this individual works because that clinic does not take any money to facilitate fetal tissue donation to university researchers. Knowing this, you still used your unilateral subpoena authority to demand her testimony, issuing a subpoena without first asking if she would appear voluntarily. You then made assurances that procedures would be in place to protect her privacy and safety – as well as that of her colleagues – only to revoke that guarantee on the eve of her scheduled deposition. This individual has made it clear that she is willing to appear and answer the Panel’s questions. The only thing preventing that from happening is the Republicans’ refusal to adopt measures that protect individual privacy and safety.

The manner in which this investigation is being conducted dishonors and discredits this Panel and the House. We ask that you immediately schedule a special meeting, as required by House Rule XI, cl.2, to enact rules that safeguard individual privacy and safety. Until this occurs, this investigation should be suspended, if not disbanded altogether.

Sincerely,



Jan Schakowsky
Ranking Member
Select Investigative Panel



Jerrold Nadler
Member
Select Investigative Panel

² *Id.*

³ Letter from Jessica Hertz and Mary Ellen Callahan, Jenner & Block, to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Apr. 25, 2016) (attached).



Diana DeGette
Member
Select Investigative Panel



Jackie Speier
Member
Select Investigative Panel



Suzan K. DelBene
Member
Select Investigative Panel



Bonnie Watson Coleman
Member
Select Investigative Panel

cc: Hon. Paul Ryan, Speaker of the House
Hon. Nancy Pelosi, Democratic Leader
Hon. Fred Upton, Chair, Energy & Commerce Committee
Hon. Frank Pallone, Jr., Ranking Member, Energy & Commerce Committee

April 25, 2016

Jessica R. Hertz

Tel [REDACTED]
[REDACTED]

VIA HAND DELIVERY AND ELECTRONIC MAIL

The Honorable Marsha Blackburn, Chair
Select Panel on Infant Lives
H2-316 Ford House Office Building
Washington, DC 20515

Dear Representative Blackburn:

As counsel for Southwestern Women's Options ("Southwestern"), we write regarding what we believe is a misunderstanding concerning the confidentiality procedures related to the execution of the Panel's deposition authority.

Specifically, you have said publicly, as recently as last week, that the Panel's sources will be kept confidential "out of an abundance of caution,"¹ and that "[the Panel] know[s] that it's important that [it] act responsibly with each and every name [involved in the investigation]."² You also pledged last month to "do everything possible to protect names and identities . . . [and] do redactions as necessary to protect privacy."³

Your staff, moreover, has said to the media that they have "repeatedly told . . . entities on the receiving end of requests and subpoenas for documents that the panel proposes to use pseudonyms or other designators" for the purpose of protecting individuals from their names being disclosed in the public or committee publications.⁴ Indeed, the Panel's lead investigator is quoted as saying:

We've told these people over and over again, we'll agree to a coding system where a person can be called "A," "B," "C," "D" . . . , "Witness A," "Witness B," "Witness C," and you can submit those names on one physical list.⁵

The investigator added, "We've got a safe for that purpose, and only one person would have access to that safe. And that would be someone like the chairman of the committee—staff wouldn't have access to it. So we've made all kinds of offers like that, which is historically the way Congress has handled this."⁶

Our client is committed to providing Congress with the information that it needs to conduct its investigation. After receiving the Panel's initial letter request, our client voluntarily produced more than one thousand pages of documents and, over the course of the Panel's investigation, has produced hundreds more. As part of each production, we have raised privacy, safety, and confidentiality concerns, particularly in light of the threats, harassment, and violence facing women's reproductive health care providers. Indeed, as we have informed your

¹ <http://dailysignal.com/2016/04/20/house-democrats-object-to-evidence-of-profiteering-in-baby-body-parts/>

² <http://dailysignal.com/2016/04/06/heres-why-republicans-are-demanding-names-in-fetal-tissue-probe/>

³ http://www.huffingtonpost.com/entry/republicans-fetal-tissue-research_us_56d71ddee4b0871f60ed7512

⁴ <http://dailysignal.com/2016/04/06/heres-why-republicans-are-demanding-names-in-fetal-tissue-probe/>

⁵ *Id.*

⁶ *Id.*

The Honorable Marsha Blackburn
Page 2 of 3
April 25, 2016

staff, our client was the victim of an arson and, unfortunately, needs to be in regular communication with law enforcement in order to keep its employees and patients safe, as evidenced by documents we have produced for the Panel at SWWO1038; SWWO001044-SWWO001046; SWWO001051-1053; SWWO001058-SWWO001066; SWWO1074-SWWO001082; and SWWO001108-SWWO001112.

On February 17, 2016, we discussed these concerns with the Panel's staff and, consistent with your staff's public statements referenced above, they offered the use of either pseudonyms or codes, with the actual identity of a deponent kept in a locked safe. Your staff indicated at that time that an agreement would be reached with regard to confidentiality as the investigation and potential depositions moved forward.

However, two business days prior to the scheduled deposition of our client's employee, we received the following response from the Panel's staff after we attempted to confirm these confidentiality procedures:

We will not assure that [the deponent's] name or any of the other names used in the deposition will remain private. It is entirely possible that the deposition could be made public. . . .⁷

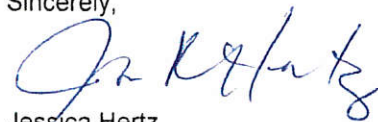
This response directly contradicts the Panel's consistent assurance in the press—and our conversation on February 17, 2016 with Panel staff—that individuals' identities and information provided to the Panel will be protected and kept confidential through agreed-upon procedures.

As we have stated previously, our client has serious concerns that disclosure not only of the deponent's name, but of any other name referenced even in passing during the deposition, would significantly infringe on these individuals' privacy rights and could subject them to harassment, intimidation, or physical harm. Furthermore, it seems clear that disclosing the names of these individuals to the public does not advance the Panel's efforts to investigate issues related to fetal tissue. This is especially the case here because—as we informed you as early as February 12, 2016, in our very first letter response to the Panel—our client does not sell fetal tissue or recoup expenses associated with tissue donation, nor has it ever done so. This deponent has little, if anything, relevant to add to this issue.

Therefore, we trust this is a misunderstanding and that the Panel intends to put in place appropriate confidentiality procedures that will protect our client, as it has publicly and privately assured counsel. Given the gravity of these concerns, this confusion must be resolved before a deposition can take place. Accordingly, we will not be able to go forward with the deposition on Tuesday, April 22, 2016, but we remain able to work with your staff to reschedule once our client has comfort with the Panel's procedures.

We look forward to hearing from the Panel to resolve this confusion.

Sincerely,



Jessica Hertz
Counsel for Southwestern Women's Options



Mary Ellen Callahan
Counsel for Southwestern Women's Options

⁷ Email from Majority staff to Southwestern counsel, April 22, 2016.

The Honorable Marsha Blackburn

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April 25, 2016

cc: March Bell, Chief Counsel, Majority Staff
Frank Scaturro, Special Counsel, Majority Staff
Heather Sawyer, Staff Director and General Counsel, Minority Staff

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives
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Majority (202) 225-2927
Minority (202) 225-3641

April 28, 2016

The Honorable Marsha Blackburn
Chair
Select Investigative Panel
U.S. House of Representatives
Washington, D.C. 20515

Dear Madam Chair:

I urge you to reconsider your decision to end the discussions regarding Panel rules to protect the names of individuals identified in the course of this investigation. There is no legitimate need to gather, much less release publicly, a list of people involved in fetal tissue research or women's health care, and forcing individuals to appear before the Panel without taking reasonable steps to protect them from harm is unjustifiable.

Almost every person contacted by the Panel has expressed fear for their safety if identified in connection with this investigation, which you repeatedly describe using highly misleading and inflammatory language. Their concerns are not hypothetical or exaggerated.

One of the individuals that you have targeted already received graphic death threats after being identified in David Daleiden's inflammatory and deceptively-edited videos.¹ The gunman who killed three people, injured nine others, and terrorized patients and providers at a Planned Parenthood clinic last November echoed nearly identical words as those used by you and others in connection with this investigation.² And Federal Judge William H. Orrick has blocked further

¹ Jessica Glenza, *Man charged for online violent threats against company over Planned Parenthood fetal tissue*, THE GUARDIAN (Dec. 17, 2015); U.S. Dep't of Justice, *Washington Man Pleads Guilty to Sending Death Threats* (Apr. 19, 2016), available at <https://www.justice.gov/usao-edca/pr/washington-man-pleads-guilty-sending-death-threats>.

² Richard Fausset, *Suspect in Colorado Planned Parenthood Rampage Declares 'I'm Guilty' in Court*, N.Y. TIMES, (Dec. 9, 2016), available at <http://www.nytimes.com/2015/12/10/us/colorado-planned-parenthood-shooting.html>.

release of Daleiden's fraudulent videos in light of the increased harassment, including death threats, against individuals identified in those videos.³

You have publicly acknowledged that the Panel must "act responsibly with each and every name" obtained through this investigation.⁴ Before last Friday, and though still refusing to discuss it with Democrats, your staff had been assuring outside entities that there would be rules in place to protect individuals identified in the course of this investigation. Just two days before the Panel's first deposition, however, they reversed course completely and confirmed that "we will not assure that [the deponent's] name or any of the other names used in the deposition will remain private."⁵

After your Democratic colleagues objected, you then sent a letter late Monday afternoon indicating that a process might be developed to keep the "names of functionary individuals" confidential but confirming that you would not protect the names of "principals" who are "known publicly for their work or position."⁶ Your letter did not indicate when, by whom, or how this distinction would be made for any particular individual, including whether the individual scheduled to appear the next day would be a protected "functionary" or unprotected "principal." Subsequent efforts to clarify these, and other questions regarding your proposal, resulted in your letter yesterday, revoking this proposal altogether and demanding that the deponent appear without any rules in place to protect her name, or anyone else's, from public release.⁷

The individual scheduled for a deposition on Tuesday has made perfectly clear that she remains willing to appear. She has agreed to do so despite the fact that the Panel has known since January that there is no possible profit from the sale of fetal tissue at the clinic where she works because that clinic does not take any money to facilitate fetal tissue donation to university researchers. Her lawyers did not, as your letter yesterday suggested, reject your offer to address her safety concerns. Rather, they merely asked for clarification – as did your Democratic colleagues – regarding how this proposal would operate, and renewed their request to protect their client's identity.

³ Nat'l Abortion Fed'n v. Ctr. for Med. Progress, No. 15-cv-03522-WHO, 2016 U.S. Dist. LEXIS 14485 at *69-70 (N.D. Cal. Feb. 5, 2016) (granting motion for preliminary injunction).

⁴ Kelsey Harkness, *Here's Why Republicans Are Demanding Names in Fetal Tissue Probe*, THE DAILY SIGNAL (Apr. 6, 2016).

⁵ Letter from Jessica Hertz and Mary Ellen Callahan, Jenner & Block, to Hon. Marsha Blackburn, Chair, Select Investigative Panel of the Committee on Energy and Commerce (Apr. 25, 2016).

⁶ Letter from Marsha Blackburn, Chair, Select Investigative Panel of the Committee on Energy and Commerce, to Jessica Hertz and Mary Ellen Callahan, Jenner & Block (Apr. 25, 2016).

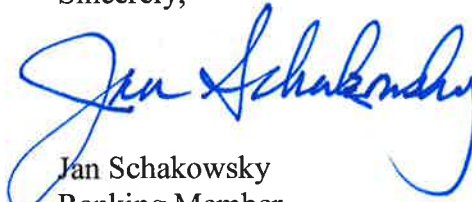
⁷ Letter from Marsha Blackburn, Chair, Select Investigative Panel on Energy and Commerce, to Jessica Hertz and Mary Ellen Callahan, Jenner & Block (Apr. 27, 2016).

Democrats have repeatedly objected to your sweeping demand for the names of any researcher, clinic staff, or doctor involved in fetal tissue research or reproductive health care in the past six years. We still see no reason why the Panel needs to amass a dangerous database of names in order to complete its work, and you have refused to provide any.

Your continued demand that people appear and name other individuals when they do so is reminiscent of Senator Joe McCarthy, whose bullying behavior ultimately resulted in censure by the U.S. Senate but not before he had damaged many American's lives and careers with unfounded accusations. As Representative Jerry Nadler noted at the Panel's hearing last week: "this committee is worse than the McCarthy investigation because McCarthy endangered people's jobs. This committee is knowingly endangering people's lives" ⁸

Once again, I ask that you immediately schedule the special meeting that the six Democratic Members have already requested so that we can enact rules that safeguard individual privacy and safety, and bring this investigation to an end.

Sincerely,



Jan Schakowsky
Ranking Member
Select Investigative Panel

⁸ *Pricing of Fetal Tissue: Hearing Before the Select Investigative Panel of the Comm. on Energy and Commerce, 114th Cong. (Apr. 20, 2016).*

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING
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Majority (202) 225-2927
Minority (202) 225-3641

May 12, 2016

The Honorable Paul Ryan
Speaker of the House
H-232, United States Capitol
Washington, D.C. 20515

Dear Mr. Speaker:

We ask for your assistance in resolving what we believe is a serious abuse of congressional power.

When you were elected Speaker of the House, you stressed your desire to “make some changes, starting with how the House does business,” including a “return to regular order” and a desire to “open up the process.”¹ We agree. In your role as chairman of the Budget Committee and the Ways and Means Committee, you demonstrated your commitment to operate in an open, transparent, and collegial manner. The House Select Investigative Panel created through H.Res. 461 is not operating in that fashion and should be disbanded.

Chair Blackburn is Operating in Violation of House Rules

After promising Ranking Member Schakowsky last December that she would hold an initial organizational meeting, Chair Blackburn has refused to hold any such meeting or to discuss with Democrats an investigative plan or rules and a timeline for completion of the Panel’s work.

In fact, when asked during the Panel’s first public hearing to explain what the Panel is investigating and, in particular, how her sweeping demand for the names of researchers, graduate students, lab technicians, clinical staff, and doctors furthers any legitimate aim of this investigation, Chair Blackburn refused to do so.

¹ Office of the Speaker of the House, *Speaker Ryan’s Remarks to the House of Representatives* (Oct. 29, 2015).

Rep. Nadler: “Madam Chair, will you explain how the names of individual medical or graduate students, researchers, health care providers, and clinic personnel are pertinent to this investigation?”

Chair Blackburn: “No, sir, I am not going to do that.”²

Congress’s broad authority to seek information is not unlimited. Members have an obligation to explain what they are investigating and how the information that they seek furthers an authorized investigation. “To be meaningful, the explanation must describe what the topic under inquiry is and the connective reasoning whereby the precise questions asked relate to it.”³

In addition to refusing to provide the basic, required explanation of what she is investigating and why, Chair Blackburn’s day-to-day operation violates longstanding rules and practice of the House and its committees. Chair Blackburn has denied Democrats access to the Panel’s records and files, refused to identify the source or foundation for materials used in public hearings, and routinely issued unilateral subpoenas without the required notice or consultation with Ranking Member Schakowsky.

Just last week, for example – and after Chair Blackburn and her staff repeatedly promised Ranking Member Schakowsky that they would provide a complete list of the individuals or entities being subpoenaed but then refused to do so – the Chair issued nineteen unilateral subpoenas. *Of the nineteen entities and individuals served, seventeen were never afforded an opportunity to comply voluntarily before receiving a subpoena.* The remaining two had been sent a letter requesting information and already had provided documents and information to the Panel voluntarily. They were never notified of any purported non-compliance before then being issued subpoenas.

Having refused to afford entities the opportunity to comply voluntarily, the Chair has made false public claims of widespread non-compliance and unjustly portrayed individuals and entities as “clearly rattled with basic facts coming to light” and resistant to “letting all the facts come out.”⁴ In fact, the Panel has received more than 18,000 pages of documents over the course of this investigation, along with answers to questions posed by the Chair.

Through H.Res. 461, the Republican Majority unfortunately gave Chair Blackburn unilateral subpoena authority; it did not grant her the power to exercise that authority in blatant disregard of House and committee rules and practice. Chair Blackburn’s “secret” subpoenas – issued without the required notice or consultation, and without any effort to obtain voluntary

² *Bioethics and Fetal Tissue: Hearing Before the Select Investigative Panel of the Comm. on Energy and Commerce*, 114th Cong. (Mar. 2, 2016).

³ *Watkins v. United States*, 354 U.S. 178, 215 (1957) (setting aside criminal conviction for contempt of Congress for refusal to “name names” when subpoenaed to appear before the Subcommittee of the House Committee on Un-American Activities).

⁴ THE ENERGY AND COMMERCE COMMITTEE, SELECT INVESTIGATIVE PANEL, *Select Investigative Panel Issues 12 New Subpoenas to Fetal Tissue Procurement Organizations* (Mar. 30, 2016).

cooperation first – do not reflect the values you have laid out or the accepted rules and practices of the House.

**Chair Blackburn and Republican Leaders Are
Putting Researchers and Doctors in Danger**

Perhaps most egregious, however, is the mistreatment of individuals who are now being compelled to appear before the Panel.

Almost every person contacted by the Panel has expressed fear for their safety if identified in connection with this investigation, which has repeatedly been described by the Chair and other Republicans using highly misleading and inflammatory language. These concerns are not hypothetical or exaggerated.

One of the individuals that Chair Blackburn has targeted already received graphic death threats after being identified in David Daleiden's inflammatory and deceptively-edited videos.⁵ The gunman who killed three people, injured nine others, and terrorized patients and providers at a Planned Parenthood clinic last November echoed nearly identical words as those used by the Chair and others in connection with this investigation.⁶ And federal Judge William H. Orrick has blocked further release of Daleiden's fraudulent videos in light of the increased harassment, including death threats, against individuals identified in those videos.⁷

Despite this clear risk, and after publicly and privately making assurances that she would put procedures in place to safeguard individual privacy and security, Chair Blackburn has refused to do so and, instead, has publicly named some of the key targets of her investigation. Just yesterday, for example, the Chair issued a press release naming a doctor as now under investigation by the Panel.⁸ Republicans have not shared with Democrats any objective basis for targeting this individual, who has been the subject of anti-abortion violence for decades, including a 1991 fire that destroyed his family farm, killing his dog, cat, and seventeen horses in claimed retaliation for the care that he provides for women in this country.⁹ The Chair's complete disregard for this doctor's safety, particularly in light of the long history of targeted harassment and violence directed against him, is further evidence that this dangerous witch hunt must end.

⁵ Jessica Glenza, *Man charged for online violent threats against company over Planned Parenthood fetal tissue*, THE GUARDIAN (Dec. 17, 2015); U.S. Dept. of Justice, *Washington Man Pleads Guilty to Sending Death Threats* (Apr. 19, 2016).

⁶ Richard Fausset, *Suspect in Colorado Planned Parenthood Rampage Declares 'I'm Guilty' in Court*, NY TIMES (Dec. 9, 2016).

⁷ Nat'l Abortion Fed'n v. Ctr. for Med. Progress, No. 15-cv-03522-WHO, 2016 U.S. Dist. LEXIS 14485 at *69-70 (N.D. Cal. Feb. 5, 2016) (granting motion for preliminary injunction).

⁸ THE ENERGY AND COMMERCE COMMITTEE, SELECT INVESTIGATIVE PANEL, *Select Panel Begins Investigation of Late-Term Abortions* (May 11, 2016).

⁹ Lena H. Sun, *Neb. doctor who performs abortions in Md. talks about security concerns, future of clinic*, WASH. POST (July 24, 2011).

The Chair's willingness to put doctors and researchers at risk – individuals against whom there is no objective evidence of wrongdoing – stands in stark contrast to the assurance on the Republicans' website, which promises that "any personal information that you provide us will be kept in strict confidence."¹⁰ That assurance appears directly above a "form" for individuals looking to "blow the whistle."¹¹ Apparently Republicans are willing to protect individuals who provide information that might support their preferred partisan narratives, but are denying this same protection to individuals who perform life-saving research and health care.

One deponent has already appealed to the Chairman of the Energy and Commerce Committee and to you, Speaker Ryan, in an effort to get basic protection for individual privacy and safety.¹² Those requests have been refused or met with deafening silence. Facing the threat of contempt, that person appeared before the Panel last week. During eight hours of questioning, she was asked to "name names" by Republican staff who refused to explain how their requests bore any relation to a legitimate investigative aim.

The Republican demand that people appear and name other individuals when they do so is reminiscent of Senator Joe McCarthy, whose bullying behavior ultimately resulted in censure by the U.S. Senate but not before he had damaged many American's lives and careers with unfounded accusations and insinuations. As Representative Jerry Nadler noted at the Panel's second hearing, held April 20, 2016: "this committee is worse than McCarthy investigations because McCarthy endangered people's jobs. This committee is knowingly endangering people's lives" ¹³

Conclusion

No body of the Congress should target individuals or organizations as possible subjects of investigation – and demand information that has grave privacy and security implications – without a legitimate basis for doing so. Chair Blackburn has repeatedly refused to tell us or the American people what she is investigating and why. The manner in which she is conducting this investigation violates clear rules and longstanding practice, and is bringing dishonor and discredit on the House.

We ask you to exercise your leadership as Speaker to bring an end to these abusive actions. This investigation has uncovered no evidence of wrongdoing and Chair Blackburn's

¹⁰ THE ENERGY AND COMMERCE COMMITTEE, SELECT INVESTIGATIVE PANEL, <https://energycommerce.house.gov/select-investigative-panel> (last visited May 11, 2016).

¹¹ *Id.*

¹² Letter from Jessica Hertz and Mary Ellen Callahan, Jenner & Block, to Hon. Fred Upton, Chairman, Committee on Energy and Commerce (Apr. 28, 2016); Letter from Jessica Hertz and Mary Ellen Callahan, Jenner & Block, to Hon. Paul Ryan, Speaker of the House of Representatives (May 3, 2016).

¹³ *Pricing of Fetal Tissue: Hearing Before the Select Investigative Panel of the Comm. on Energy and Commerce*, 114th Cong. (Apr. 20, 2016).

The Honorable Paul Ryan
May 12, 2016
Page 5


unjustified witch hunt against researchers and doctors is putting life-saving research and health care at risk. This investigation has never been – and has no hope of becoming – fair or fact-based and we call on you to disband it.

Given the seriousness of this issue, we hope that you will respond as soon as possible.

Sincerely,



Jan Schakowsky
Ranking Member
Select Investigative Panel




Jerrold Nadler
Member
Select Investigative Panel




Diana DeGette
Member
Select Investigative Panel



Jackie Speier
Member
Select Investigative Panel



Suzan K. DelBene
Member
Select Investigative Panel



Bonnie Watson Coleman
Member
Select Investigative Panel

cc: Hon. Nancy Pelosi, Democratic Leader
Hon. Fred Upton, Chair, Energy & Commerce Committee
Hon. Frank Pallone, Jr., Ranking Member, Energy & Commerce Committee
Hon. Marsha Blackburn, Chair, Select Investigative Panel

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
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Minority (202) 225-3641

May 13, 2016

The Honorable Karen L. Haas
Clerk of the U.S. House of Representatives
U.S. Capitol, Room H154
Washington, DC 20515

Dear Clerk Haas:

I am writing to request that you ensure preservation of the audio recordings of depositions taken by the Select Investigative Panel of the House Energy and Commerce Committee. Preserving these audio recordings to supplement written transcripts is needed to reflect the full interaction between witnesses, Members, and counsel during these proceedings.

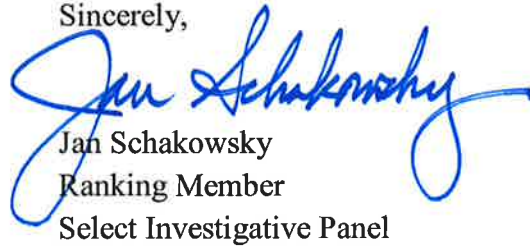
Counsel for one witness already has alerted Speaker Ryan to concerns about possible misconduct during their client's deposition.¹ This witness and others have been threatened with possible contempt of Congress. Their counsel and Panel Democrats have sought to make any necessary objections during the depositions in a timely, concise, and non-argumentative manner, in accordance with House deposition rules.² They have been told that they cannot object or interrupted by Panel Republicans in a manner that has jeopardized the creation of an accurate and complete record. Preserving the audio recordings will ensure that a complete record, which accurately captures the entire interaction, is available as needed.

¹ Letter from Jessica Hertz and Mary Ellen Callahan, Jenner & Block to Hon. Paul Ryan, Speaker of the House of Representatives (May 12, 2016).

² 114 CONG. REC. E21 (daily ed. Jan. 7, 2015) (extension of remarks of Rep. Sessions).

I therefore ask that you take steps to ensure that audio recordings of the Select Panel's depositions preserved. I would also appreciate confirmation that this has been done.

Sincerely,

A handwritten signature in blue ink, reading "Jan Schakowsky". The signature is fluid and cursive, with a large initial "J" and a long, sweeping tail that loops back under the name.

Jan Schakowsky
Ranking Member
Select Investigative Panel

cc: The Honorable Marsha Blackburn

ONE HUNDRED FOURTEENTH CONGRESS
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House of Representatives
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June 3, 2016

The Honorable Marsha Blackburn
Chair
Select Investigative Panel
U.S. House of Representatives
Washington, D.C. 20515

Dear Madam Chair:

I am deeply concerned by your decision this week to provide FOX News advance copies of letters to the Department of Health and Human Services (HHS) before sending them to HHS or sharing them with me. In those letters, you again allege wrongdoing by StemExpress based on documents and secret “testimony” that you continue to withhold from Democrats in violation of House rules and without affording the company the opportunity to answer your claims, something it offered to do months ago.

You also released these letters and documents without redacting the names and contact information of doctors and researchers, despite repeatedly claiming that you take individual privacy and safety concerns seriously and would protect names and personal information from public disclosure. Following the Panel’s March 2, 2016 hearing, for example, you had the following exchange with a reporter:

Question: “What do you have to say to the criticism of the subpoenas for the names of the graduate students and researchers?”

Chair Blackburn: “We’re going to continue to have the necessary information and we’re going to do everything possible to protect names and identities. You saw that with the exhibits that we brought forward today.”

Panel Democrats have repeatedly objected to your sweeping documents requests and abuse of unilateral subpoena power, and have asked for rules that limit the information being collected and protect individual privacy and security. You have ignored our requests. As a result, the Panel now has information – including the names of researchers, doctors, and students, the records of victims of rape, and personal financial information – that Congress has no right or need to know.

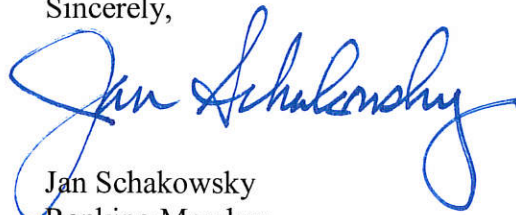
The Honorable Marsha Blackburn

Page 2

You have proven the risk of having this information in the hands of Panel Republicans: there is nothing to stop you from publicly releasing any of the information that you collect.

We ask that you immediately redact names, contact information, and other personally identifiable information from the documents that you have posted on your website. We also renew our request for the special meeting that the six Democratic Members previously requested so that we can enact rules that safeguard individual privacy and safety, and bring this investigation to an end.

Sincerely,



Jan Schakowsky
Ranking Member
Select Investigative Panel

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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June 7, 2016

The Honorable Marsha Blackburn
Chair
Select Investigative Panel
U.S. House of Representatives
Washington, D.C. 20515

Dear Madam Chair:

We wrote in early April to express our concerns that Panel Republicans are not conducting an objective, fact-based investigation but, instead, are relying on information and allegations from anti-abortion extremists. That concern has become a reality.

Over the past two months, Republicans have used documents and allegations from anti-abortion extremists to question witnesses during public hearings and depositions. Some of those documents can be found on the websites of anti-abortion extremists; others that are not in the public domain appear to have been passed directly to Republicans by some of these same groups. In your recent letters to the Department of Health and Human Services, you similarly base allegations of wrongdoing on documents and secret testimony that you continue to withhold from Democrats in violation of House rules.

Now, an additionally troubling possibility has come to light. Communications from lawyers representing an entity that you have targeted in your investigation indicate that – in addition to relying on information from anti-abortion extremists – Panel Republicans may be funneling information back to those individuals and groups.

As we recently learned, anti-abortion activists have been made aware of the legal representation for an entity contacted by the Panel, despite such information not being public.¹ These activists regularly protest and harass the doctor that you publicly identified by name in a press release as the latest target of your investigation and whom Rep. Diane Black then publicly compared to a convicted murderer.² This same provider has been the target of anti-abortion extremists for decades. A fire destroyed his family farm, killing 17 horses and family pets in claimed retaliation for the care he provides to women.³ The use of inflammatory rhetoric by Panel Republicans to publicly condemn this doctor – while also publicly announcing the date, time, and location of his appearance before the Panel – endangers his safety and that of many others. It also makes a mockery of any claim that he, or any information that he might provide, will be treated fairly or appropriately in this so-called “investigation.”

Your continued refusal to adopt rules to govern this investigation means that there are no protections for the information being demanded from this doctor or anyone else under your unilateral subpoenas. This includes information – such as records of victims of rape and personal financial information – that Congress has no right or need to know.

It is troubling enough that you are threatening to hold law-abiding doctors and researchers in contempt in order to obtain this information. Your refusal to adopt rules to foreclose the additional risk that highly sensitive and personal information might be released publicly or more selectively passed into the hands of anti-abortion extremists is inexcusable.

Assurances that you take seriously individual privacy and security concerns are insufficient. You reneged on promises to protect the individual privacy and security of a deposition witness.⁴ Just last week, Panel Republicans leaked letters to FOX News and posted documents on your website that contained names, contact information, and other personally identifiable information of doctors and researchers.⁵ You publicly advertised the date, location, and time that a doctor who lives in fear for his life would be compelled to appear before the Panel.

¹ Letter to Hon. Marsha Blackburn (May 27, 2016).

² Dr. Susan Berry, *Rep. Diane Black: ‘Little that Separates Late-Term Abortionist [Dr.] from Kermit Gosnell’*, BREITBART (May 16, 2016).


³ Lena H. Sun, *Neb. doctor who performs abortions in Md. talks about security concerns, future of clinic*, WASH. POST (July 24, 2011).

⁴ Letter from Select Panel Democrats to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Apr. 25, 2016); Letter from Ranking Member Jan Schakowsky to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Apr. 28, 2016).


⁵ Letter from Ranking Member Jan Schakowsky to Hon. Marsha Blackburn, Chair, Select Investigative Panel (June 3, 2016).

We continue to believe that the Select Panel should be disbanded. In the meantime, we ask that you investigate whether information provided to Select Panel Republicans is being disclosed to anti-abortion extremists and take steps to address and prevent any such leaks.

Sincerely,



Jan Schakowsky
Ranking Member
Select Investigative Panel



Jerrold Nadler
Member
Select Investigative Panel




Diana DeGette
Member
Select Investigative Panel



Jackie Speier
Member
Select Investigative Panel



Suzan K. DelBene
Member
Select Investigative Panel



Bonnie Watson Coleman
Member
Select Investigative Panel

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June 14, 2016

The Honorable Marsha Blackburn
Chair
Select Investigative Panel
U.S. House of Representatives
Washington, D.C. 20515

Dear Madam Chair:

I am writing to ask that you take steps to protect the names of [REDACTED] staff that were recently disclosed to the Panel.

To date, Panel Democrats have asked you and your staff repeatedly – in private and public settings – to work with us to limit the information being collected and to protect individual safety and security. You have steadfastly refused to do so. As a result, the Panel now has documents and information that Congress has no right or need to know, including the names of individuals who work at [REDACTED].

As the Panel is now aware, [REDACTED] (1) does not sell or donate fetal tissue for research, transplantation, or any other purpose; (2) does not receive any federal funding or support; and (3) does not perform “partial birth abortions” or engage in practices that have resulted or could result in “a child being born alive.”¹ This confirms that [REDACTED] is not a legitimate target of this investigation, as the clinic does not engage in any of the activities that the Panel is authorized to investigate.

Given that, there is no reason to continuing demanding that Dr. [REDACTED] turn over the names of clinic staff or to maintain the names already in the Panel’s possession. Because there are no rules to ensure that these names are not disclosed publicly or more selectively leaked to

¹ Letter to Hon. Marsha Blackburn (May 27, 2016).

outside groups – especially given the concerns that we raised regarding the possibility that information in the possession of Panel Republicans is being shared with anti-abortion groups – there is a significant risk that these names will be disclosed, at great harm to these individuals.

I therefore ask that you take the following steps with regard to the names of [REDACTED] staff:

1. redact staff names from any documents already in the Panel's possession;
2. stop demanding this information from Dr. [REDACTED] or others;
3. agree that you will not subpoena or otherwise contact these individuals directly; and
4. confirm that these names have not been shared with anyone who is not a staff or Member of the Panel and take steps to ensure that anyone who has seen the names will not share them further.

I welcome the opportunity to discuss this further, and ask that you also confirm, in writing, that the requested steps have been taken.

Sincerely,



Jan Schakowsky
Ranking Member
Select Investigative Panel

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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June 16, 2016

The Honorable Paul Ryan
Speaker of the House
H-232, United States Capitol
Washington, D.C. 20515

Dear Mr. Speaker:

One hundred and eighty one of your Democratic colleagues wrote you a letter on May 24, 2016 urging you to disband the Select Investigative Panel of the Energy and Commerce Committee (the Panel) and asked for a written response by June 6, 2016. When questioned by the press, your spokesperson said that “Speaker Ryan supports the Select Committee’s continued efforts to protect infant lives,”¹ but we have yet to hear from you.

We believe that a request coming from nearly all of the Democrats in the House warrants your respect and serious consideration and write now to ask that you meet with us before the House leaves in June for the July 4th district work period.

We have repeatedly raised our concerns about the partisan, dangerous nature of this Panel.² You also have been contacted directly by counsel for individuals and entities targeted in this investigation who have implored you to intervene and address Panel Republicans’ various abuses of congressional authority.³ These concerns and requests have been met with deafening silence.

This Panel poses a real and serious threat to life-saving research, women’s access to critical health care, and people’s lives. At the Panel’s first hearing, we learned that ongoing investigations have had a chilling effect on research, resulting in the loss of fetal tissue needed for promising work on multiple sclerosis (MS). Subsequent reporting confirmed that another research trial on late-stage MS patients planned for this year had to be pushed back to 2019

¹ Mike DeBonis, *181 Democrats join call to end House fetal-tissue probe*, WASH. POST (May 24, 2016).

² See, e.g., Letter from Select Panel Democrats to Hon. Paul Ryan, Speaker of the House (May 12, 2016).

³ Letter from Jessica Hertz and Mary Ellen Callahan, Jenner & Block, to Hon. Paul Ryan, Speaker of the House of Representatives (May 3, 2016).

because researchers lacked the fetal tissue that they need to proceed.⁴ Those researchers sought to capitalize on a breakthrough in regenerating myelin, the insulation around nerve fibers, in an effort to cure this debilitating condition. As a neurologist leading the research team explained: “This kind of delay . . . results in the additional deaths of people who could have been rescued.”⁵

The Panel also heard from preeminent researchers that fetal tissue is critical to promising research on diabetes and various neurological disorders, including Alzheimer’s, schizophrenia, and autism. These researchers informed us that fetal tissue is needed for the next phase in the treatment and cures of autoimmune diseases such as type 1 diabetes, and that they cannot unlock a cure without fetal tissue. They also reminded us that diabetes costs hundreds of billions of dollars each year and impacts millions of Americans, who face significant medical challenges and shortened life expectancies.

Following Indiana’s passage of an abortion law that would effectively shut down fetal tissue research in that state, Indiana University sued to challenge the law. As the University explained:

“[T]he university felt compelled to do this in an effort to protect its researchers from criminal prosecution, to protect the research enterprise as a whole, and to protect the research that has the potential to save thousands of lives, if not more.”⁶

Congress should support, not threaten, research that advances our understanding of fetal and human development and brings us closer to treating and curing diseases. This is particularly true as researchers are racing to understand and find possible means of addressing the Zika virus. The Panel Republican’s anti-science agenda is putting life-saving research at risk. It is also putting people’s lives in danger.

Recently, we learned that information in possession of Panel Republicans was shared with anti-abortion extremists who regularly protest and harass the doctor that Chair Blackburn publicly identified by name in a press release as the latest target of the Panel’s investigation and whom Rep. Diane Black then publicly compared to a convicted murderer.⁷ This same provider has been the target of anti-abortion extremists for decades. The use of inflammatory rhetoric by Panel Republicans to condemn this doctor – while also publicly announcing the date, time, and location of his appearance before the Panel – endangered his safety and that of many others. It also makes a mockery of any claim that he, or any information that he might provide, will be treated fairly or appropriately by Panel Republicans.

Assurances that Panel Republicans take seriously individual privacy and security concerns are insufficient. They reneged on promises to protect the individual privacy and

⁴ Danielle Paquette, *‘We lose money doing this’: Tiny company caught in abortion debate takes on Congress*, WASH. POST (May 27, 2016).

⁵ *Id.*

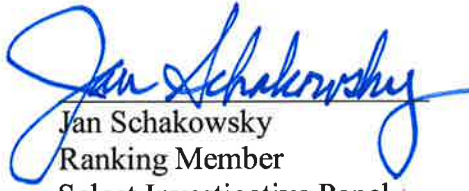


⁶ Rick Seltzer, *Turning Research Into a Felony*, INSIDE HIGHER ED (May 26, 2016).

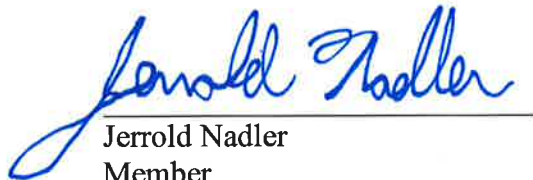
⁷ Dr. Susan Berry, *Rep. Diane Black: ‘Little that Separates Late-Term Abortionist [Dr.] from Kermit Gosnell’*, BREITBART (May 16, 2016).

security of a deposition witness.⁸ They leaked letters to FOX News and posted documents on their website that contained names, contact information, and other personally identifiable information of doctors and researchers.⁹ Given this, it is particularly troubling that the Panel is now in possession of information that Congress has no need or right to know, including the names of clinic personnel, records of victims of rape, and personal financial information.


When you became Speaker of the House, you indicated your commitment to an open and transparent approach to leadership. We had expected that would include a willingness to respond to these critical medical research, public health, and personal safety concerns raised by a significant number of the members of the House. We hope that you will act swiftly to schedule a meeting before we leave in June.


Sincerely,

		
Jan Schakowsky Ranking Member Select Investigative Panel	Diana DeGette Co-Chair House Pro-Choice Caucus	Louise Slaughter Co-Chair House Pro-Choice Caucus


Jerrold Nadler
Member
Select Investigative Panel


Jackie Speier
Member
Select Investigative Panel


Suzan K. DelBene
Member
Select Investigative Panel


Bonnie Watson Coleman
Member
Select Investigative Panel

⁸ Letter from Select Panel Democrats to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Apr. 25, 2016); Letter from Ranking Member Jan Schakowsky to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Apr. 28, 2016).

⁹ Letter from Ranking Member Jan Schakowsky to Hon. Marsha Blackburn, Chair, Select Investigative Panel (June 3, 2016).

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September 20, 2016

The Honorable Marsha Blackburn
Chair
Select Investigative Panel
U.S. House of Representatives
Washington, D.C. 20515

Dear Madam Chair:

I write in response to the letter that you sent this afternoon offering to consult with me regarding possible release of the May 11, 2016 deposition transcript. House deposition rules state that:

“The chair and ranking member *shall* consult regarding the release of depositions. If either objects in writing to a proposed release of a deposition or a portion thereof, the matter shall be promptly referred to the committee for resolution.”

Yesterday, you issued a public notice scheduling a markup on release of this transcript without notifying or consulting with me. In so doing, you also released the name of the deponent, knowing that she has significant personal safety concerns and having been asked – before, during, and after her appearance – to safeguard her identity. Had you consulted with me as the rules require, I would have raised this issue with you before you released the deponent’s name. While there is no way to cure the damage done by your prior public releases of her identity, we can take steps now to prevent any further damage.

I therefore accept your invitation to consult and request a meeting to discuss conditions for possible release of this transcript. Any Panel consideration in advance of that meeting would be premature and I reserve the right to raise any applicable objections.

The Honorable Marsha Blackburn
Page 2

It is also my understanding that the Majority has never afforded the witness the opportunity to review a copy of the transcript and submit changes as is also required by the rules. Our consultation over possible release should occur after that review takes place so that we have a common understanding of the actual text being considered for release.

Sincerely,



Jan Schakowsky
Ranking Member
Select Investigative Panel

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September 29, 2016

The Honorable Marsha Blackburn
Chair
Select Investigative Panel
U.S. House of Representatives
Washington, D.C. 20515

Dear Madam Chair:

I object to your proposed unilateral release of unspecified portions of the May 11 deposition transcript and request that this matter be referred to the Select Panel for resolution as required by House rules in the event that we do not reach agreement on release of the transcript.

On September 19, 2016, you issued a public notice scheduling a markup on release of this transcript. You did not notify or consult with me before issuing that notice and, in so doing, you released the name of the deponent knowing that she has significant personal safety concerns and that her university has already increased security measures because of Panel Republicans' prior public release of her name.

Only after we objected that you had failed to consult with me and also failed to allow the witness an opportunity to review and correct the transcript – both of which are required by House rules – you wrote “to consult” with me and asked if I objected to release of the transcript.¹ While your letter bears the date of September 19, 2016, it was not delivered to my office until after 1:00 p.m. on September 20, 2016.²

¹ See Attachment 1, Letter from Hon. Marsha Blackburn, Chair, Select Investigative Panel to Hon. Jan Schakowsky, Ranking Member, Select Investigative Panel (Sept. 20, 2016) [sic Sept. 19, 2016].

² See Attachment 2, Email correspondence from Select Panel Majority staff to Select Panel Minority staff (Sept. 20, 2016, 1:22:02 PM).

I accepted your offer to consult, and clearly noted that I would have objected to release of the deponent's name had you consulted with me as the rules required. I asked that we meet once the witness had an opportunity to correct the transcript so that "we have a common understanding of the actual text being considered for release."³ I also noted that I "reserve the right to raise any applicable objections."⁴

We were then advised that you had removed consideration of release of the transcript from the agenda for the September 21, 2016 business meeting. During that meeting, you confirmed that you would consult with me going forward on any possible release:

Ms. Schakowsky: And to the extent we need to consider this [possible release of a witness deposition] in the future, I hope you will consult with me and issue appropriate notice at that time. So I thank you.

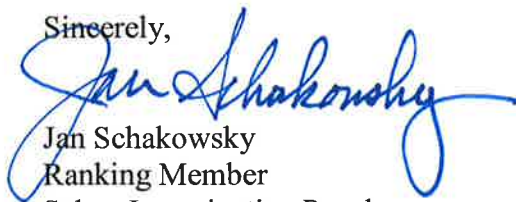
Mrs. Blackburn: We will do so.⁵

When we requested a meeting to discuss possible release, however, your staff informed us that "after grammatical edits we will be using portions of the transcript in public communications."⁶

This declaration reneges on your public commitment to consult with me going forward on possible release of this transcript. It also violates House rules to unilaterally release unspecified portions of a deposition without identifying and consulting with me over their release so that I can determine whether any objection is warranted.

Once again, I urge you to work with us on possible release of this transcript. House rules do not give you unilateral power to release a deposition transcript or portions thereof and we will consider appropriate steps to address any such unauthorized release.

Sincerely,



Jan Schakowsky
Ranking Member
Select Investigative Panel

Attachments

³ See Attachment 3, Letter from Hon. Jan Schakowsky, Ranking Member, Select Investigative Panel, to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Sept. 20, 2016).

⁴ *Id.*

⁵ *Business Meeting of the Select Investigative Panel of the Committee on Energy and Commerce*, 114th Cong. (unedited transcript 3) (Sept. 21, 2016).

⁶ See Attachment 4, Email correspondence from Select Panel Majority staff to Select Panel Minority staff (Sept. 29, 2016, 10:14:24 AM).

Attachment 1

9/20/16

Letter from Chair Blackburn

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
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The Honorable Jan Schakowsky
Ranking Member
Select Investigative Panel
2367 Rayburn House Office Building
Washington, DC 20515
Re: Consultation

September 19, 2016

Dear Ranking Members Schakowsky:

I am writing to consult with you about my intention to release the transcript of the deposition of Dr. [REDACTED], taken May 12, 2016. Please advise of your intent, in writing, to object to the release of the transcript or any portion thereof by close of business today.

Thank you for your attention to this matter.

Sincerely,



Marsha Blackburn
Chair
Select Investigative Panel

Cc: Heather Sawyer, Minority Chief Counsel
March Bell, Majority Chief Counsel

Attachment 2

9/20/16

Email correspondence from
Select Panel Majority staff

From: [Flint, Charles](#)
To: [Bell, March](#); [Sawyer, Heather](#)
Cc: [Christian, Karen](#); [Platt, Mike](#)
Subject: Consultation Letter
Date: Tuesday, September 20, 2016 1:22:02 PM
Attachments: [REDACTED] Consult letter.pdf

Heather --

See the attached consultation letter regarding the deposition transcript of Dr. [REDACTED]. It was just delivered to the Ranking Member's office.

Thank you.

- Chuck

Charles Flint
Legislative Director and Counsel
Rep. Marsha Blackburn (TN-07)
2266 Rayburn
[REDACTED]

Attachment 3

9/20/16

Letter from Ranking Member
Schakowsky

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (202) 225-2927
Minority (202) 225-3641

September 20, 2016

The Honorable Marsha Blackburn
Chair
Select Investigative Panel
U.S. House of Representatives
Washington, D.C. 20515

Dear Madam Chair:

I write in response to the letter that you sent this afternoon offering to consult with me regarding possible release of the May 11, 2016 deposition transcript. House deposition rules state that:

“The chair and ranking member *shall* consult regarding the release of depositions. If either objects in writing to a proposed release of a deposition or a portion thereof, the matter shall be promptly referred to the committee for resolution.”

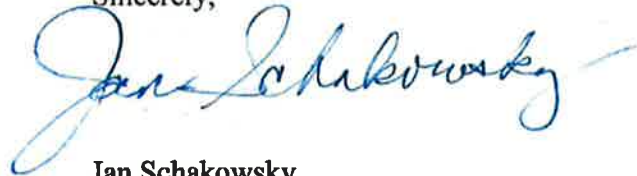
Yesterday, you issued a public notice scheduling a markup on release of this transcript without notifying or consulting with me. In so doing, you also released the name of the deponent, knowing that she has significant personal safety concerns and having been asked – before, during, and after her appearance – to safeguard her identity. Had you consulted with me as the rules require, I would have raised this issue with you before you released the deponent’s name. While there is no way to cure the damage done by your prior public releases of her identity, we can take steps now to prevent any further damage.

I therefore accept your invitation to consult and request a meeting to discuss conditions for possible release of this transcript. Any Panel consideration in advance of that meeting would be premature and I reserve the right to raise any applicable objections.

The Honorable Marsha Blackburn
Page 2

It is also my understanding that the Majority has never afforded the witness the opportunity to review a copy of the transcript and submit changes as is also required by the rules. Our consultation over possible release should occur after that review takes place so that we have a common understanding of the actual text being considered for release.

Sincerely,

A handwritten signature in blue ink that reads "Jan Schakowsky". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jan Schakowsky
Ranking Member
Select Investigative Panel

Attachment 4

9/29/16

Email correspondence from
Select Panel Majority staff

From: [Bell, March](#)
To: [Sawyer, Heather](#)
Cc: [Christian, Karen](#); [Platt, Mike](#); [Flint, Charles](#)
Subject: RE: Follow Up on Interview Transcript
Date: Thursday, September 29, 2016 10:14:24 AM

Heather--

We will wait to see the deponent's edits. The Chair has consulted in writing and made her intent known.

After grammatical edits we will be using portions of the transcript in public communications.

Your written communication did not object to release of the transcript and only stated that you wanted to consult on the conditions of the release.

This is not anticipated by the rules.

Sincerely,

March Bell

From: Sawyer, Heather
Sent: Thursday, September 29, 2016 10:04 AM
To: Bell, March [REDACTED]
Subject: Follow Up on Interview Transcript

Hi March –

I wanted to follow up on the Chair's offer to consult about possible release of the May 11 transcript.

We've gone through and made minor, grammatical/technical changes to our portions and have redacted the name of the doctor and a few others. I can't send that to you by email b/c the file is too large but we can drop it off on a USB drive so that you guys can download it.

Can we schedule a time to discuss? It might make sense to wait for McDermott's errata sheet, which it looks like they are sending early next week, and then we can discuss any/all changes or requests at one time.

Thanks -- Heather

Heather Sawyer
Democratic Staff Director and General Counsel
Select Investigative Panel

House Energy & Commerce Committee



ONE HUNDRED FOURTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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November 2, 2016

The Honorable Marsha Blackburn
Chair
Select Investigative Panel
U.S. House of Representatives
Washington, D.C. 20515

Dear Madam Chair:

On Monday, October 31, 2016, you notified me of your intent to issue additional unilateral subpoenas, including a subpoena to the Center for Medical Progress (“CMP”). You assured me that your staff would provide additional details. However, as has been the case for all of your unilateral subpoenas and in violation of Committee rules that require consultation before issuance, your staff has again refused to discuss these subpoenas or provide copies so that we might see what is being requested.

As you are aware, videos released by David Daleiden and CMP implicate the organization and its associates in a multi-year effort to secretly record Planned Parenthood employees and entrap them into agreeing to violate the law – an elaborate scheme that proved unsuccessful.¹ In these videos, CMP representatives use false names and a fake company called “BioMax Procurement Services LLC” (“BioMax”), which they created in order to carry out their plans.

Three House Committees and thirteen states have investigated Planned Parenthood as a result of these fraudulent video allegations and none have found any wrongdoing. Remarkably, not one of the three House investigations that preceded the Select Panel compelled CMP or Mr. Daleiden to testify or produce information about their potentially criminal activities.

¹*See, e.g., Nat'l Abortion Fed'n v. Ctr. for Med. Progress*, No. 15-cv-03522-WHO, 2016 U.S. Dist. LEXIS14485 at *28-29 (N.D. Cal. Feb. 5, 2016) (“Having reviewed the records or transcripts in full and in context, I find that no [National Abortion Federation] attendee admitted to engaging in, agreed to engage in, or expressed interest in engaging in potentially illegal sale of fetal tissue for profit.”) (granting motion for preliminary injunction).

Any legitimate, fact-based investigation should have started by questioning and demanding information from CMP and Mr. Daleiden, and we proposed that the Select Panel do so.² You ignored our request.

When Panel Republicans used materials that appeared to have come directly from CMP or Mr. Daleiden in public hearings and to question witnesses in closed-door sessions, we asked for copies of materials that you already had received from them. Panel Republicans refused those requests.

We are disappointed that you delayed so long in issuing CMP a subpoena and that your staff has repeatedly denied our requests for documents and information from CMP or Mr. Daleiden that Panel Republicans may already have.

We are also dismayed that your staff would not discuss or share a copy of the proposed subpoenas prior to issuance. Since we have no way of knowing what you are requesting in your subpoena to CMP, and to ensure that the Select Panel understands the activities of CMP and its associates, we ask that you include the following requests in your CMP subpoena and issue additional subpoenas to obtain the testimony from the following individuals:

Subpoenas for depositions

1. David Daleiden (aka “Robert Sarkis” on CMP videos);
2. Sandra Merritt (aka “Susan Tennenbaum” on CMP videos);
3. Troy Newman, President, Operation Rescue and former Board Member, CMP;
4. Albin Rhomberg, Chief Financial Officer, CMP;
5. Mark Crutcher, Founder and President of Life Dynamics;
6. Cheryl Sullenger, Senior Vice President, Operation Rescue.

In CMP subpoena, covering the period from January 1, 2010 to the present

1. Copies of all documents submitted to any state or federal government agency on behalf of CMP or BioMax, including the California Secretary of State’s office, the California Attorney General’s office, the California Registry of Charitable Trusts, and the federal Internal Revenue Service.
2. Copies of all documents related to any effort by or on behalf of David Daleiden, Sandra Merritt or any other individuals associated with CMP or BioMax to create, obtain, or falsify government records, including copies of all documents relating to false driver’s licenses or other identification documents.
3. Copies of all documents reflecting the amount of funding that CMP received through tax deductible charitable donations, including Internal Revenue Service form 990, Return of


² See e.g. Letter from Select Panel Democrats to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Feb. 11, 2016) (Proposed Investigative Plan, at 3-5); Letter from Select Panel Democrats to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Jan. 21, 2016).

Organization Exempt from Income Tax, and a list of the cumulative amount of charitable funding for each year.

4. For each year, accounting records sufficient to show all CMP activities that were financed with charitable donations, to include the specific amount of charitable donations used for each expenditure.
5. Copies of all documents submitted to any internet domain name registrar, including but not limited to FastDomain Inc., related to any website maintained by CMP or BioMax.
6. Copies of all documents reflecting communications with Members of Congress or their staff, or elected state or local officials or their staff, and a list of meetings between representatives of CMP and Members of Congress or their staff, or elected state or local officials or their staff.
7. Copies of all documents reflecting communication among or between CMP, BioMax, and Operation Rescue related to fetal tissue, the establishment of BioMax, or efforts by CMP, BioMax or their representatives to engage Planned Parenthood employees or others in discussions about fetal tissue.
8. Copies of all applications and any related documents submitted in connection with participation in National Abortion Federation conferences or any other conferences attended by CMP, BioMax or any of their representatives related to its alleged interest in fetal tissue.

We continue to believe that the Select Panel is an unnecessary and harmful use of taxpayer funds and congressional resources, and that the Panel should disband. However, to the extent that you are moving forward with these additional subpoenas, we are confident that our requests can be completed in time for a final report by the end of this Congress.

Sincerely,



Jan Schakowsky
Ranking Member
Select Investigative Panel

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November 18, 2016

The Honorable Marsha Blackburn
Chair
Select Investigative Panel
U.S. House of Representatives
Washington, D.C. 20515

Dear Madam Chair:

We are writing to request that you provide us with a draft of the Majority's proposed final report along with any documents or other information relied upon for that report that have not been provided to Panel Democrats.

You recently criticized our alleged "lack of cooperation" in the investigation and took the position that "this panel does not have to be viciously partisan."¹ You also said:

"Our panel is tasked with finding facts. I hope the Democrats will join us in our effort to uncover the truth about what is really going on in America's abortion and fetal tissue industry."²

Unfortunately, your words do not match your actions. Over the past year, Panel Republicans have held Republican-only negotiations, briefings, and interviews, despite our

¹ Hon. Marsha Blackburn, *Big Abortion's Allies Standing in the Way of the Truth*, LIFEZETTE (Oct. 4, 2016), <http://www.lifezette.com/polizette/big-abortions-allies-standing-in-the-way-of-the-truth/>.

² *Id.*

repeated requests to be included. In fact, your staff has candidly informed outside parties that “[i]f the Minority is on the phone call, we will terminate it and call you back.”³

As your staff has made perfectly clear, “there’s a vast number of people that [Panel Republicans] have spoken to [that Panel Democrats] haven’t heard from.”⁴ Excluding Democrats allows Panel Republicans to misrepresent documents and facts and to then disclose or conceal what they have learned, as suits preferred partisan narratives.

Information allegedly obtained in these secret Republican-only settings has then been used to question other witnesses:

Majority counsel: I just wondered what your response was to a completely different business model where the tech comes in from an outside company, does all the work, takes the tissue and leaves. In California, they call it a snip-and-clip business.

Minority counsel: I don’t know who calls it that. I mean, [counsel], come on, be fair.

Majority counsel: I think that’s what one of the people called it to us on the phone.

Minority counsel: To you on the phone?

Majority counsel: Yes.

Minority counsel: Who? You did not include us in that conversation.

Majority counsel: I never include you in conversations.⁵

These are not isolated incidents. On the contrary, Panel Republicans have routinely asked witnesses to speculate based on information that has never been shared with Democrats and remains unverified, as captured in the following exchange:

Minority counsel: So, [counsel], if there was such an instance, we have seen no documentation of it. So can you either put an actual instance in front of [the witness] or make clear this is a –

Majority counsel: I’m asking, I’m suggesting to you that a former employee of your clinic told us – two former employees of your clinic told us they were in the clinic when this happened.

³ *Criminal Contempt Report of the Select Investigative Panel of the Comm. on Energy and Commerce*, at 16, n.92 (Sep. 19, 2016) (Email correspondence from Select Panel Republican staff to Kevin M. Murphy, Carr Maloney P.C. (May 10, 2016), attached to the report).

⁴ Transcribed Interview of the Select Investigative Panel, H. Energy and Commerce Comm. (Oct. 19, 2016).

⁵ *Id.*

Minority counsel: And I want to make clear that that information has not been shared with the minority.

Witness counsel: And I want to point out that [the witness] has testified that, to her knowledge, [the incident has never occurred.]⁶

Panel Republican have similarly used documents that have never been sourced or shared with Democrats to question witnesses:

Minority counsel: Can you tell us where this came from? This isn't something we've ever seen before.

Majority counsel: All right.

Minority counsel: Source-wise, where is it?

Majority counsel: I think it's a [photo] at a conference, but I don't –

Minority counsel: But how did the Panel come by it? It wasn't ever provided to –

Majority counsel: Oh, I don't know. I can't –

Majority counsel: -- the Minority before.

Majority counsel: I can't, you know – there's 40,000 pages in there. I can't – I can't remember.

Minority counsel: Right, and you haven't given us access to that. So I'm just curious as to whether –

Majority counsel: Right.

Minority counsel: you know the origin of this photograph.

Majority counsel: I said no. The answer would be no.⁷

⁶ Transcribed Interview of the Select Investigative Panel, H. Energy and Commerce Comm. (July 21, 2016).

⁷ Transcribed Interview of the Select Investigative Panel, H. Energy and Commerce Comm. (Oct. 6, 2016).

When Panel Democrats objected that there was no foundational support for these questions, Republicans responded that, to the extent it exists, that evidence was being withheld:

Minority counsel: So you're just admitting right here and now that you're withholding evidence from the Minority members of this panel.

Majority counsel: I'm withholding evidence from you, [counsel], for the purposes of this question.⁸

On November 3, 2016, you issued a subpoena to the Center for Medical Progress seeking "all documents from January 1, 2013 to the present referring or relating to meeting of the National Abortion Federation."⁹ There is reason to believe that Panel Republicans may already have some of this information – which has not been sourced or shared with Panel Democrats – and have been using it throughout the investigation.

For example, Panel Republicans used documents during a public hearing in April after refusing to identify the underlying source of many and on notice that some "appear to be versions of StemExpress documents that were stolen by David Daleiden" using the password of a former company employee.¹⁰ During a recent interview, your staff acknowledged that CMP may already have "mailed" material to Panel Republicans:

Minority counsel: And just to be clear, this is a three-page document. The first page is page 1.

Majority counsel: Yeah, one is to show you who it is, and then I want you just to comment on this because this is something we're trying to understand and are still very confused about.

Minority counsel: And this was taken off of their public Web site from the Center for Medical Progress?

Majority counsel: Maybe from the Web site. Maybe they just mailed it in here. I don't -- I don't -- probably one of the two.¹¹

We previously asked you to investigate and address the possible funneling of information between Select Panel Republicans and anti-abortion activists, and have expressed concern about

⁸ *Id.*

⁹ Subpoena to the Center for Medical Progress, Select Investigative Panel, H. Energy and Commerce Comm. (Nov. 3, 2016).

¹⁰ Letter from Amandeep S. Sidhu, McDermott Will & Emery LLP to Hon. Marsha Blackburn and Hon. Jan Schakowsky *Re: Call for Withdrawal or Amendment of Proposed Exhibits for April 20, 2016 Hearing on 'The Pricing of Fetal Tissue'* (Apr. 19, 2016).

¹¹ Transcribed Interview of the Select Investigative Panel, H. Energy and Commerce Comm. (Nov. 1, 2016).

the continued reliance on allegations and information from these sources.¹² You ignored those requests and your staff has continued to withhold documents and information from these sources and others.

This continued exclusion of Democrats – including multiple letters to attorneys for CMP (the Life Legal Defense Foundation) that were not provided to Panel Democrats before being filed with a federal court¹³ – belies any publicly claimed interest in working with us “to uncover the truth.”

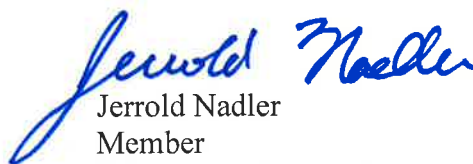
We agreed to participate in this Panel because facts matter, and we were determined to be in the room to defend the truth. As the Panel increasingly abused congressional authority and put doctors and researchers at risk, we called on the Panel to disband but continued in our efforts to make this investigation as fair, balanced, and fact-based as possible.

You have promised to complete the Panel’s required “final report” by the end of the calendar year.¹⁴ We anticipate that like the Republican “interim update” – which was not provided to Panel Democrats before being sent to House Republican leaders and posted on your website – the final report will include allegations and claimed evidentiary support that we have never seen. We therefore request a draft of the report and its evidentiary basis, with sufficient time for meaningful review and feedback, before any public release.

Sincerely,



Jan Schakowsky
Ranking Member
Select Investigative Panel



Jerrold Nadler
Member
Select Investigative Panel

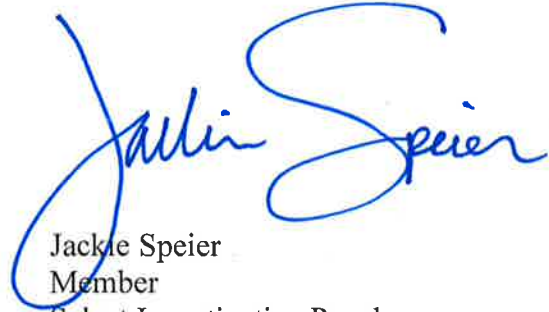
¹² Letter from Select Panel Democrats to Hon. Marsha Blackburn, Chair, Select Investigative Panel (June 7, 2016); Letter from Select Panel Democrats to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Apr. 7, 2016).

¹³ Letter from Hon. Jan Schakowsky, Ranking Member, Select Investigative Panel to Hon. William H. Orrick, N. D. Cal. (Nov. 14, 2016).

¹⁴ See e.g. Christine Grimaldi, *Blackburn Abortion Investigation Set for Congressional Windfall*, REWIRE (July 1, 2016) (“In a statement shared via panel spokesperson... “These disturbing findings are exactly why this investigation is warranted and we will continue to follow the facts in order to complete our report to Congress by the end of the year,” she [Blackburn] said.”), <https://rewire.news/article/2016/07/01/blackburn-abortion-investigation-set-congressional-windfall/>.



Diana DeGette
Member
Select Investigative Panel



Jackie Speier
Member
Select Investigative Panel



Suzan K. DelBene
Member
Select Investigative Panel



Bonnie Watson Coleman
Member
Select Investigative Panel

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December 1, 2016

The Honorable Marsha Blackburn
Chair
Select Investigative Panel
U.S. House of Representatives
Washington, D.C. 20515

Dear Madam Chair:

We write in response to your letter regarding the release of transcripts of depositions subject to section 3(b)(2) of H. Res. 5 and a proposed protocol for redaction of voluntary transcribed interviews.

As an initial matter, your letter references a “Report to Congress.” We have asked repeatedly for clarification of the timeline and plan for completion of the Select Panel’s report and the opportunity to review the Majority’s proposed draft and provide feedback. You have yet to respond. It is our understanding, as confirmed by the House Parliamentarian’s Office, that release of the Panel’s report as directed in H. Res. 461 requires action of the full Panel. Please promptly advise the Panel Democrats regarding the anticipated scheduling of a business meeting to consider the Panel’s report and when we will have text from the Majority for review.

With regard to the proposed redactions of depositions and transcribed interviews, witnesses and their counsel have asked the Panel to take steps sufficient to safeguard their privacy and safety because of the risk of harm to these individuals if identified in connection with this investigation. Certainly redacting names is a necessary – but in our view, insufficient – step toward achieving this goal. But replacing names with an individual’s title and the name of her organization would not sufficiently safeguard identities and, therefore, would not reduce the risk of harm.

Back in April 2016, you publicly stated that “[w]e know it’s important that we act responsibly with each and every name.”¹ Your “lead investigator” also publicly said that the Panel would agree to a “coding system.” As was reported at the time:

“We’ve told these people over and over again,” the panel’s lead investigator said, “we’ll agree to a coding system where a person can be called ‘A’ ‘B’ ‘C’ ‘D’ ..., ‘Witness A’, ‘Witness B,’ ‘Witness C,’ and you can submit those names on one physical list.”²

We therefore propose the following coding system that uses assigned identifiers in place of the names of any deponent or interview witness, without further reference or identification of organizational affiliation:

- May 6, 2016 deponent: [Clinic A Dr. #1]
- May 11, 2016 deponent: [Dr. Administrator]
- July 21, 2016 interview witnesses:
 - [Clinic B Staff #1]
 - [Clinic B Staff #2]
 - [Clinic B Staff #3]
 - [Clinic B Staff #4]
- October 6, 2016 interview witness: [PP Witness #1]
- October 19, 2016 interview witness: [PP Witness #2]
- November 1, 2016 interview witness: [PP Witness #3]
- November 17, 2016 interview witness: [PP Witness #4]

With regard to any other names that appear in these transcripts, we propose simply redacting those names and any organizational or other identifying affiliation.

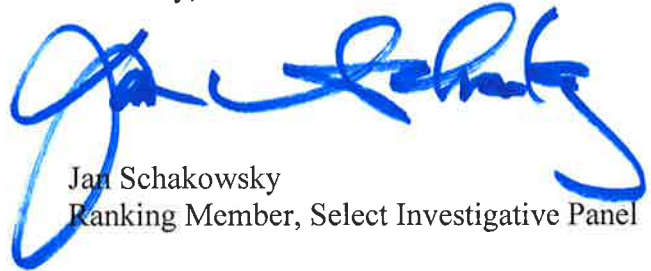
In addition, and before I can determine whether to waive the right to object, we need to see copies of the actual redacted transcripts that are proposed for release. Provided we reach agreement on redactions, Panel Democrats would support release of the transcripts in full. Pending our review of the actual redacted transcripts, I reserve the right to object, with the hope that we can promptly resolve this without any need for formal Panel action.

¹ Kelsey Harkness, *Here’s Why Republicans Are Demanding Names in Fetal Tissue Probe*, THE DAILY SIGNAL (Apr. 6, 2016), <http://dailysignal.com/2016/04/06/heres-why-republicans-are-demanding-names-in-fetal-tissue-probe/>.

² *Id.*

We have not yet received the transcript of the November 17 interview, which you have indicated that Republicans intend to rely upon in the report. Please ensure that we are immediately provided copies of that transcript, and confirm that each witness and counsel has had the opportunity to review and correct their transcript, as agreed by your staff.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jan Schakowsky". The signature is fluid and cursive, with a large initial "J" and a long, sweeping tail.

Jan Schakowsky
Ranking Member, Select Investigative Panel

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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December 5, 2016

The Honorable Marsha Blackburn
Chair
Select Investigative Panel
U.S. House of Representatives
Washington, D.C. 20515

Dear Madam Chair:

We are writing to provide you with a copy of the final report from the Democratic Members of the Select Investigative Panel. Fifteen months after the Select Panel was created and after spending more than \$1.5 million taxpayer dollars, the American people deserve an accurate accounting of what the Select Panel has learned.

Despite the repeated false rhetoric of Panel Republicans, this investigation has found no evidence of wrongdoing by researchers, health care providers, clinics, or companies who help facilitate life-saving research.

Instead the Panel heard from some of our nation's leading researchers and research institutions about the indispensable role that fetal tissue research plays in advancing our understanding and treatment of a staggering array of conditions that afflict millions of people in this country and throughout the world. Letters and statements from scientists, researchers, public health authorities, and some of the nation's leading academic medical centers highlighted its past benefits and confirmed the value of fetal tissue for research on a broad range of disease and conditions from infancy through adulthood. This work deserves continued and robust bipartisan support.

Evidence obtained by the Panel also confirmed the importance of access to the full range of family planning services, including contraception and safe and legal abortion care.

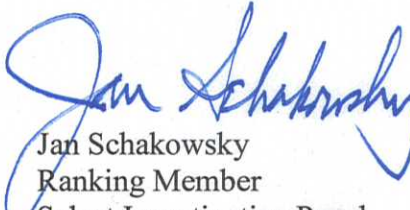
Reproductive health care providers confirmed that these services benefit maternal and infant health and, conversely, that legislative restrictions on this care put women at risk.

In October, we asked for a timeline for completing the Panel's work and the opportunity to review and provide feedback on any proposed final report from the Panel.¹ We reiterated this request in November, asking that you provide us a draft along with any supporting documents or other information that had not already been provided to Panel Democrats with sufficient time for review and meaningful feedback.² You ignored these requests, leaving us with no choice but to draft our own report.

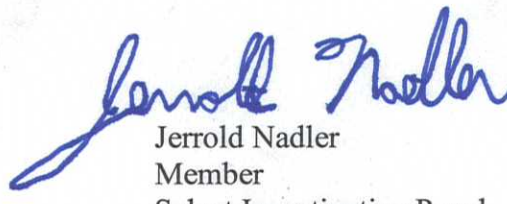
That report includes our key findings and recommendations based on the evidence obtained by the Panel and prior House investigations into the fraudulent Daleiden/CMP video allegations. That evidence includes testimony from the Panel's eight voluntary interviews, not subject to section 3(b)(2) of H. Res. 5. In keeping with our consistent effort to safeguard individual privacy and safety, we have used the coding system that we proposed to you last week.³ As we explained, redacting names but replacing them with titles and organizational affiliation – as you had proposed – does not sufficiently safeguard identifies and, therefore, does not reduce the risk of harm to these individuals, their colleagues, or their patients.

We agreed to participate in this Panel because facts matter, and we were determined to be in the room to defend the truth. As the Panel increasingly abused congressional authority and put doctors and researchers at risk, we called on the Panel to disband but continued in our efforts to make this investigation as fair, balanced, and fact-based as possible. To that end, we are releasing this report to set the record straight for the American people.

Sincerely,



Jan Schakowsky
Ranking Member
Select Investigative Panel



Jerrold Nadler
Member
Select Investigative Panel

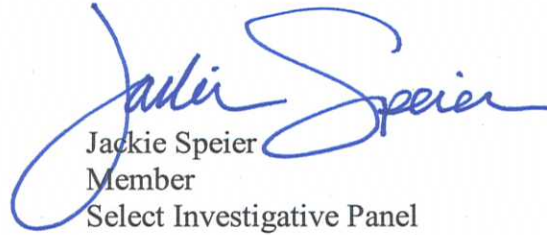
¹ Email correspondence from Select Panel Democratic staff to Select Panel Republican staff (Oct. 13, 2016), on file with the Democratic Members.

² Letter from Select Panel Democrats to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Nov. 18, 2016).

³ Letter from Select Panel Democrats to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Dec. 1, 2016).



Diana DeGette
Member
Select Investigative Panel



Jackie Speier
Member
Select Investigative Panel



Suzan K. DelBene
Member
Select Investigative Panel



Bonnie Watson Coleman
Member
Select Investigative Panel

ONE HUNDRED FOURTEENTH CONGRESS
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December 7, 2016

The Honorable Paul Ryan
Speaker of the House of Representatives
H-232 U.S. Capitol
Washington, D.C. 20515

Dear Mr. Speaker:

We write to ask that you address the continued violation of House rules by the Republican Members of the Select Investigative Panel of the Energy and Commerce Committee and take steps to ensure that Panel Democrats have access to documents and source information obtained by Panel Republicans.

Throughout the investigation, Panel Republicans have withheld documents and information from Panel Democrats. This includes documents obtained pursuant to congressional subpoena or threat of subpoena, as well as documents from alleged “confidential informants.”¹ They have used these documents to question witnesses, as the basis for their own allegations of criminal wrongdoing and – more recently – as the basis for requesting criminal investigation by law enforcement officials in various states.²

When Panel Democrats have obtained documents that had been withheld – and while Panel Republicans continue to refuse to identify the source of many of these materials – we have seen that these documents do not actually support Republican allegations.³ This demonstrates why the continued withholding of “evidence” by Panel Republicans is so problematic.

House rules guarantee all members access to committee records and equitable treatment of majority and minority committee staff as well.⁴ Documents that form the basis of congressional accusations of criminal misconduct – along with source information, which goes to the heart of the reliability and credibility of the materials being used – should not be withheld from minority members regardless of who controls the majority.

Panel Republicans have claimed that they cannot share documents and source information because they have agreed to maintain this information as “confidential.” These

agreements – intended, presumably, to shield individuals from *public* disclosure – cannot be used as a sword to violate House rules and withhold information from other Members of the Panel. Chair Blackburn already argued in correspondence filed with a federal court that “disclosure to Congress is not ‘public disclosure.’”⁵ Thus, any alleged concern about safety risks that might flow from public disclosure does not justify withholding documents and source information from Panel Democrats.

The solution to any legitimate concern about protecting identities from public disclosure is to enact rules for the Panel to follow and that would apply across-the-board to anyone whose safety is at risk. But Panel Republicans have steadfastly refused requests from Democrats and outside entities to enact any such rules and, instead, have publicly released and named certain targets of their investigation. Now, when it suits their needs, Panel Republicans have manufactured a non-existent safety concern that allows them to avoid fact checking of their alleged “evidence” or allegations.

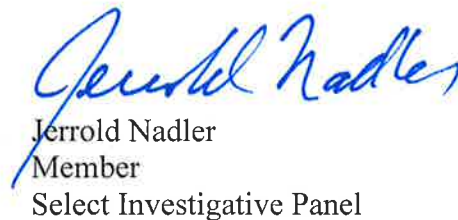
For the past year, you have allowed Panel Republicans to run roughshod over House rules, notions of basic fairness, and common decency. As a result, they have conducted a shameful “investigation” that dishonors and discredits the House.

The point to intervene is overdue. Panel Republicans have made serious allegations of criminal misconduct, including “criminal referrals” to state or local law enforcement officials, based on secret, unsourced, unverified documents and information. We ask that you take immediate steps to ensure that Panel Democrats have access to documents and source information obtained by Panel Republicans, as House rules require.

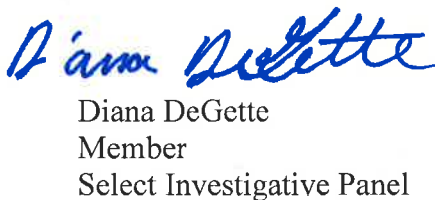
Sincerely,



Jan Schakowsky
Ranking Member
Select Investigative Panel



Jerrold Nadler
Member
Select Investigative Panel



Diana DeGette
Member
Select Investigative Panel



Jackie Speier
Member
Select Investigative Panel



Suzan K. DelBene
Member
Select Investigative Panel



Bonnie Watson Coleman
Member
Select Investigative Panel

cc: Hon. Marsha Blackburn
Chair, Select Investigative Panel

¹ Report of the Democratic Members of the Select Investigative Panel, *Setting the Record Straight: The Unjustifiable Attack on Women's Health Care and Life-Saving Research* (Dec. 5, 2016), at 88-89 [hereinafter "Final Report of the Democratic Members"].

² See 162 CONG. REC. H7091 (daily ed. Dec. 1, 2016) (statement of Rep. Mia Love describing various criminal "referrals" by Select Panel Republicans, including several that referenced reliance on "confidential informants"); See also email correspondence from Select Panel Republican staff to Select Panel Democratic staff (Dec. 6, 2016), on file with the Democratic Members.

³ See, e.g., Final Report of the Democratic Members, at 58-59, 89-91.

⁴ HOUSE RULE XI 2(e)(2), RULE X 9(g) (114th Cong.).

⁵ Letter from Hon. Marsha Blackburn, Chair, Select Investigative Panel to Ms. Catherine Short, Life Legal Defense Foundation (Nov. 8, 2016), at 4.

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (202) 225-2927
Minority (202) 225-3641

December 28, 2016

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Upton:

Attached is the report of the Democratic Members of the Select Investigative Panel, “Setting the Record Straight: The Unjustifiable Attack on Women’s Health Care and Life-Saving Research.” As detailed in our report, and after fifteen months and nearly \$1.6 million taxpayer dollars, the Select Panel found no evidence of wrongdoing by health care providers, researchers, or tissue procurement companies.

Instead, the Panel heard from some of our nation’s leading researchers and research institutions about the indispensable role that fetal tissue research plays in advancing our understanding and treatment of a staggering array of conditions that afflict millions of people in this country and throughout the world. Letters and statements from scientists, researchers, public health authorities, and some of the nation’s leading academic medical centers highlighted its past benefits and confirmed the value of fetal tissue for research on a broad range of diseases and conditions from infancy through adulthood. This work deserves continued and robust bipartisan support.

Evidence obtained by the Panel also confirmed the importance of access to the full range of family planning services, including contraception and safe and legal abortion care. Reproductive health care providers confirmed that these services benefit maternal and infant health and, conversely, that legislative restrictions on this care put women at risk.

Our report makes 14 findings based on the evidence we obtained, and includes 5 recommendations to combat the anti-fact, anti-research, and anti-health approach taken by Panel Republicans. These recommendations are designed to ensure that public policy is based on facts

– not false, manufactured allegations. The report also documents the harm to life-saving research and women’s health care as well as the grave abuses committed by Panel Republicans, including the misuse of unilateral subpoena authority to intimidate and harass law-abiding doctors and researchers.

We want to ensure that our views are included along with those expressed by Panel Republicans. For the past several months, Panel Republicans have been drafting their “final report” in secret, without any input from Panel Democrats. Despite our repeated requests, Chair Blackburn has refused to share a draft or explain when and how she intends to release this “final report,” in an apparent effort to avoid fact-checking by Democrats before public release.

The refusal to share the report, or any information about its possible release, has continued even after Chair Blackburn relied on sections of what she described as “the Select Panel Final Report” in a “referral” letter to the U.S. Department of Justice.ⁱ Describing this Republican-only work product as a final report of the Select Panel misrepresents the views of Panel Republicans as those of the entire Panel, which they are not.

H. Res. 461 authorized and directed the Panel – not just its chair or majority members – to issue a final report and authorized you, as the chair of the Committee on Energy and Commerce, to act only with regard to “any such report.”ⁱⁱ As confirmed by the House Parliamentarian, this requires formal action of the full Panel and the corresponding opportunity to review proposed text prior to a Panel meeting for the required public debate, possible amendment, and recorded vote on its release, as well as the opportunity to submit official minority views.

As we pointed out in a December 7, 2016 letter to Speaker Ryan, the refusal of Panel Republicans to follow House and committee rules is significant because, among other things, when information is finally revealed, it does not actually support Republican allegations.ⁱⁱⁱ This has been true of documents and information that Panel Republicans obtained and withheld from Democrats over the course of the investigation; it appears equally true of the Republican “final report.”

We agreed to participate in this Panel because facts matter, and we were determined to be in the room to defend the truth. As the Panel increasingly abused congressional authority and put doctors and researchers at risk, we called for its disbandment but continued in our efforts to make this investigation as fair, balanced, and fact-based as possible. To that end, we are forwarding our report in order to set the record straight for the American people.

Sincerely,



Jan Schakowsky
Ranking Member
Select Investigative Panel

Enclosure

cc: Hon. Marsha Blackburn
Chair, Select Investigative Panel

Hon. Frank Pallone
Ranking Member, Committee on Energy and Commerce

ⁱ See Letter from Hon. Marsha Blackburn, Chair, Select Investigative Panel, to Hon. Loretta Lynch, Attorney General, U.S. Dep't of Justice (Dec. 21, 2016).

ⁱⁱ H. Res. 461, 114th Cong. § 3 (2015) (enacted).

ⁱⁱⁱ See Letter from Select Panel Democrats to Hon. Paul Ryan, Speaker of the House (Dec. 7, 2016).

APPENDIX B

CORRESPONDENCE FROM SELECT PANEL DEMOCRATS TO OUTSIDE ENTITIES

Date	Recipient	Description
07/12/2016	Hon. Hector H. Balderas, Jr. Attorney General of New Mexico	Expressing the Democratic Members' disagreement with the Chair's "criminal referral" to the New Mexico Attorney General concerning University of New Mexico and Southwestern Women's Options.
09/12/2016	Michael Leoz, Regional Manager, HHS Office of Civil Rights, Pacific Region	Expressing the Democratic Members' disagreement with the Chair's "referrals" to the Office for Civil Rights regarding purported HIPAA violations.
11/14/2016	Hon. William H. Orrick, US Dist. Ct. N. Dist. of California	Providing the views of the Democratic Members regarding the unilateral subpoena issued to CMP by the Chair for documents subject to a restraining order.

ONE HUNDRED FOURTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

July 12, 2016

The Honorable Hector H. Balderas, Jr.
Attorney General of New Mexico
408 Galisteo Street
Villagra Building
Santa Fe, NM 87501

Dear Attorney General Balderas:

We write to express our disagreement with the June 23, 2016 letter sent by Representative Marsha Blackburn, Chair of the Select Investigative Panel of the Committee on Energy and Commerce of the U.S. House of Representatives (“Select Panel”). That letter was not shared with the Democratic Members of the Select Panel before it was sent and does not reflect our views.

The Democratic Members of the Select Panel have a markedly different understanding of the facts and law regarding the relationship between the University of New Mexico (“UNM”) and Southwestern Women’s Options (“SWO”). We have seen no evidence of wrongdoing and do not support the Chair’s “criminal referral” to your office.

The vast majority of the Chair’s letter expresses displeasure that UNM provides reproductive health care and takes steps to ensure that medical residents and fellows obtain training that is mandated by various accrediting institutions. Chair Blackburn complains about private foundation funding for this training and takes issue that there is “too close” a relationship between SWO and university researchers, but not a single criminal law is implicated by these activities. While she ultimately alleges that UNM provides unlawful “valuable consideration” in exchange for fetal tissue donated by some women who receive care at SWO, sworn testimony obtained by the Panel rebuts these allegations. We are deeply troubled by her failure to mention this testimony in her referral.

The House Majority created the Select Panel in October 2015 after three House Committees – Energy and Commerce, Oversight and Government Reform, and Judiciary – already had investigated and found no evidence that fetal tissue is being sold for profit, as has

been alleged by anti-abortion activist David Daleiden and the “Center for Medical Progress” through a series of deceptively-edited videos. Thirteen states also investigated these allegations and found no wrongdoing by clinic personnel, doctors, and researchers. In fact, the only misconduct that has been uncovered is that of Mr. Daleiden, who now faces criminal charges after a Texas grand jury tasked with investigating Planned Parenthood cleared the organization and indicted him instead.

The Select Panel – like the three House and thirteen state investigations that preceded it – has similarly uncovered no evidence of the unlawful sale of fetal tissue. With specific regard to UNM and SWO, the Panel has known since January that SWO donates fetal tissue at no cost to a researcher at UNM. SWO receives no money related to that donation, not even reimbursements for expenses as expressly permitted by federal law. Chair Blackburn acknowledges this, but asserts that UNM provided various non-monetary benefits to SWO in exchange for fetal tissue and that these non-monetary benefits constituted unlawful “valuable consideration” within the meaning of 42 U.S.C. § 289g-2(a).

We do not believe that Chair Blackburn’s theory is supported by the law or the facts. As to the law, the United States Justice Department’s Office of Legal Counsel (“OLC”) concluded in 2007 that the federal prohibition on “valuable consideration” does not reach non-monetary benefits exchanged in connection with organ donation programs.¹ Providing that opinion in the context of the National Organ Transplant Act (“NOTA”), the OLC noted that the decision to use that same language in 42 U.S.C. § 289g-2 demonstrated Congress’s intent for “that text to have the same meaning in both statutes.”² It then looked to the method of calculating fines under 42 U.S.C. §289g-2(c)(2) to conclude that “‘valuable consideration’ is monetary or at least has a readily measurable pecuniary value.”³

Not only is Chair Blackburn’s theory at odds with the law, it has no support in the facts. As noted above, there is no exchange of money or anything of “readily measurable pecuniary value” when women who receive care at SWO elect to donate fetal tissue to a university researcher. Moreover, evidence obtained by the Panel, including sworn testimony from UNM and SWO, also shows that there is no non-monetary exchange related to donation of fetal tissue to UNM either. As the evidence shows:

- SWO receives no money – not even for the recovery of costs as permitted by law – when women at SWO elect to donate fetal tissue.⁴

¹ See Attachment 1, Department of Justice, Office of Legal Counsel, *Legality of Alternative Organ Donation Practices Under 42 U.S.C. §274e* (Mar. 28, 2007).

² *Id.* at 4.

³ *Id.*

⁴ Letter from UNM Counsel to Hon. Marsha Blackburn, Chair, and Hon. Jan Schakowsky, Ranking member, Select Investigative Panel (January 29, 2016) (*see* Letter from Hon. Marsha Blackburn, Chair, Select Investigative Panel to Hon. Hector H. Balderas, Jr., Attorney General of New Mexico, June 23, 2016, Attachment 24).

- SWO's supervision of medical residents and fellows benefitted UNM, not the clinic. "Teaching residents and fellows created more work for SWO doctors. It slowed down the procedures and required SWO preceptors to take more time and effort to teach and train."⁵
- The "volunteer faculty" positions held by three SWO physicians "are not only uncompensated, they are not unique at UNM. Indeed, there are approximately 1000 Volunteer Clinical Faculty throughout UNMHSC [University of New Mexico Health Sciences Center], of which the Ob-Gyn department has 58."⁶ The "benefits" outlined in the Chair's letter (at page 5 and attachment 20) are available to all volunteer faculty and "are not material inducements to provide fetal tissue."⁷
- SWO did not get insurance coverage under the New Mexico Tort Claims Act as a benefit or in exchange for fetal tissue donation. SWO "had to obtain and pay for its own insurance coverage" independent of any coverage under the New Mexico Tort Claims Act, which applies to issues arising from care provided by "UNM medical students, residents, fellows and faculty."⁸ SWO has never made a claim for coverage under UNM's state-issued insurance.⁹

Chair Blackburn also asserts that the transfer of fetal tissue from SWO to UNM "is a systematic violation of New Mexico's *Jonathan Spradling Revised Uniform Anatomical Gift Act (Spradling Act)*." Proper interpretation and enforcement of state law is beyond the jurisdiction of this Panel and the Chair cites no supporting case law, legislative history, or interpretive guidance for her claim. The Chair never raised this issue with us or with UNM or SWO. In fact, Chair Blackburn did not notify, much less afford UNM or SWO an opportunity to address her state law assertions before issuing a press release and posting the letter on the Majority's website, along with several documents that they had asked the Panel to treat as confidential.¹⁰ However, UNM has since informed the Panel that it "denies in every respect that it has done or taken any action in receiving donated fetal tissue from SWO in violation of New Mexico's version of the Uniform Anatomical Gift Act."¹¹

The Democratic Members of the Select Panel remain deeply concerned that Chair Blackburn is using the power of the Congress to chase unfounded allegations of anti-abortion extremists.¹² This latest referral follows that pattern as the claims being championed by Chair Blackburn have already been made by the New Mexico Alliance for Life, Protest ABQ, and

⁵ See Attachment 2, Letter from UNM Counsel to Hon. Marsha Blackburn, Chair, and Hon. Jan Schakowsky, Ranking Member, Select Investigative Panel (June 27, 2016).

⁶ *Id.* at 3.

⁷ *Id.*

⁸ *Id.* at 3-4.

⁹ *Id.* at 3.

¹⁰ *Id.* at 2.

¹¹ *Id.* at 1-2.

¹² See Letter from Select Investigative Panel Democrats to Hon. Marsha Blackburn, Chair, Select Investigative Panel (April 7, 2016).

others.¹³ Chair Blackburn used her unilateral subpoena authority to investigate the claims of these groups. She then suppressed the facts that did not fit their preferred narrative when she sent a “criminal referral” without acknowledging sworn testimony that rebuts these unfounded theories. We agree that Congress can play an important role in referring matters to appropriate law enforcement agencies where the facts and law support it. However, we do not believe that standard has been met here, particularly given the Chair’s failure to disclose evidence obtained by the Select Panel that rebuts her allegations.

Federal and state investigators have already spent millions of taxpayer dollars chasing inflammatory allegations of anti-abortion extremists regarding the unlawful sale of fetal tissue. These investigations have uncovered no evidence of wrongdoing and are putting doctors and researchers – along with life-saving research and critical health care – at grave risk. We do not believe that there is a sufficient legal or factual basis to warrant a criminal referral of UNM or SWO and respectfully ask that you take our views into consideration with regard to any further investigation into this matter.

We also invite you to contact the Democratic Staff of the Select Investigative Panel at (202) 226-9471 should you have any questions.

Sincerely,



Jan Schakowsky
Ranking Member
Select Investigative Panel



Jerrold Nadler
Member
Select Investigative Panel



Diana DeGette
Member
Select Investigative Panel



Jackie Speier
Member
Select Investigative Panel

¹³ See Tara Shaver, *Breaking: UNM Halts Abortion Rotation at Late-Term Abortion Facility But Continues to Break the Law*, PROTEST ABQ (Dec. 20, 2015); Cheryl Sullenger, *Select Panel Refers UNM & Late-term Abortion Facility for Criminal Charges Related to Fetal Tissue Procurement*, OPERATION RESCUE (June 24, 2016).



Suzan K. DelBene
Member
Select Investigative Panel



Bonnie Watson Coleman
Member
Select Investigative Panel

Attachments

cc: The Honorable Marsha Blackburn, Chair
Select Investigative Panel

The Honorable Susana Martinez
Governor of New Mexico

The Honorable John A. Sanchez
Lieutenant Governor of New Mexico

The Honorable Michelle Lujan Grisham
First Congressional District, New Mexico

The Honorable Steve Pearce
Second Congressional District, New Mexico

Attachment 1

3/28/07 DOJ

Office of Legal Counsel Memo

**LEGALITY OF ALTERNATIVE ORGAN DONATION PRACTICES
UNDER 42 U.S.C. § 274e**

Two alternative kidney donation practices, in which a living donor who is incompatible with his intended recipient donates a kidney to a stranger in exchange for the intended recipient's receiving a kidney from another donor or increased priority on a waiting list, do not violate the prohibition on transfers of organs for "valuable consideration" in 42 U.S.C. § 274e.

March 28, 2007

**MEMORANDUM OPINION FOR THE GENERAL COUNSEL
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

Section 301 of the National Organ Transplant Act ("NOTA" or "Act"), entitled "Prohibition of organ purchases," imposes criminal penalties of up to \$50,000 and five years in prison on any person who "knowingly acquire[s], receive[s], or otherwise transfer[s] any human organ for valuable consideration for use in human transplantation if the transfer affects interstate commerce." 42 U.S.C. § 274e (2000). You have asked whether certain arrangements for donation of kidneys by living donors involve "valuable consideration" under this statute. We conclude that they do not.

I.

Someone requiring a kidney transplant may generally obtain a kidney in two ways. First, he may join a national waiting list to receive a kidney from a deceased donor. There are far more people waiting, however, than there are cadaveric kidneys available, and the wait can be long. Alternatively, such a person may receive a kidney from a living donor. In many cases, however, the would-be donor is biologically incompatible with the intended recipient.

Two alternative donation practices have developed to mitigate these problems. In a Living Donor/Deceased Donor ("LDDD") Exchange, a living donor donates a kidney to an unknown, compatible recipient on the list for a deceased donor. The living donor's intended (but incompatible) recipient receives in turn some priority on the deceased-donor waiting list, and this priority may significantly shorten his waiting time. In a Paired Exchange, an organ procurement and transplantation network matches two or more incompatible donor/recipient pairs where each living donor is compatible with another living donor's intended recipient. Hospitals have performed a number of transplants involving Paired Exchanges. *See, e.g., Susan Levine, Hopkins Celebrates Quintuple Transplant, Wash. Post, Nov. 21, 2006, at A21.* You seek our views primarily so that the Secretary of Health and Human Services may know whether section 301 imposes a barrier to his taking certain actions to encourage these practices.

When a living donor simply gives the gift of a kidney to his intended recipient, he receives in return only the satisfaction of helping that recipient. Although a knowing "transfer" of a "human organ . . . for use in human transplantation" has occurred, the lack of any exchange eliminates any question of the transfer's being "for valuable consideration." 42 U.S.C. § 274e(a). But when a donor transfers the kidney through an LDDD or Paired Exchange to be

implanted into someone else, the donor does so in exchange for a benefit to his intended recipient as a third party. The intended recipient either receives from a network advancement on the waiting list for a cadaveric kidney or receives a kidney from another living donor. Thus, the question arises whether either of these donative practices involves a transfer for “valuable consideration” under section 301.

II.

The term “consideration” has deep roots in the common law of contracts and a fairly established meaning, but the meaning of the term “valuable consideration” is less clear. Drawing on the available sources of guidance, however, we conclude that the latter term as used in section 301 does not apply to an LDDD Exchange or a Paired Exchange, because neither involves the buying or selling of a kidney or otherwise commercializes the transfer of kidneys.¹

Section 301 does not define “valuable consideration,” but it and a related provision in the Act provide some initial guidance. Section 301 lists certain acts that do *not* involve “valuable consideration”: “The term ‘valuable consideration’ does not include the *reasonable payments* associated with the removal, transportation, implantation, processing, preservation, quality control, and storage of a human organ or the *expenses* of travel, housing, and lost wages incurred by the donor of a human organ in connection with the donation of the organ.” 42 U.S.C. § 274e(c)(2) (emphases added). These exclusions address types of “payments” and “expenses” that may otherwise fall within the term “valuable consideration” on the theory that they involve monetary benefits or at least a monetary transfer. Any benefits received in the LDDD and Paired Exchanges, on the other hand, are not monetary or otherwise pecuniary. To the extent that Congress concluded that exclusions from the prohibition on transfers for “valuable consideration” were necessary only for the specified monetary payments and reimbursements, the lack in section 301 of a comparable exclusion for non-monetary benefits may suggest that non-monetary exchanges such as LDDD and Paired Exchanges do not involve valuable consideration.

The title that Congress affixed to section 301 supports such an interpretation. It is established that “the title of a statute or section can aid in resolving an ambiguity in the legislation’s text.” *INS v. Nat’l Ctr. for Immigrants’ Rights*, 502 U.S. 183, 189 (1991) (concluding that the term “employment” in statutory text referred to “unauthorized employment,” in accordance with heading of section). Here, although the title does not expressly address “valuable consideration,” it does describe section 301 as involving a “[p]rohibition of organ purchases.” 42 U.S.C. § 274e; NOTA, Pub. L. No. 98-507, § 301, 98 Stat. 2339, 2346-47 (1984). Reading the statutory text in light of this title suggests that the

¹ In considering this question, we have benefited from the views of your office as well as those of the Department of Justice’s Criminal Division. Our conclusion is consistent with the views of both.

vague phrase “valuable consideration” addresses organ transfers that could be considered to involve a “purchase[],” rather than all donations that may involve some exchange.

In addition, section 301 applies only “if the transfer affects interstate commerce.” Apart from the distinct question whether a transfer that did involve valuable consideration would satisfy this requirement, the requirement indicates that section 301 rests on Congress’s power to “regulate Commerce . . . among the several States.” U.S. Const. art. I, § 8, cl. 3. That foundation further suggests that “valuable consideration” involves some sort of commercial transaction. *See United States v. Lopez*, 514 U.S. 549, 561 (1995) (finding criminal statute not authorized by this power, because having “nothing to do with ‘commerce’ or any sort of economic enterprise, however broadly one might define those terms”); *cf. Gonzales v. Raich*, 545 U.S. 1, 25 (2005) (“Unlike those at issue in *Lopez* and *Morrison*, the activities regulated by the [Controlled Substances Act] are quintessentially economic. . . . [It] regulates the production, distribution, and consumption of commodities for which there is an established, and lucrative, interstate market.”); *Perry v. St. Francis Hosp. & Med. Ctr.*, 886 F. Supp. 1551, 1563-64 (D. Kan. 1995) (“For whatever reason, . . . society presently rejects the commercialization of human organs . . . and tolerates only an altruistic system of voluntary donation.”).

As a further, albeit less direct, indication, the Act in another section gives certain duties to an organ procurement and transplantation network established by the Secretary. The network has a duty to “work actively to increase the supply of donated organs.” 42 U.S.C. § 274(b)(2)(K) (2000). One should seek to interpret the provisions of an act in harmony with one another; here, that rule of interpretation indicates that this statutory mandate to increase the supply of donated organs can illuminate the statute’s unclear phrase “valuable consideration.” In particular, section 301 should be read to allow creative practices that “increase the supply of donated organs,” *id.*, but do not involve buying, selling, or otherwise commercializing the transfer of organs. Both of the forms of exchange at issue enable someone who desires simply to donate his kidney to a family member or another specific individual, but is unable to do so directly due to incompatibility, to benefit that individual by other means. By donating his kidney to someone other than his intended recipient, the donor does receive something in exchange, but not a payment, financial gain, or direct personal benefit; rather, he receives an increased opportunity for his intended recipient to obtain a compatible kidney. These arrangements may fairly be described as enabling donations rather than as transfers for “valuable consideration.”²

² The Act’s legislative history does not directly suggest a meaning of “valuable consideration” but is consistent with the above indications and interpretation. The Senate Report states that the bill “prohibits the interstate buying and selling of human organs for transplantation” and “is directed at preventing the for-profit marketing of kidneys and other organs.” S. Rep. No. 98-382, at 2, 4, *reprinted in* 1984 U.S.C.C.A.N. 3975, 3976, 3978. It adds that “individuals or organizations should not profit by the sale of human organs” and that “human body parts should not be viewed as commodities.” *Id.* at 16-17, 1984 U.S.C.C.A.N. at 3982. The House Conference Report explains that the final bill “intends to make the buying and selling of human organs unlawful.” H.R. Conf.

Some other references to “valuable consideration” in the United States Code reinforce these indications from the Act (while the remainder of the references are inconclusive). The most relevant reference tracks section 301 by making it “unlawful for any person to knowingly acquire, receive, or otherwise transfer any human fetal tissue for valuable consideration if the transfer affects interstate commerce.” 42 U.S.C. § 289g-2(a) (2000). The title—“Purchase of tissue”—also parallels section 301. It is an accepted rule that “when Congress uses the same language in two statutes having similar purposes, particularly when one is enacted shortly after the other, it is appropriate to presume that Congress intended that text to have the same meaning in both statutes.” *Smith v. City of Jackson, Miss.*, 544 U.S. 228, 233 (2005). The prohibition on the purchase of fetal tissue was enacted nine years after NOTA, *see* National Institutes of Health Revitalization Act, Pub. L. No. 103-43, § 112, 107 Stat. 122, 131 (1993), and is codified with NOTA as part of the Public Health Service Act, 42 U.S.C. §§ 201-300gg-92 (2000). Thus, the penalty for violating the prohibition is illuminating: a “fine . . . in an amount not less than twice the amount of the valuable consideration received.” *Id.* § 289g-2(c)(2). The requirement for calculating the fine presumes that the “valuable consideration” is monetary or at least has a readily measurable pecuniary value. It is reasonable to apply that same meaning to the identical term in section 301, and “valuable consideration” so understood would not include the two donative practices at issue.³

A further indication of the meaning of “valuable consideration” in section 301 is usage in similar contexts in contemporaneous state laws. A California law enacted in 1984, the same year as NOTA, makes it “unlawful for any person to knowingly acquire, receive, sell, promote the transfer of, or otherwise transfer any human organ, for purposes of transplantation, for valuable consideration.” Cal. Penal Code § 367f(a) (2005). That statute defines “valuable consideration” to mean “financial gain or advantage.” *Id.* § 367f(c)(2). An essentially identical South Dakota prohibition enacted in 1992 likewise defines “valuable consideration” to mean “financial gain or advantage.” *See* S.D. Codified Laws §§ 34-26-43 (definition), 34-26-44 (prohibition) (2005). And the Uniform Anatomical Gift Act, while not defining “valuable consideration,” does provide that “[a] person may not knowingly, for valuable consideration, *purchase or sell* a part for transplantation or therapy, if the removal of the part is intended to occur after the death of the decedent.” Unif. Anatomical Gift Act § 10(a) (1987) (emphasis added). (All three of these sources also have exclusions for reasonable payments similar to the exclusions in section 301.)

Rep. No. 98-1127, at 16, *reprinted in* 1984 U.S.C.C.A.N. 3989, 3992. The legislative history does not suggest that any Member of Congress understood the bill as addressing non-monetary or otherwise non-commercial transfers.

³ Several other federal statutes use “valuable consideration” in different contexts and without defining it or otherwise clearly indicating its meaning, although they seem to suggest some sort of commercial transaction. *See, e.g.*, 15 U.S.C. § 1060 (2000) (protecting “subsequent purchaser [of a trademark] for valuable consideration”); 31 U.S.C. § 3125(a) (2000) (defining “obligation” to mean “a direct obligation of the United States Government issued under law for valuable consideration, including bonds, notes, certificates of indebtedness, Treasury bills, and interim certificates”); 47 U.S.C. § 338(e) (2000) (making it unlawful for a satellite carrier to “accept or request monetary payment or other valuable consideration” for certain actions).

This usage also indicates that “valuable consideration,” at least as applied to organ donations, involves some sort of buying and selling, or otherwise commercial transfer, of organs.

It also is appropriate, as suggested above, to look to the common law of contracts, because “[w]here Congress uses terms that have accumulated settled meaning under . . . the common law, a court must infer, unless the statute otherwise dictates, that Congress means to incorporate the established meaning of these terms.” *N.L.R.B. v. Amax Coal Co.*, 453 U.S. 322, 329 (1981) (citation omitted). With regard to mere “consideration,” a broad range of promises and actions may suffice, though even there the outer limits are hazy. Compare 2 William Blackstone, *Commentaries on the Laws of England* *440 (5th ed. 1773) (“[I]n case of leases, always reserving a rent, though it be but a peppercorn [such] . . . considerations will, in the eyes of the law, convert the gift . . . into a contract.”), with *Restatement (Second) of Contracts* § 79 cmt. d (1979) (“Disparity in value, with or without other circumstances, sometimes indicates that the purported consideration was not in fact bargained for but was a mere formality or pretense.”). With regard to “valuable consideration,” however, there is much less of a “settled meaning.” The term is rarely defined, and its apparent meaning has varied over time and among jurisdictions. It also is difficult to determine how it differs from mere “consideration,” even though, under normal rules of interpretation, one would expect the additional word to have some meaning. In addition, the definitions indicated by various authorities are not specific to the context of organ transfers. Nevertheless, the common law does at least allow for the reading of section 301 that we have derived from relevant statutory usage; it certainly does not foreclose it.

Black's Law Dictionary defines “consideration” generally as “[s]omething (such as an act, a forbearance, or a return promise) bargained for and received by a promisor from a promisee; that which motivates a person to do something, esp. to engage in a legal act.” *Black's Law Dictionary* 324 (8th ed. 2004) (“*Black's*”). It then defines “valuable consideration” as “[c]onsideration that is valid under the law; consideration that either confers a *pecuniarily* measurable benefit on one party or imposes a *pecuniarily* measurable detriment on the other.” *Id.* at 326 (emphasis added). This latter definition dates to the 1999 edition, which was a significant update and revision. *Black's* at 302 (7th ed. 1999). The definition in the edition current when NOTA was enacted had not required “pecuniarily measurable” consideration:

A class of consideration upon which a promise may be founded, which entitles the promisee to enforce his claim against an unwilling promisor. Some right, interest, profit, or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by the other. . . . It need not be translatable into dollars and cents, but is sufficient if it consists of *performance, or promise thereof, which promisor treats and considers of value to him.*

Black's at 1390 (5th ed. 1979) (emphasis added). (This edition did, however, define “valuable” to mean “[o]f financial or market value; commanding or worth a good price; of considerable

worth in any respect, whether monetary or intrinsic.” *Id.*) Under this definition, a kidney made available to a third party in an LDDD or Paired Exchange could be viewed as a “benefit” “of value to” the donor of a kidney; in turn, the network in an LDDD Exchange and the complementary donor in a Paired Exchange could be viewed as undertaking a “responsibility” toward the intended recipient.

The case law is similarly inconclusive as to whether “valuable consideration” necessarily involves a pecuniary element, though it does suggest that valuable consideration typically involves consideration that can be measured in monetary terms. In *Prewitt v. Wilson*, 103 U.S. 22 (1881), the Supreme Court quoted Sir Edward Coke for the proposition that “[m]arriage is to be ranked among the valuable considerations, yet it is distinguishable from most of these in not being reducible to a value which can be expressed in dollars and cents.” *Id.* at 24 (citation omitted). Other authority also indicates that “valuable” generally refers to a pecuniary value. See, e.g., *Nelson v. Brown*, 164 Ala. 397, 405, 51 So. 360 (1910) (marriage “is valuable in a way which must be differentiated from that valuable consideration which will support a contract in that ordinarily the word ‘valuable’ signifies that the consideration so described is pecuniary, or convertible into money”); *In re Haugh’s Estate*, 12 Ohio Supp. 57, 1943 WL 3216, at *3 (Ohio Prob. 1943) (quoting digest for the proposition that “[m]arriage, however, is distinguishable from other valuable consideration in that it is not capable of being reduced to a value which can be expressed in dollars and cents,” but noting that “an antenuptial contract does have certain very valuable considerations which can be reduced to dollars and cents”). In *Stanley v. Schwalby*, 162 U.S. 255 (1896), however, the Court concluded that the promise to establish a military headquarters on particular land was valuable consideration for a city’s conveyance of the land to the United States, as “[a] valuable consideration may be other than the actual payment of money, and may consist of acts to be done after the conveyance.” The Court explained that “[t]he advantage enuring to the city of San Antonio from the establishment of the military headquarters there was clearly a valuable consideration for the deed of the city to the United States,” but did not discuss how readily that promised act could be converted into a pecuniary value to the city. *Id.* at 276.

Thus, the common law understanding of “valuable consideration” either is inconclusive, leaving open the meaning we derive from statutory sources, or tends to confirm that meaning by suggesting that consideration, to be “valuable,” should be pecuniary, readily convertible into monetary value. There is no doubt a sense in which any act or thing could be given some value in dollars and cents. But the third-party benefits received under the donative practices at issue here are not commonly or readily so measured, as far as we are aware.

Finally, notwithstanding the above indications of the meaning of “valuable consideration,” the scope of the phrase does remain open to some question. Given that section 301 is a criminal statute, it is therefore appropriate to apply the rule of lenity in favor of a narrower reading, and thus to understand “valuable consideration” in section 301 of the Act as referring to the buying and selling of organs for monetary gain or to organ exchanges that are

otherwise commercial. *See, e.g., Leocal v. Ashcroft*, 543 U.S. 1, 11 n.8 (2004) (“Even if [the relevant statute] lacked clarity on this point, we would be constrained to interpret any ambiguity in the statute in petitioner’s favor.”). As the Supreme Court has stressed: “[W]hen choice has to be made between two readings of what conduct Congress has made a crime, it is appropriate, before we choose the harsher alternative, to require that Congress should have spoken in language that is clear and definite.” *Dowling v. United States*, 473 U.S. 207, 214 (1985) (citations and internal quotations omitted). Setting aside the strong circumstantial evidence of meaning discussed above, it is certainly true, at a minimum, that section 301 does *not* “clear[ly] and definite[ly]” encompass LDDD and Paired Exchanges, as distinct from “purchases” or other transfers for a profit.

For all of the above reasons, the donative practices you have described do not violate section 301.

/s/

C. KEVIN MARSHALL
Deputy Assistant Attorney General
Office of Legal Counsel

Attachment 2

6/27/16 UNM Letter to

House Select Panel

McDermott Will & Emery

Boston Brussels Chicago Dallas Düsseldorf Frankfurt Houston London Los Angeles Miami
Milan Munich New York Orange County Paris Rome Seoul Silicon Valley Washington, D.C.

Strategic alliance with MWE China Law Offices (Shanghai)

Stephen M. Ryan
Attorney at Law

June 27, 2016

BY U.S. MAIL AND EMAIL

The Honorable Marsha Blackburn, Chairman
The Honorable Jan Schakowsky, Ranking Member
House Select Panel on Infant Lives
H2-316 Ford House Office Building
Washington, DC 20515

Re: Letter Regarding UNM and Fetal Tissue Research

Dear Chairman Blackburn and Ranking Member Schakowsky:

The Select Panel has for several months been inquiring about the University of New Mexico's ("UNM") relationship with Southwestern Women's Options ("SWO"). The Panel's Majority has issued document subpoenas, taken depositions under oath, and worked closely with New Mexico anti-abortion groups to conduct its investigation. The Majority staff has known from the outset that SWO donated fetal tissue to a single neonatologist at UNM, and that UNM did not provide SWO with any compensation in or even reimbursement for costs incurred by SWO in exchange for fetal tissue. Since no payment was ever made, the Panel's majority staff probed deeply to be certain there was no other valuable consideration in return for the donation of fetal tissue. This effort turned up no new evidence. This letter summarizes the testimony and documents in this regard.

To be lawful, the Select Panel's investigative activities must have a legislative purpose, which is to examine whether federal law or policy should be changed. This past week the Chairman made a series of unsupported allegations against UNM, including crafting a new claim that UNM violated New Mexico state law, which it purported to refer to New Mexico Attorney General Hector H. Balderas, Jr. Making an unfounded 'criminal referral' regarding state law is well outside of the Panel's mandate. UNM will respond to its Attorney General regarding the baseless allegations in the Chairman's letter.

The Chairman's new and unfounded allegation that UNM has potentially violated New Mexico's version of the Uniform Anatomical Gifts Act is not a subject the Select Panel ever asked UNM or its deposition witness about before publicly opining about it. It is based solely on the conclusions of the Panel Majority's lawyers, none of whom are admitted to practice law in New Mexico. Suffice it to say, UNM denies in every respect that it has done or taken any action in

receiving donated fetal tissue from SWO in violation of New Mexico's version of the Uniform Anatomical Gift Act.

UNM also objects to the Select Panel Majority's tactics in issuing last week's press release and allegations. UNM was never provided a copy of the allegations. The materials were provided to the press hours before they were provided to the public online. In fact, UNM began receiving calls about the matter from the press approximately two hours before UNM was able to obtain a copy of the Chairman's allegations from the Panel's public website. Counsel for UNM sent an email to the Majority staff asking for a copy of the allegations. Majority staff never responded to this request.

UNM's Relationship with SWO

Referrals by UNM to SWO Are Not Unique or Exclusive

Your staff has sought to understand whether UNM provides some meaningful consideration, including but not limited to referrals to SWO for abortion procedures. The facts do not support the existence of any special relationship in this regard.

UNM generally will not perform a voluntary abortion procedure for a woman beyond the gestational age of 24-weeks because of a policy followed by UNM's hospital and the UNM Medical Group, Inc.'s Center for Reproductive Health Clinic. Faced with a woman beyond that gestational age, where the health of the mother or significant fetal anomalies are not present, the physicians at UNM will only provide options counseling to those patients. These options always include counseling about the woman continuing her pregnancy and adoption. It also includes providing the woman a list of non-UNM facilities that do not follow UNM's time limits for non-medically indicated procedures. Among the facilities UNM does provide information about is SWO. But that is not the only such facility listed. This options counseling is constitutionally protected activity between these women and their doctors.

UNM Residency/Fellow Rotations at SWO Did Not Benefit SWO

Your staff has asked UNM about the training program for medical residents and fellows (fully licensed doctors who seek additional training). Under this program, one or two Family Planning fellows from the Department of Obstetrics and Gynecology each year spent two, two-week rotations at SWO. Under the residency program, two to three residents spent portions of two weeks at SWO. This fellowship rotation at SWO began in 2011, but terminated before this congressional investigation began, in 2015. The program was terminated because the Family Planning Fellowship Program, which conducts a routine review of fellowship educational content every year or two, determined that 'learners,' a term used for all students and doctors undergoing training, were not obtaining the volume of practice at SWO to become competent in second trimester termination procedures.

UNM Dr. Administrator testified in her deposition on May 11, 2016 that having UNM learners at SWO did not benefit SWO. In fact, she stated just the opposite: Dr. Administrator stated that teaching residents and fellows created more work for SWO doctors. It slowed down the procedures and required SWO preceptors to take more time and effort to teach and train. The testimony is clear that any benefit accrued to UNM learners and UNM in this relationship, not SWO.

SWO Doctors Were Provided Unpaid Volunteer Faculty Appointments Due to Accrediting Body Rules, But Provided No Financial Benefit to SWO or the Doctors at SWO

As UNM explained in its response of March 3, 2016 to the Select Panel's subpoena, it is a requirement that preceptors, whose duties include training learners at UNM, must be members of the faculty. Accordingly, three SWO doctors—Dr. B., Dr. L., and Dr. C.—were appointed as Volunteer Faculty during the time that the training rotation program was in existence. Volunteer Faculty positions are not only uncompensated, they are not unique at UNM. Indeed, there are approximately 1000 Volunteer Clinical Faculty throughout UNMHSC, of which the Ob-Gyn department has 58.

Volunteer Clinical Faculty receive no financial compensation. Accordingly, the SWO doctors who served as preceptors for UNM learners were not paid by UNM for training these learners, or for any duties they performed. As UNM explained in its March 3, 2016 response to the Select Panel's subpoena, the Volunteer Faculty Guidelines indicate that Volunteer Faculty receive certain de minimus non-monetary benefits, such as access to purchase tickets to UNM sporting events, and access to the UNM fitness center. The benefits UNM gave to the SWO doctors was consistent with the benefits received by all Volunteer Faculty, and are not material inducements to provide fetal tissue which SWO had been donating for some time prior to 2011.

SWO Had Its Own Malpractice Insurance and Did Not Ever Make A Claim For Coverage Under UNM's State Issued Insurance

The Select Panel has inquired about the insurance coverage relationship between UNM and SWO. UNM has explained in its response to the Select Panel's subpoena on March 3, 2016, as well as in Dr. Administrator's testimony, the following facts regarding insurance coverage:

UNM medical students, residents, fellows, and faculty are covered by the New Mexico Tort Claims Act for any issue of malpractice that may arise from their performance of medical procedures or medical care, whether that care is given at UNM or at another facility, such as SWO. Likewise, preceptors that supervise UNM learners may be covered by the New Mexico Tort Claims Act for claims that arise while a UNM learner is conducting a procedure and a preceptor is supervising that learner. However, in any case, it is the New Mexico Risk Management Department that would make a determination regarding the coverage of the New Mexico Tort Claims Act. No such situation has arisen.

The Honorable Marsha Blackburn, Chairman
The Honorable Jan Schakowsky, Ranking Member
June 27, 2016
Page 4

The bottom line is SWO had to obtain and pay for its own insurance coverage. UNM did not provide that coverage.

SWO's Ability to Refer Its Patients In an Emergency To UNM Hospital Is Not In Any Way Unique

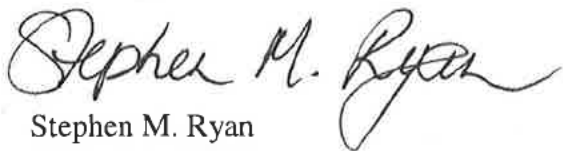
If a patient of SWO needed to be transported on an emergency basis to UNM's hospital, UNM would accept such patients, as it regularly takes emergency cases and is the only hospital with a Level 1 Trauma Center in all of New Mexico. (Another very skilled hospital, nearby to SWO and UNM is Presbyterian Hospital, where, upon information and belief, SWO could also send its patients in need of emergency or other care). In this respect, however, SWO is treated no differently than any other medical institution or medical practice in the state. Nor were SWO doctors automatically given clinical privileges to practice in the hospital. The volunteer faculty status does not carry with it such hospital privileges. In fact, the only Doctor at SWO who had the privilege to practice at UNM was Dr. C. This was provided to her by UNM due to her having been a fellow at UNM, not due to her work at SWO. This was used on a single occasion to allow Dr. C. to supervise a procedure at UNM, for the benefit of UNM. Dr. C. was not paid for this procedure.

Conclusion

UNM has been entirely forthright and has fully cooperated with all aspects of this investigation for six months, including providing documents, witnesses and answers. UNM has been targeted by the Panel majority due to its relationship with SWO and because SWO performs abortions into the third trimester. However, the Panel has learned that UNM's relationship with SWO is limited, and the key facts are known. There is no evidence that UNM has reimbursed or compensated SWO for providing fetal tissue to UNM's fetal tissue researcher. UNM ended its no-fee relationship to send learners to SWO before this Panel began its work.

Given the record, we fail to see any reason why UNM should continue to be the subject of any inquiry at this time. Indeed, the Supreme Court of the United States confirmed again today that abortion is a legal right protected by the Constitution. Accordingly, we respectfully request the Panel terminate its investigation of UNM.

Sincerely,



Stephen M. Ryan
Counsel to UNM

The Honorable Marsha Blackburn, Chairman
The Honorable Jan Schakowsky, Ranking Member
June 27, 2016
Page 5

cc: Elsa Kircher Cole, University Counsel
March Bell, Esq., Select Investigative Panel on Infant Lives
Frank Scaturro, Esq., Select Investigative Panel on Infant Lives
Heather Sawyer, Esq., Select Investigative Panel on Infant Lives

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING
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Majority (202) 225-2927
Minority (202) 225-3641

September 12, 2016

Michael Leoz
Regional Manager
Department of Health & Human Services
Office for Civil Rights, Pacific Region
90 7th Street, Suite 4-100
San Francisco, CA 94103-6705

OCR Reference Numbers: 16-241844, 16-241846, 16-241848

Dear Mr. Leoz:

We write in response to your August 18, 2016 letter seeking information regarding allegations made by Representative Marsha Blackburn, Chair of the Select Investigative Panel of the Committee on Energy and Commerce of the U.S. House of Representatives (“Select Panel”).

As an initial matter, the Chair’s June 1, 2016 letter alleging that certain clinics violated the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule was not shared with Democratic Members of the Select Panel before being sent to the Department of Health & Human Services (HHS) and does not reflect our views. We are not aware – and the Chair has not identified – any actual instances where health information privacy rights were violated. In addition, the Chair does not allege any ongoing violations and information provided to the Panel indicates that there is no possibility of an ongoing violation, as explained below.

As you may already be aware, the House Majority created the Select Panel in October 2015 to continue investigating allegations regarding the unlawful sale of fetal tissue made through a series of deceptively-edited videos created by anti-abortion activist David Daleiden and the “Center for Medical Progress.” Three House Committees – Energy and Commerce, Oversight and Government Reform, and Judiciary – had already investigated these fraudulent video allegations and found no evidence of wrongdoing by Planned Parenthood. Thirteen states have also now investigated and have found no wrongdoing by clinic personnel, doctors, or researchers.

Like the three House and thirteen state investigations that preceded it, the Select Panel has similarly uncovered no evidence of the unlawful sale of fetal tissue. We also have no evidence that HIPAA’s Privacy Rule was violated in connection with fetal tissue donation.

Chair Blackburn asserts in her June 1, 2016 letter that language contained in agreements between StemExpress, a tissue procurement business, and certain clinics raises concern about possible HIPAA violations,¹ but she does not identify any actual incidents. Moreover, before sending her June 1, 2016 letter to HHS, the Chair never raised this concern directly with us or with StemExpress or the named providers. In fact, we first learned of the allegations in her letter through a FOX News report on May 31, 2016, which included an interview with Chair Blackburn and a copy of her letter, which had not yet been provided to us or, apparently, HHS.

With regard to the specific questions raised in your August 18, 2016 letter, we submit the following information:

1. On what date(s) did the alleged violations occur for each of the named entities?

The Democratic Members of the Select Panel are not aware of any such violations.

2. Are the alleged violations ongoing for each of the named entities?

No. Chair Blackburn has not alleged ongoing violations but, instead, asserts only possible past violations “from about 2010 to 2015.”

In addition, StemExpress informed the Select Panel nearly eight months ago that “at present, no StemExpress personnel are directly involved in the procurement of fetal tissue onsite at any clinics in the United States” and its staff are only onsite “for initial training for the clinic’s staff.”² Chair Blackburn alleges that the risk of a HIPAA violation existed because StemExpress employees were working onsite; the fact that StemExpress no longer procures tissue onsite in clinics removes that possibility.

3. If the alleged violations are not ongoing, when did they cease for each of the named entities?

StemExpress informed the Panel that it stopped working with Planned Parenthood in August 2015.³ The possibility that StemExpress employees had unauthorized access to protected information at any Planned Parenthood clinic would have ceased as of August 2015.

StemExpress also informed the Panel that its personnel are no longer working onsite in any clinics and that the independent clinics (i.e., clinics not affiliated with Planned Parenthood) that it continues to work with “handle all aspects of the patient consent process, the procurement of tissue following a termination procedure, and the packaging and shipment of the tissues to StemExpress for use in the production of isolated cells.”⁴

With regard to the particular independent clinic identified in Chair Blackburn’s June 1, 2016 letter, documents produced to the Panel provide no evidence that any relationship with StemExpress existed beyond 2012.

¹ Letter from Hon. Marsha Blackburn, Chair, Select Investigative Panel to Ms. Jocelyn Samuels, Director, Office for Civil Rights, Dept. of Health and Human Services (June 1, 2016), at 4.

² StemExpress First Response to House Select Panel Document Requests (Jan. 15, 2016).

³ *Id.*

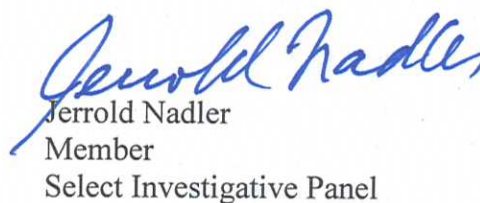
⁴ *Id.*

We hope that this information is of assistance and welcome any additional questions.

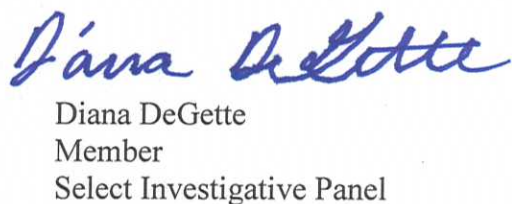
Sincerely,



Jan Schakowsky
Ranking Member
Select Investigative Panel



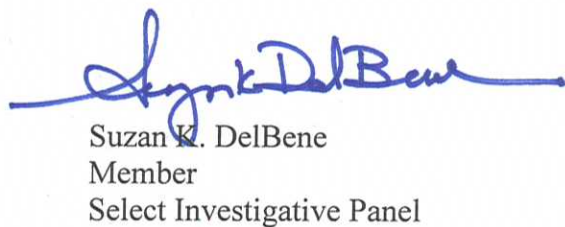
Jerrold Nadler
Member
Select Investigative Panel



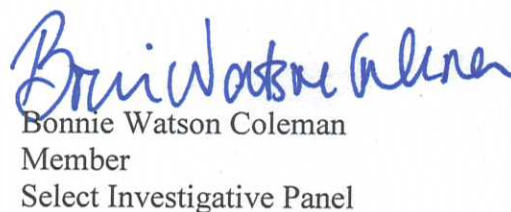
Diana DeGette
Member
Select Investigative Panel



Jackie Speier
Member
Select Investigative Panel



Suzan K. DelBene
Member
Select Investigative Panel



Bonnie Watson Coleman
Member
Select Investigative Panel

Cc: Hon. Marsha Blackburn, Chair
Select Investigative Panel

Hon. Jocelyn Samuels, Director
HHS Office for Civil Rights

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November 14, 2016

The Honorable William H. Orrick
United States District Court
Northern District of California
450 Golden Gate Avenue
San Francisco, CA 94102

Re: *National Abortion Federation v. Center for Medical Progress, et al.*
Case No. 3:15-cv-03522

Dear Judge Orrick:

I appreciate the opportunity to provide the views of the Democratic Members on the Select Investigative Panel (Select Panel) regarding the unilateral subpoena issued to the Center for Medical Progress (CMP) by Chair Blackburn and the November 8, 2016 letter from the Chair to Life Legal Defense Foundation. That letter was not given to us until November 10, 2016, after it already had been filed with the Court, and does not reflect our views.

It is our understanding that in a subsequent letter sent November 11, 2016, Panel Republicans withdrew the Chair's unilateral subpoena. We did not receive a copy of that letter until today and are therefore submitting this letter in the event that any further action on the subpoena is necessary.

As explained below, we are extremely concerned that any CMP materials produced to the Select Panel will be released to the public. To date, Chair Blackburn has ignored repeated requests to adopt rules governing the Panel's collection and handling of information, including names and other personal information. In the absence of rules, Panel Republicans have publicly named some of the key targets of their investigation and released names and contact information for others, knowing that doing so endangers individual privacy and safety.

We also do not believe that the subpoena, which was issued in violation of House rules, is necessary or enforceable. CMP already produced these materials to Congress and the Select Panel can obtain them from the House Oversight and Government Reform Committee, subject to appropriate limitations to protect sensitive information. As a result, we see no legitimate need for the Court to lift its stay to allow CMP to produce a duplicate set of materials covered by orders issued in this case.

1. Panel Republicans have Refused to Adopt Rules to Safeguard Sensitive Information and have Released Names and Other Personal Information to the Public.

Over the course of the Panel's investigation, Chair Blackburn has used her unilateral subpoena authority – or the threat of that authority – to demand information, including the names of researchers, students, laboratory or clinic personnel, and doctors involved in fetal tissue research or reproductive health care. At the same time, she has ignored repeated requests from Panel Democrats and outside entities to enact rules to safeguard individual privacy and safety.¹

Nearly everyone contacted by the Panel has been reluctant to provide names and personal information without protective rules in place. As they have explained, providers and researchers already face harassment and violence and identifying anyone in connection with this investigation increases these risks.

Their concerns are not hypothetical or exaggerated. One of the individuals targeted by Panel Republicans received graphic death threats after being identified in the inflammatory Daleiden/CMP videos.² The gunman who killed three people, injured nine others, and terrorized patients and providers at a Planned Parenthood clinic last November used the same inflammatory language that has been used repeatedly by Chair Blackburn and others to describe this investigation.³

This Court recognized the increased harassment, including death threats, against individuals identified in the Daleiden/CMP videos and other materials and issued orders to block additional release of those materials in an effort to prevent further harm.⁴ Unlike the Court, Panel Republicans have refused to put any rules in place to safeguard names or other personal information. Instead, they have publicly identified some of the key targets of their investigation, released names and contact information for others, and have made clear that they remain free to do so.

¹ See e.g. Letter from Hon. Jan Schakowsky, Ranking Member, Select Investigative Panel, to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Apr. 28, 2016); Letter from Select Panel Democrats to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Apr. 25, 2016); Letter from Jessica Hertz and Mary Ellen Callahan, Jenner & Block LLP to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Apr. 25, 2016); Letter and attachments from Select Panel Democrats to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Feb. 11, 2016); Letter from Select Panel Democrats to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Jan. 21, 2016).

² Jessica Glenza, *Man charged for online violent threats against company over Planned Parenthood fetal tissue*, THE GUARDIAN (Dec. 17, 2015), <https://www.theguardian.com/us-news/2015/dec/17/planned-parenthood-online-violent-threats-stemexpress-fetal-tissue>; U.S. Dept. of Justice, *Washington Man Pleads Guilty to Sending Death Threats* (Apr. 19, 2016), <https://www.justice.gov/usao-edca/pr/washington-man-pleads-guilty-sending-death-threats>.

³ Richard Fausset, *Suspect in Colorado Planned Parenthood Rampage Declares 'I'm Guilty' in Court*, NY TIMES (Dec. 9, 2015), http://www.nytimes.com/2015/12/10/us/colorado-planned-parenthood-shooting.html?_r=0.

⁴ Nat'l Abortion Fed'n v. Ctr. for Med. Progress, No. 15-cv-03522-WHO, 2016 U.S. Dist. LEXIS 14485 at *69-70 (N.D. Cal. Feb. 5, 2016) (granting motion for preliminary injunction).

For example, after publicly and privately promising to protect individual names,⁵ Panel Republicans told counsel for a witness who had expressed safety concerns and asked for protections that:

“We will not assure that [individual’s] name or any of the other names used in the deposition will remain private. It is entirely possible that the deposition could be made public.”⁶

Less than a month later, Chair Blackburn issued a press release identifying another doctor as a target of the investigation and announcing the date, time and location of his deposition.⁷ This provider has been the target of harassment by anti-abortion extremists for decades. A fire destroyed his family farm, killing 17 horses and family pets in claimed retaliation for the care he provides to women.⁸ A few days after the Chair announced his deposition, and before his scheduled appearance to answer the Panel’s questions, a Republican Member of the Panel compared him to a convicted murderer.⁹

In June 2016 letters to the Department of Health and Human Services (HHS), which Panel Republicans leaked to FOX News before they had been mailed to HHS or provided to Democrats, Chair Blackburn included documents that contained names, contact information, and other personal information of doctors and researchers.¹⁰ Republicans redacted identifying information only after Panel Democrats objected; and, therefore, after this information had been provided to the press and posted on the Republicans’ website.¹¹

During her appearance before the Panel, another doctor under unilateral subpoena from the Chair detailed the harassment and threats that she and others have received at home and at

⁵ Kelsey Harkness, *Here’s Why Republicans Are Demanding Names in Fetal Tissue Probe*, THE DAILY SIGNAL (Apr. 6, 2016), <http://dailysignal.com/2016/04/06/heres-why-republicans-are-demanding-names-in-fetal-tissue-probe/>.

⁶ See Letter from Jessica Hertz, Jenner & Block LLP to Hon. Marsha Blackburn, Chair, Select Investigative Panel, and Hon. Jan Schakowsky, Ranking Member, Select Investigative Panel (Apr. 25, 2016).

⁷ THE ENERGY AND COMMERCE COMM., SELECT INVESTIGATIVE PANEL, *Select Panel Begins Investigation of Late-Term Abortionist [Dr.]* (May 11, 2016).

⁸ Lena H. Sun, *Neb. doctor who performs abortions in Md. talks about security concerns, future of clinic*, WASH. POST (July 24, 2011), https://www.washingtonpost.com/national/health-science/neb-doctor-who-performs-abortions-in-md-talks-about-security-concerns-future-of-clinic/2011/07/21/gIQAaJMSXI_story.html.

⁹ Dr. Susan Berry, *Rep. Diane Black: ‘Little that Separates Late-Term Abortionist [Dr.] from Kermit Gosnell’*, BREITBART (May 16, 2016).

¹⁰ Letter from Hon. Marsha Blackburn, Chair, Select Investigative Panel, to Dr. Jerry Menikoff, Director, Office for Human Research Protections, Dep’t of Health and Human Services (June 1, 2016); Letter from Hon. Marsha Blackburn, Chair, Select Investigative Panel, to Ms. Jocelyn Samuels, Director, Office for Civil Rights, Dep’t of Health and Human Services (June 1, 2016).

¹¹ See Letter from Select Panel Democrats to Hon. Marsha Blackburn, Chair, Select Investigative Panel (June 3, 2016).

work.¹² That witness and her counsel repeatedly asked the Panel to safeguard her name and those of others that she had been asked to identify. Yet a little more than two months after her deposition, Chair Blackburn identified the doctor in an “interim update” issued by Panel Republicans and posted on the Panel Republicans’ website.¹³

In September 2016, Chair Blackburn released the doctor’s name again, this time in a notice for a business meeting to vote on release of her deposition transcript without any agreement about appropriate redactions of names or other personal information.

The week before this release, her university’s counsel had advised Panel Republicans:

[The University] has been working with campus police and local law enforcement regarding the publication of the names by the Panel Majority, as well as the publication of the address and contact information of its doctors and the lab assistant by a “Liveactionnews” blog that was published during the same week. [The University] is also concerned about the inflammatory rhetoric of both publications, and will be seeking additional security measures to safeguard these individuals and their students.¹⁴

Knowing this, Panel Republicans still identified the doctor by name in their hearing notice. That information remains on the Republicans’ website to this day, despite a request from Panel Democrats to revise and remove that information from their notice.

We are additionally concerned about possible public release of the materials now being sought by subpoena because we have reason to believe that Panel Republicans already have some of these materials and may have gotten them from CMP, Mr. Daleiden, or their associates, despite this Court’s orders.

During a recent Panel interview, for example, Panel Republicans questioned a witness using a photograph of what appeared to be a table display at a conference. When asked to explain the document, which had not previously been shared with Panel Democrats, Majority counsel responded “I think it’s a [photo] at a conference,” but would not otherwise identify its source.¹⁵ In another interview, counsel acknowledged that Panel Republicans may already have gotten materials from CMP:

¹² Deposition of [Dr. Administrator] by the Select Investigative Panel, H. Energy and Commerce Comm. (May 11, 2016).

¹³ THE ENERGY AND COMMERCE COMM., SELECT INVESTIGATIVE PANEL, *Select Investigative Panel Issues Interim Update to the House* (July 14, 2016), <https://energycommerce.house.gov/news-center/press-releases/select-investigative-panel-issues-interim-update-house>.

¹⁴ Email correspondence from Stephen M. Ryan, McDermott Will & Emery LLP to Select Panel Majority staff (Sept. 12, 2016).

¹⁵ Transcribed Interview of the Select Investigative Panel, H. Energy and Commerce Comm. (Oct. 6, 2016).

Minority counsel: And just to be clear, this is a three-page document. The first page is page 1.

Majority counsel: Yeah, one is to show you who it is, and then I want you just to comment on this because this is something we're trying to understand and are still very confused about.

Minority counsel: And this was taken off of their public Web site from the Center for Medical Progress?

Majority counsel: Maybe from the Web site. Maybe they just mailed it in here. I don't -- I don't -- probably one of the two.¹⁶

Panel Democrats have already asked Chair Blackburn to investigate and address the possible funneling of information between Select Panel Republicans and anti-abortion activists, and have expressed concern about the continued reliance on allegations and information from these sources.¹⁷ In so doing, we reiterated our position that the “refusal to adopt rules to foreclose the additional risk that highly sensitive and personal information might be released publicly or more selectively passed into the hands of anti-abortion extremists is inexcusable.”¹⁸ Chair Blackburn never responded and there still are no rules governing the Panel’s handling of sensitive information or its possible release.

2. The Subpoena was Issued in Violation of House Rules.

The resolution authorizing creation of the Select Panel grants Chair Blackburn unilateral subpoena authority “consistent with the notification, consultation, and reporting requirements of rule 16 of the Committee on Energy and Commerce.”¹⁹ Rule 16 provides that “to the extent practicable, the Chair shall consult with the ranking minority member at least 72 hours in advance of a subpoena being issued under such authority.”²⁰

On Monday, October 31, 2016 Chair Blackburn notified the Ranking Member of her intent to issue a subpoena to CMP and said that her staff would provide additional details. Panel Democrats immediately requested information – including a copy of the subpoena schedule; Panel Republicans ignored the request. Three days later, and without any discussion about what

¹⁶ Transcribed Interview of the Select Investigative Panel, H. Energy and Commerce Comm. (Nov. 1, 2016).

¹⁷ Letter from Select Panel Democrats to Hon. Marsha Blackburn, Chair, Select Investigative Panel (June 7, 2016); Letter from Select Panel Democrats to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Apr. 7, 2016).

¹⁸ Letter from Select Panel Democrats to Hon. Marsha Blackburn, Chair, Select Investigative Panel (June 7, 2016).

¹⁹ H. Res. 461, 114th Cong. § 4(1) (2015) (enacted).

²⁰ RULES OF THE H. COMM. ON ENERGY AND COMM., Rule 16 (114th Cong.).

was being requested and why, Panel Republicans issued the subpoena and, only then, provided Democrats with a copy.

Mere notification, accompanied by a refusal to discuss or provide copies of subpoenas before they are served, does not comply with the notice *and* consultation requirements of Rule 16, calling into question the validity of the Chair's unilateral subpoena.

3. Additional Production by CMP to Congress is Not Necessary.

In the letter filed with the court on November 7, 2016, Catherine Short of the Life Legal Defense Foundation said that CMP intends to "provide only the same materials provided in October 2015" in response to an earlier Congressional subpoena from the Chair of the Oversight and Government Reform Committee.

Ms. Short also represented that "counsel for the Panel also informed me that the Parliamentarian of the House of Representatives ruled, over objections from Panel staff, that the Panel does not have access to the material subpoenaed by the Committee on Oversight and Government Reform last September."

After reading Ms. Short's letter, we confirmed with the House Parliamentarian that committees control the terms of access to their records and may take action to disseminate copies, under conditions they deem appropriate to govern that release. Thus, there is no rule or ruling that prevents the Oversight and Government Reform Committee from providing copies of the materials already obtained from CMP to the Select Panel.

The Court previously permitted limited release of materials obtained by CMP and Mr. Daleiden under the subpoena issued by the Oversight and Government Reform Committee. Unfortunately, and while the source of the leak remains uncertain, some of the footage from CMP and Mr. Daleiden was posted on the internet following that release.

The editor of the website responsible for that posting initially said that he obtained the videos from a high-ranking congressional staffer "who felt morally compelled to have them release."²¹ And while requests to investigate the potential leak went unanswered, it is our understanding that Oversight and Government Reform Committee Chairman Jason Chaffetz has otherwise taken steps to safeguard the CMP materials in the Committee's possession. Chairman Chaffetz established a "viewing room" to allow Members and staff who need to view these materials the opportunity to do so and otherwise prohibited additional copying of the Daleiden/CMP materials, thus reducing the risk of any further public release.

²¹ Nancy Cook, '*Confidential*' Planned Parenthood Video Leaked, POLITICO (Oct. 22, 2015), <http://www.politico.com/story/2015/10/planned-parenthood-video-leak-215094>.

Conclusion

There is no reason why the Select Panel cannot reach bipartisan agreement with the Oversight and Government Reform Committee that provides access to the information from CMP that is already in that Committee's possession, with appropriate safeguards. Given the Panel's current lack of rules and the ongoing release of names and other personal information by Panel Republicans, we believe that this is the best avenue for getting the information that is being sought from CMP in a manner that encourages Congress to "exercise their powers responsibly and with due regard for the rights of affected parties."²²

Respectfully,



Jan Schakowsky
Ranking Member
Select Investigative Panel

cc: Hon. Marsha Blackburn, Chair
Select Investigative Panel

²² National Abortion Federation v. Center for Medical Progress et al., No. 15-cv-03522-WHO, slip op at 2 (N.D. Cal. Oct. 6, 2015).

APPENDIX C

OVERVIEW OF SELECT PANEL INTERACTIONS WITH STEMEXPRESS

- December 17, 2015 Letter from Chair Blackburn: Chair Blackburn requests documents spanning 13 different topic areas with a deadline for production of December 29, 2015. This gave the company eight business days over the holiday season to comply.
- December 18, 2015 Letter from StemExpress: StemExpress agrees to produce some documents by December 29, and requested additional time in light of the broad scope of the requests.
- December 22, 2015 Production from StemExpress: StemExpress produces documents, including materials it had previously produced to other Committees.
- January 15, 2016 Production from StemExpress: StemExpress produces documents, including a partial list of its research customers.
- February 1, 2016 Production from StemExpress: StemExpress produces documents, including documents related to all requests for fetal tissue during the January to April 2015 time period.
- February 12, 2016 Press Release: Chair Blackburn issues a press release announcing into to subpoena StemExpress.
 - Panel Democrats send Chair Blackburn a letter, objecting to issuance of the subpoena in violation of House rules and seeking the required consultation.
- February 16, 2016 Unilateral Subpoenas: Without any response to Panel Democrats, Chair Blackburn serves StemExpress with a subpoena demanding production the next day (February 17, 2016), and issues a press release identifying StemExpress and two others as “uncooperative organizations.”
- February 19, 2016 Letter from StemExpress: StemExpress notes that it had already produced over 1,300 pages of documents prior to the issuance of the Chair’s unilateral subpoena and confirms its intent to continue cooperating with the Panel. The company also reminds the Majority of its prior agreement to accept an organizational chart instead of individual names (already produced) and questioned the need to turn over all of its employees’ names.
- March 4, 2016 Production from StemExpress: StemExpress produces a list of entities to which it transported, donated, moved, or shipped fetal tissue. StemExpress agreed to provide this information after it was able to inform these entities that they were being named, in light of security and safety concerns.

- March 14, 2016 Production from StemExpress: StemExpress produces more documents, including all entities from which StemExpress procured fetal tissue as well as materials related to employee compensation.
 - StemExpress also offers their current Procurement Director to answer written or oral questions from the Panel regarding the company's fetal tissue procurement process and finances.
 - StemExpress explains that, consistent with their ongoing discussions with Republican staff, they are compiling a list of current and former employees who participated in various aspects of fetal tissue procurement to "facilitate additional discussions" with the Panel regarding this matter.
- March 18, 2016 Letter from StemExpress: StemExpress raises concerns about the changing demands of the Majority regarding document requests.
- March 23, 2016 emails between Panel staff: Chair Blackburn notifies Ranking Member Schakowsky of her intent to issue more subpoenas but Panel Republicans refuse requests to consult on the subpoenas or provide copies before service.
- March 28, 2016 Production from StemExpress: StemExpress produces accounting reports of StemExpress' 2014 and 2015 fetal tissue transfers. These reports are generated by agreement with Majority staff "in lieu of producing additional email correspondence, purchase orders, invoices, and other documentation related to fetal tissue transactions." Stem Express repeats its offer of a witness to explain its business and answer the Panel's questions.
- March 29, 2016 Unilateral Subpoenas: Chair Blackburn serves a subpoena for documents on StemExpress and on its CEO and also issues a subpoena for a deposition of the company's former procurement manager.
- March 30, 2016 StemExpress Letter: StemExpress requests that Chair Blackburn redact StemExpress CEO's name and title from the Republican website.
- April 1, 2016 email from counsel: Counsel offers four possible dates for the deposition of StemExpress's former procurement manager and advises the Panel that the witness can answer accounting questions.
- April 6, 2016 email from Majority staff: Majority staff respond that they are still trying to determine which of the proposed dates for the deposition of StemExpress's former procurement manager works best for them.
- April 11, 2016 Production from StemExpress: StemExpress sends more documents, including accounting reports of StemExpress' 2011- 2013 fetal tissue transfers. StemExpress again confirms that its former procurement manager served in an accounting role and can answer the Panel's questions. StemExpress also names its outside accountant.

- April 18, 2016 emails between Panel staff and StemExpress counsel: The Majority refuses to provide StemExpress with copies of staff-created “exhibits” that they intended to at the Panel’s April 20, 2016 public hearing. These documents had already been shared with other witnesses and the press. After Majority staff failed to respond to the Minority’s request to provide StemExpress with the documents and an opportunity to comment, Minority staff forwarded the exhibits to StemExpress’s counsel.
- April 19, 2016 Letters from StemExpress: StemExpress sends two letters to the Panel prior to the April 20 hearing. The company highlights its concerns with the Majority’s proposed exhibits, asks that the Majority rescind or revise the exhibits, and its business structure and pricing of fetal tissue, including detailed estimated costs and expenses related to fetal tissue procurement showing a net loss for the company.
- April 28, 2016 Letter from Chair Blackburn: Chair Blackburn sends StemExpress CEO a letter demanding StemExpress turn over additional business and accounting documents, claiming that the company had failed to comply with congressional subpoenas.
- May 2, 2016 Press Release: Chair Blackburn issues a press release with her April 28, 2016 letter to StemExpress’s CEO.
- May 6, 2016 Letter from StemExpress: StemExpress catalogues how it has complied with each of the Chair’s subpoena demands, disputes the claim that materials were still owed, and asks for an additional subpoena, which was never issued, to specify what is still owed and cover any new requests for information.
- May 10, 2016 Production from StemExpress: StemExpress produces more documents to the Select Panel in response to previous subpoenas, including updated accounting reports of fetal tissue transfers with more detailed explanations of costs and expenses associated with such transactions.
- May 12, 2016 Production from StemExpress: StemExpress produces more documents to the Select Panel, including invoices of specific transactions with researchers from 2011 through 2015.
- August 14, 2016 Republican “Interim Update”: Panel Republicans release an “interim update” identifying StemExpress (and several others) as failing to comply with document demands.
- September 8, 2016 Letter from Chair Blackburn: Chair Blackburn notifies StemExpress of her intent to pursue criminal contempt against the company and its CEO.
- September 19, 2016 Notice of Markup on Contempt: Panel Republicans notice a business meeting for September 21, 2016 to pursue criminal contempt against StemExpress and its CEO.

- September 21, 2016: Chair Blackburn and Panel Republicans vote to recommend criminal contempt against StemExpress without ever responding to the explanation of compliance sent by the company four months earlier. Panel Democrats move to adjourn the meeting because the Select Panel lacks authority to report contempt to the House or its Speaker and leave the meeting, refusing to vote on the recommendation.
- November 2, 2016: Chair Blackburn sends a letter to StemExpress informing the company that “I expect a vote to be held on next steps to compel StemExpress to comply with the two subpoenas issued to it.” The letter also raised three new allegations against StemExpress and sought new questions relating to production.

APPENDIX D

KEY EDITORIALS REGARDING THE SELECT PANEL'S INVESTIGATION

“Planned Parenthood Has Been Absolved. The GOP Should Give Up Its Crusade.”

Editorial Board. *The Washington Post*, January 26, 2016

“Vindication for Planned Parenthood”

Editorial Board. *The New York Times*, January 27, 2016

“The Planned Parenthood Witch Hunt”

Editorial Board. *The Washington Post*, February 20, 2016

“Abortion Witch Hunt”

Amanda Robb. *The New York Times*, March 5, 2016

“A New Attack on Fetal Tissue Research”

Editorial Board. *The New York Times*, March 7, 2016

“Republicans Continue Their Attacks on Fetal Tissue Research”

Anna North. *The New York Times*, March 25, 2016

“Enough Grandstanding on Fetal Tissue”

Editorial Board. *Los Angeles Times*, March 30, 2016

“Ideology Over Truth. It is Time to Shutter the House Panel on Fetal Tissue Research”

Editorial Board. *The Washington Post*, May 28, 2016

“Republicans' Latest Attempt to Discredit Fetal Tissue Research”

Anna North. *The New York Times*, June 3, 2016

“Marsha Blackburn's Infant Lives Panel Loses Focus”

David Plazas. *The Tennessean*, June 12, 2016

“Don't Stop the Clock on Medical Research”

Kathleen Cullen. *The Hill*, June 27, 2016

“Congressional Republicans Try to Criminalize Key Medical Research”

Charles Tiefer. *Forbes*, July 20, 2016

“Congressional Witch Hunt for ‘Baby Body Part’ Sellers Needs to End”

Editorial Board. *Los Angeles Times*, July 25, 2016

“GOP Ideology is Curtailing Vital Medical Research”

Editorial Board. *The Washington Post*, October 10, 2016

“House Republicans Wage War on Medical Research”

Albert R. Hunt. *Bloomberg*, October 23, 2016

Planned Parenthood has been absolved. The GOP should give up its crusade.

By Editorial Board January 26

"WE MUST go where the evidence leads us." So explained a Texas district attorney about why an investigation into alleged misconduct by Planned Parenthood ended instead with charges against Planned Parenthood's accusers. By adhering to the facts, prosecutors and grand jurors set a model of behavior that puts them at odds with the politicians — in Congress, in statehouses and on the Republican presidential campaign trail — who have tried to advance their agendas by falsely demonizing an organization that provides critical health care to women. In their evidence-free crusade, they have put vital health services at risk and wasted millions of taxpayer dollars.

A Houston grand jury on Monday returned indictments against two antiabortion activists involved in producing the explosive "sting" videos that purported to show Planned Parenthood personnel selling aborted fetal organs for profit. That the damaging but long-discredited videos showed nothing of the kind was underscored by Harris County District Attorney Devon Anderson's statement that the grand jury had cleared Planned Parenthood of any wrongdoing. Instead, the head of the Center for Medical Progress and another employee were charged with felony counts of tampering with a government record, presenting fake driver's licenses with intent to harm or defraud. Center head David R. Daleiden was also charged with a misdemeanor count related to offering to buy human tissue.

The judicial process will determine the validity of the charges against these two people. What we already know is that the investigation was, in Ms. Anderson's words, "lengthy and thorough"; that it was conducted by a respected Republican prosecutor; and that it was launched at the behest of Lt. Gov. Dan Patrick (R), a fierce opponent of abortion and of Planned Parenthood. In clearing Planned Parenthood of any wrongdoing, Harris County officials joined officials in 12 states (including Kansas, Florida, Ohio and Georgia) who concluded investigations into claims Planned Parenthood illegally profited from fetal tissue donation by absolving it of misconduct. An additional eight states declined even to investigate, citing a lack of any evidence of wrongdoing. The fact is Planned Parenthood does not sell fetal tissue for profit and never has.

Unfortunately, none of that has kept congressional Republicans from seeking to defund Planned Parenthood, nor hostile state governments from trying to block access to care at Planned Parenthood clinics. And don't hold your breath waiting for an apology from Carly Fiorina or other Republican presidential candidates who have demagogued the issue. Even in the face of this finding of no wrongdoing by a group of citizens relying on evidence, logic and common sense, Texas Gov. Greg Abbott (R) insisted the state would continue its own investigation of Planned Parenthood. After all, how important are the facts when there is self-interest to be served and a political point to be made?

The New York Times

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Founded in 1851

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Vindication for Planned Parenthood

One after the other, investigations of Planned Parenthood prompted by hidden-camera videos released last summer have found no evidence of wrongdoing. On Monday, a grand jury in Harris County, Tex., went a step further. Though it was convened to investigate Planned Parenthood, it indicted two members of the group that made the videos instead.

The Harris County prosecutor, Devon Anderson, a Republican who was asked by the lieutenant governor, a strident opponent of Planned Parenthood, to open the criminal investigation, said on Monday that the grand jurors had cleared Planned Parenthood of any misconduct.

Yet despite all the evidence, Texas' Republican governor, Greg Abbott, said on Monday that the state attorney general's office and the State Health and Human Services Commission would continue investigating Planned Parenthood. This is a purely political campaign of intimidation and persecution meant to destroy an organization whose mission to serve women's health care needs the governor abhors.

Fortunately, in the Harris County case, the jurors considered the facts. David Daleiden, the director of the Center for Medical Progress, which released the videos, and Sandra Merritt, an employee, were indicted on felony charges of tampering with governmental records, probably connected to their alleged use of fake driver's licenses to get into a Planned Parenthood office.

Mr. Daleiden was also indicted on a misdemeanor charge of violating a Texas ban on the buying and selling of human organs. A lawyer for Planned Parenthood said Mr. Daleiden sent an email to Planned Parenthood employees last June offering to buy fetal tissue for \$1,600 per sample, to which Planned Parenthood never responded. A lawyer for Mr. Daleiden said on Tuesday that his client planned to plead not guilty and would vigorously defend against the charges.

Neither the videos nor the many investigations that followed have found any evidence that Planned Parenthood employees offered to sell fetal tissue for a profit.

Texas is the 12th state in which investigations stemming from the videos have found no wrongdoing by Planned Parenthood. In October, Representative Jason Chaffetz, chairman of the House Oversight and Government Reform Committee, admitted that the committee's investigation of Planned Parenthood had found no evidence of misconduct.

Nonetheless, the videos have already had a destructive effect. Texas and several other states have moved to defund Planned Parenthood; a bill to deny money to the group in Ohio is before the State Senate this week. A bill that would pull federal money from Planned Parenthood has reached the president, who is sure to veto it.

These efforts threaten to deprive the country's poorest women of health services they need, including cancer screenings, contraceptive care and sexually transmitted infection testing. In many parts of the country, Planned Parenthood is the only source of contraceptive services for low-income women.

Several Republican presidential candidates continue to treat the falsehoods presented by the Center for Medical Progress as fact. In response to Monday's indictments, Carly Fiorina, for one, said, "Planned Parenthood has been trafficking in body parts," a claim she has made repeatedly on the campaign trail.

The indictments should cause politicians to back away from an anti-abortion group that will stop at nothing to attack Planned Parenthood. Gov. John Kasich of Ohio is running for president on a platform of good governance and common sense. The campaign against Planned Parenthood is anathema to these principles, and if a bill to defund the organization reaches his desk, he should veto it.

If convicted, Mr. Daleiden and Ms. Merritt face up to 20 years in prison on the felony charge; the misdemeanor is punishable by up to a year. These penalties will not undo the damage the videos have already done to Planned Parenthood and women's health and reproductive rights. State and federal officials who care about the truth should work to remedy that damage in any way they can.

The Planned Parenthood witch hunt

By Editorial Board February 20

TWELVE STATES that undertook investigations of Planned Parenthood found no wrongdoing. An additional eight states refused even to investigate, citing lack of credible evidence. A grand jury in Texas and a federal judge in California exonerated the organization after each conducted extensive reviews. Three congressional committees failed to turn up any improprieties. In short, the hidden-camera videos purporting to show illegal selling of fetal tissue show no such thing.

Despite all that, a Republican-led House panel is undeterred in conducting its own investigation, or, more accurately, witch hunt. Even more troubling than the considerable time and money that will be wasted is the potential damage to health care and medical research.

The coyly named Select Investigative Panel on Infant Lives has made sweeping requests (including three subpoenas) for documents and information from more than 30 agencies and organizations that provide abortions or are involved in fetal tissue research. Of particular concern is the panel's demand for the names of doctors, medical students and researchers involved in performing abortions or conducting research with fetal tissue. Democrats on the panel decried the creation of such a database, which — without rules to protect it from public disclosure — risks individual privacy and safety without legitimate reason. How is the name of a graduate student who five years ago was an intern at a lab relevant to anything?

Rep. Marsha Blackburn (R-Tenn.), chair of the House panel, has defended the investigation as necessary because of lingering questions raised by secretly recorded videos of Planned Parenthood personnel released last year by the equally-misnamed Center for Medical Progress. Those videos, supposedly showing Planned Parenthood illegally selling aborted fetal organs for profit, have been discredited. A grand jury empaneled in Houston to investigate Planned Parenthood ended up indicting the activists who produced the videos and, after reviewing the evidence for two months, cleared Planned Parenthood of any wrongdoing. U.S. District Court Judge William H. Orrick reached the same conclusion, granting a preliminary injunction prohibiting release of illegally obtained recordings and materials in a decision that laid bare the fraud against Planned Parenthood. Also noted by the judge was the alarming increase in incidents of harassment and violence directed against abortion providers since the videos were released last July. Among them: four incidents of arson and the attack on a Colorado clinic by a gunman in which three people were killed.

Federal law permits medical use of fetal tissue. The handful of Planned Parenthood clinics in which patients are able to donate fetal tissue adhered to the law that allows reasonable payment for costs associated with donations, but they have stopped accepting any reimbursement because of the controversy. Congress, with approval from both sides of the aisle, legalized fetal tissue research in 1993 because of the potential for scientific advances in treating and curing illnesses.

Congress has the prerogative to change that law, if it wants to undermine the kind of medical research that has led to breakthroughs such as the polio vaccine. But it has no call to engage in a reckless investigation with the potential to cause a great deal of harm.

The New York Times

Abortion Witch Hunt

By Amanda Robb

LAST month, Representative Marsha Blackburn, Republican of Tennessee, in her capacity as chairwoman of the newly created House Select Investigative Panel on Infant Lives, issued subpoenas to three organizations: StemExpress, a company that supplies biological specimens for research; the University of New Mexico, where scientists conduct medical research using fetal tissue; and Southwestern Women's Options, an abortion clinic in Albuquerque.

In addition to requiring these groups to produce exhaustive documentation about how exactly they procure and handle fetal tissue, the subpoenas demand that the organizations identify personnel, including medical students, who were in proximity to abortions and their aftermath. Despite objections from the panel's minority members, Ms. Blackburn is insisting that the subpoenas' targets name names.

House committee leaders have rarely issued unilateral subpoenas. In the last 50 years it appears that only the Republicans Dan Burton of Indiana and Darrell Issa of California used them, each as chairman of the House Oversight and Government Reform committee. Both men created divisive and ultimately unproductive investigations. Despite the poor example these investigations set, House Republicans recently moved to grant at least seven congressional leaders the power to issue subpoenas unilaterally.

In issuing the Select Investigative Panel on Infant Lives' subpoenas, Ms. Blackburn claims to be motivated to "get the facts about medical practices of abortion service providers and the business practices of the procurement organizations who sell baby body parts." But the surreptitiously recorded videos made by anti-

Republicans are abusing
their subpoena power.

abortion activists that accused abortion providers of selling baby body parts have been found to be deceptively edited and essentially fraudulent.

Henry Waxman, a former California congressman who served as the Democratic chairman of the House Oversight and Government Reform committee from 2007 to 2009, told me that "issuing a subpoena is not a benign activity. It involves the intrusive power of the federal government to compel people to come in and testify and to turn over documents. If you don't comply, you can be held in contempt of Congress, which is a criminal charge."

At the Select Investigative Panel on Infant Lives' first hearing on Wednesday, Democratic members expressed worries about Ms. Blackburn's demands. Jan Schakowsky of Illinois, the ranking Democrat on the panel, said that they create "a partisan and dangerous witch hunt." Jerrold Nadler, a New York Democrat who is also on the panel, said that making the identities of abortion-clinic personnel public could "endanger their lives."

This is not idle speculation. "Outing" abortion-care providers has played a deadly role in anti-abortion terrorism for two decades. In 1997, Neal Horsley, an anti-abortion activist, created a website called the Nuremberg Files that listed the names and addresses of doctors who provided abortions, including an entry for my uncle Barnett Slepian. In 1998, an anti-abortion extremist shot and killed him at home in Amherst, N.Y., in front of his wife and children.

In 2002, Operation Rescue (whose president was a founding board member of the Center for Medical Progress, which made the recent "baby body parts" videos) moved its headquarters to Kansas to focus its energies on ending the Wichita practice of Dr. George Tiller, who specialized in late-term abortions. The group maintained a "Tiller Watch" webpage that listed the physician's whereabouts. In 2009, an anti-abortion extremist shot and killed Dr. Tiller at his church.

Three months ago, a gunman shot 12 people, killing three, at a Planned Parenthood clinic in Colorado Springs. When questioned by the police as to his motive, the gunman is reported to have said, "No more baby parts."

At Wednesday's hearing of the Select Investigative Panel on Infant Lives, Mr. Nadler made a motion to quash Ms. Blackburn's subpoenas. It failed on a party-line vote. So far Ms. Blackburn has not promised to redact any documents the panel receives or protect anyone from public exposure.

There is a wide range of feelings about abortion in this country. There are policy debates and moral conversations to be had about the procedure. But elected leaders should not be using the powers of their offices to intimidate citizens who hold different points of view.

Dr. Curtis Boyd, who owns and operates Southwestern Women's Options in Albuquerque with his wife, Glenna Halvorsen-Boyd, says that he will comply with the investigative panel's demands — except for identifying his staff, volunteers or visitors. "I lived through the McCarthy era," Dr. Boyd told me. "I've lived and worked through the last 20 years of anti-abortion violence. I know that naming those names could be dangerous. So I won't do it. Ever. No matter what." □

Amanda Robb, a journalist based in New York, worked for Senator Harry Reid from 1988 to 1992.

The New York Times

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A New Attack on Fetal Tissue Research

With its hidden-camera videos that took aim at Planned Parenthood, the Center for Medical Progress tried to stir up opposition to abortion rights by concocting a controversy over fetal tissue research. Now Republicans in the House are doing much the same thing.

Initially convened in response to the videos, the Select Investigative Panel on Infant Lives, a part of the House Energy and Commerce Committee, pledges to "get the facts about medical practices of abortion service providers and the business practices of the procurement organizations who sell baby body parts."

Its first hearing last Wednesday was a showcase for fallacious attacks on fetal tissue research. In her opening statement, Representative Marsha Blackburn, a Tennessee Republican who heads the panel, talked about the Tuskegee syphilis experiment and the forced sterilization of people with intellectual disabilities as a prelude to discussing fetal tissue research. She went on to claim that the Center for Medical Progress's videos showed "something very troubling, is going on related to fetal tissue and research," even though multiple investigations of Planned Parenthood have found no evidence of wrongdoing.

The panel, dominated by Republicans, decided to issue subpoenas requesting the names of medical researchers who work with fetal tissue and employees at a clinic that provides abortions. That tactic could put clinic workers, who routinely face harassment and threats, at greater risk by making their names public as part of a congressional investigation.

As Representative Jan Schakowsky, the ranking Democrat on the panel, put it, "Linking individuals' names to an investigation that the Republicans describe as examining the 'harvesting of baby body parts' and the 'horrible practices' of abortion providers puts people in danger."

Some witnesses called by the Republicans questioned the research value of fetal tissue or said it could be replaced by tissue from other sources. But many medical experts say fetal tissue research is a necessary part of the search for treatments for Parkinson's, diabetes and other conditions. At the hearing, Lawrence Goldstein, the director of the stem cell program at the University of California, San Diego, said that stopping fetal tissue research would slow the search for a vaccine for the Zika virus.

Fetal tissue has already been used to produce vaccines for diseases like polio and rubella, and a panel convened by President Ronald Reagan found fetal tissue donation and research to be ethically acceptable.

The panel's efforts will not be limited to blocking fetal tissue research, which is bad enough. According to its website, it is empowered to study federal funding for abortion providers, late-term abortion practices and "any changes in law or regulation necessary as a result of any other findings made."

Wednesday's hearing showed that limiting or ending access to legal abortion services is part of the agenda. One witness said that women who have had abortions "forfeit the moral standing needed" to decide what should happen to the fetal tissue. One panel member, Representative Diane Black, Republican of Tennessee, bizarrely asked, "Have we reached a point in our society where there effectively is an Amazon.com for human parts, including entire babies?" — a comment that has no basis in reality.

Since the panel's goals are so broad, its future direction is unclear. What is clear is that by pursuing their baseless investigation into "baby body parts," Republicans are continuing the campaign against fetal tissue research and reproductive rights that the Center for Medical Progress began.

The Opinion Pages

Republicans Continue Their Attacks on Fetal Tissue Research

By Anna North March 25, 2016 1:04 pm

Republicans in the House launched a politically-motivated attack on fetal tissue research and abortion rights when they created the Select Investigative Panel on Infant Lives, which held its first hearing earlier this month. Now they plan to continue their campaign by issuing 17 subpoenas seeking the names of researchers, students and others.

The request could put the researchers at risk of harassment or violence if the names become public, especially since Republicans have already taken pains to demonize fetal tissue research. At the hearing, Representative Diane Black, Republican of Tennessee, asked if “there effectively is an Amazon.com for human parts, including entire babies.” And Representative Marsha Blackburn, Republican of Tennessee and the panel’s chair, referenced forced sterilization and the Tuskegee syphilis experiment.

Democrats on the panel had already raised privacy concerns when Republicans sought names of medical researchers and employees at a clinic that performs abortions. These new requests show that those concerns fell on deaf ears.

Ms. Blackburn told The Times that “we all are concerned for individual safety.” But so far Republicans on the panel have given no assurances that they will keep the names of researchers private.

Nor is there any reason to conduct this investigation. It was launched after the release by an anti-abortion group of deceptively edited videos accusing Planned Parenthood of selling fetal tissue for profit. Multiple investigations have found nothing to support these accusations.

But it seems Ms. Blackburn’s mind is already made up. “We are going to review the business practices of these procurement organizations and do some investigating of how they have constructed a for-profit business model from selling baby body parts,” she said.

Meanwhile, research is suffering. Larry Goldstein, the director of the stem cell program at the University of California, San Diego, testified at the hearing that a study seeking a cure for multiple sclerosis had been stopped due to lack of access to fetal tissue. Republicans are pointlessly attacking a practice that could save lives and, in the process, potentially putting researchers’ lives at risk.

Editorial Enough grandstanding on fetal tissue

By The Times Editorial Board

MARCH 30, 2016, 5:00 AM

It is illegal in the U.S. to sell body parts. So the release of undercover videos last summer purporting to show Planned Parenthood officials negotiating fees for tissue from aborted fetuses launched a flurry of federal and state investigations into the healthcare provider. The House Energy and Commerce Committee's Select Investigative Panel on Infant Lives was the fourth congressional entry into this overcrowded field, but its mandate is far broader than just looking into Planned Parenthood — it can investigate the entities that procure fetal tissue and look into federal funding and support for abortion providers. It is also authorized to scrutinize the providers of second- and third-term abortions (even though later-term abortions are already highly regulated).

Toward those ends, the panel has requested documents from more than 30 groups, and last month it issued subpoenas to three institutions it deemed uncooperative with earlier requests: the University of New Mexico, where research is done using fetal tissue; an Albuquerque abortion clinic called Southwestern Women's Options; and StemExpress, which provides human tissue to biomedical researchers. The sweeping subpoenas requested five years' worth of documentation on fetal tissue acquisitions, bank records, and the names of people involved in the businesses. The university and abortion clinic were also required to provide names of personnel involved in abortion procedures. Now, the panel is preparing to issue 17 more subpoenas, according to its ranking Democrat, Rep. Jan Schakowsky of Illinois, who has decried the work of the Republican members as a "partisan witch hunt."

It's legitimate for a congressional committee to look into allegations of wrongdoing. But this panel — which is chaired by Rep. Marsha Blackburn (R-Tenn.), an opponent of abortion rights who has worked hard to defund Planned Parenthood — has raised alarm bells by seeking the names of people involved in legal enterprises, namely, providing abortions and collecting fetal tissue for research. If the main goal of the subpoenas is to expose people in these fields to harassment and intimidation, Blackburn should stop now.

Legally donated fetal tissue has played a significant role in cutting-edge research, including Alzheimer's disease, spinal cord injury and kidney failure. The purpose of the panel was not to weigh in on the ethics of abortion but to investigate allegations of illegal practices. So far, all the governmental inquiries that preceded this panel's — by 12 state agencies, three congressional committees, and a grand jury in Texas — have found no evidence that Planned Parenthood was profiting from fetal tissue. This panel's work, so far, looks only like grandstanding.

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The Washington Post

AN INDEPENDENT NEWSPAPER

EDITORIALS

Ideology over truth

It is time to shutter the House panel on fetal tissue research.

ANY DOUBT about the kind of investigation into fetal tissue research that would be conducted by a special House panel was erased at its first hearing, when one of the witnesses called by Republicans drew comparisons between this life-saving medical work and the experiments of Nazi war criminal Josef Mengele. And the panel has gone downhill since.

The committee has issued indiscriminate subpoenas, intimidated witnesses and relied on misleading information. It is abusing power at taxpayer expense, and Democrats are right to demand its shutdown. In a letter this week to House Speaker Paul D. Ryan (R-Wis.), 181 of the 188 House Democrats called for disbanding the select investigative panel, characterizing it as a "witch hunt." The committee was created last year by former speaker John A. Boehner (R-Ohio) to probe connections between abortion providers

and medical researchers in the wake of the furor caused by sting videos purporting to show Planned Parenthood involved in the illegal sale of fetal tissue.

As we now know, those videos are bunk, neither accurate nor reliable. Previous investigations by three House committees found no wrongdoing. Twelve states that launched investigations into Planned Parenthood found nothing; another eight determined there was no credible evidence even to warrant investigation. The only wrongdoing, according to a Texas grand jury that was under orders to investigate Planned Parenthood, was committed by the antiabortion activists who filmed the misleading videos.

None of those facts seems to matter to Republicans who see the committee as an opportunity to score political points with their antiabortion base. Their heavy-handed tactics in service of this

grotesque theater are disturbing. Rep. Marsha Blackburn (R-Tenn.), the committee chair, despite amassing 19,000 pages of documents claims noncompliance and has unilaterally issued dozens of subpoenas, often without reaching out to subjects to ask for voluntary compliance. Her demand for names of individuals who work in labs and clinics without providing a justification and without assurances of privacy is troubling and irresponsible. According to Democrats, one of the individuals targeted by the investigation already has received graphic death threats after being identified in the videos.

There is no legitimate reason for this inquiry. Individuals and organizations are being unfairly targeted and placed at risk. Mr. Ryan, who took office with talk of wanting to change how the House does business, should put an end to these sordid proceedings.

The Opinion Pages

Republicans' Latest Attempt to Discredit Fetal Tissue Research

By Anna North June 3, 2016 12:33 pm

As part of their continuing war on fetal tissue research, House Republicans are now accusing a tissue procurement company and three abortion clinics of violating federal privacy law.

In a letter dated Wednesday, Representative Marsha Blackburn, chair of the House Select Investigative Panel on Infant Lives, charged that StemExpress and the clinics, two of which are Planned Parenthood affiliates, violated the Health Insurance Portability and Accountability Act (HIPAA) by sharing information on patients receiving abortions. A separate letter accuses StemExpress of using improper consent forms, among other infractions. The letters ask officials at the Department of Health and Human Services to investigate whether the company and the clinics broke the law.

StemExpress has vigorously denied the allegations. "StemExpress is confident there has been no violation of law and appropriate consents were made for every fetal tissue donation," the company said in a statement. "We welcome the opportunity to answer any questions from the U.S. Department of Health and Human Services or any other agency related to Ms. Blackburn's continued unfounded accusations."

These accusations are the latest step in an investigation that has never had any reason to exist. The House panel was formed after the Center for Medical Progress, an anti-abortion group, released deceptively edited videos purporting to reveal that Planned Parenthood sold fetal tissue for profit. Since then, repeated

investigations have found no evidence that Planned Parenthood did anything wrong, and members of the Center for Medical Progress have been indicted for their activities.

If Republicans on the panel were truly concerned about HIPAA compliance in fetal tissue research, they could have accepted StemExpress's offer to testify. But they appear more interested in attempting to discredit the company and the clinics with which it works. Ms. Blackburn's letters were featured on Fox News on Tuesday, before H.H.S. received them.

StemExpress was never given the opportunity to comment on the dozens of pages of documents appended to the letters. Several of these documents appear to come from the Center for Medical Progress.

The letters, which are posted on the House Energy and Commerce Committee's website, include the names of researchers and employees of StemExpress and Planned Parenthood, potentially putting them at risk of harassment or violence by anti-abortion extremists.

In her opening statement at the panel's first hearing, Ms. Blackburn claimed that "something very troubling is going on related to fetal tissue and research." Since then, the panel's goal has been to convince the public of that, regardless of what the evidence shows.

Update: A spokesman for Ms. Blackburn told Rewire on Friday that the congresswoman's staff had made an error by failing to redact the names of researchers and others from letters to H.H.S. posted online. "The chairman has been very clear about redacting the names and staff just made a mistake," the spokesman, Mike Reynard, said. Redacted letters have been posted on the House Energy and Commerce Committee website, but on Monday afternoon, links in a press release sent last week by Ms. Blackburn's office still pointed to unredacted versions.

Editorial: Marsha Blackburn's Infant Lives panel loses focus

David Plazas, dplazas@tennessean.com 7:02 a.m. CDT June 12, 2016

The panel has fallen into mission creep and it needs to regain its focus.

STORY HIGHLIGHTS

- The origin of the panel was the doctored Planned Parenthood videos.
- Since that time no illicit fetal parts market has been exposed.
- The panel needs to get past partisan politics and finish its work.

The origin of the Select Investigative Panel on Infant Lives chaired by Congressman Marsha Blackburn, R-Brentwood, emanated from a false narrative.

The 14-member bipartisan panel has pivoted since doctored video claimed dishonestly that Planned Parenthood trafficked in fetal parts and organs — the reason the panel was approved by Congress in the first place in October.

Over the past few months, the panel has fallen into mission creep and it needs to regain its focus if it is going to be taken seriously.

Committee members, which include Rep. Diane Black, R-Gallatin, have spent much time over the last few months in partisan bickering over whether this is a witch hunt of McCarthyian proportions.

The panel has:

- Issued subpoenas to nearly a dozen companies, medical professionals or health organizations.
- Targeted biomedical company StemExpress, which purchases fetal tissue from abortion clinics and sells it to medical research organizations.
- Announced it was investigating a Maryland late-term abortion doctor, potentially putting him in danger by naming him and his clinic.

On June 1, Blackburn called on the U.S. Department of Health and Human Services to investigate StemExpress and three abortion clinics for privacy violations of the Health Insurance Portability and Accountability Act (HIPAA). In addition, Blackburn called for an investigation into whether StemExpress has been using invalid consent forms in its transactions.

StemExpress, in a June 2 news release, denied any wrongdoing and welcomed "the opportunity to answer any questions from the U.S. Department of Health and Human Services or any other agency related to Representative Blackburn's continued unfounded accusations."

So far, however, there is no smoking gun on whether there is an illicit market for fetal tissue or parts.

On April 12 Blackburn explained to The Tennessean editorial board in a wide-ranging interview: "What we want to do is get to the truth."

She said that the mission of the panel was to investigate if laws that prohibit profiting off fetal tissue had been violated and to determine if new laws are needed to address any problem areas. The panel is supposed to issue its final report by the end of the year, Blackburn told the board.

"You want to make certain you're protecting these unborn babies," she said. "You want to make certain that you're protecting these women (who have abortions). You want to be certain that there is no profit scheme that has developed around the sale of the organs of these babies."

Blackburn downplayed the Planned Parenthood connection saying she had requested no documents from or issued subpoenas to the health organization.

That tone was in stark contrast to an op-ed she penned in U.S. News and World Report on Nov. 10 when emotions were still running high from the scandal over the doctored videos. She started her op-ed, writing:

"The abhorrent videos released over the last several months detailing abortion practices and treatment of infant lives have shaken and startled compassionate Americans across the country. These videos raise serious questions that deserve a thorough examination, as people have reacted with disgust as they have seen the video footage."

Two of the abortion clinics named in the HIPAA violations investigation request are affiliated with Planned Parenthood.

During her meeting with the editorial board meeting, Blackburn outlined areas of agreement among panel members:

- That you cannot sell tissue for a profit.
- That you cannot get pregnant for the purpose of donating fetal tissue.
- That abortion clinics cannot compel women to donate fetal parts, blood or tissue.
- That consent forms should not be misleading.

Anyone — pro-choice or pro-life — should be horrified at the thought of an illicit market for fetal parts.

However, if it does not exist, the panel would do best to wrap up its work quickly.

Right now, the panel is creating the perception that it is embroiled in a wild goose chase.

Opinion engagement editor David Plazas wrote this editorial on behalf of The Tennessean editorial board. Call him at 615-259-8063, email him at dplazas@tennessean.com or tweet to him at [@davidplazas](https://twitter.com/davidplazas).



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The views expressed by Contributors are their own and not the views of The Hill

Don't stop the clock on medical research

By Kathleen Cullen | June 27, 2016, 03:14 pm

Life with multiple sclerosis (MS) today is very different than when I was diagnosed in 1992, which is why I'm so worried to see a representative in Congress from my home state, Rep. **Marsha Blackburn**, turning the clock backward.

When I first learned I had this disease, there were no widely-available drugs or treatments on the market to help people like me. With so few treatment options back then, one of the first questions asked of an MS patient was often, "When do you plan to stop working?" A diagnosis meant the end of life as you knew and loved it.

But despite the lack of resources available at the time of my diagnosis, I wasn't going to be someone who sat back and shrank from the world. With my great team of doctors, I created my own support group of friends and family, and as soon as it became possible, I began a regimen of what has become a lifetime of drugs to stop the progression of this disease. The first drug I tried, Betaseron, was in such high demand there were waiting lists, lotteries, and years-long waiting periods for those of us who wanted the chance to try it.

Like many people living with MS, my life has become divided in two parts: "before MS" diagnosis and "after." Before MS, I was a busy young adult. I owned my own business at the time, worked 50+ hours a week, and enjoyed a life full of friends, family, and promise. After MS, I live with often-crippling fatigue, frequent numbness and disorienting vision problems. I frequently rely on a cane to get around. There was even a time when I was confined to a scooter for several months. (Thankfully, that time has passed – for now.) After MS, I have had to work – hard – every day, to live on my own terms.

Twenty four years later, there is still no cure. But I'm doing the best I can to live a normal life, thanks in large part to the treatments and drugs made possible by medical research, like the kind now at risk because of party politics on Capitol Hill.

Rep. Blackburn is leading the House Select Investigative Panel formed specifically to investigate false and inflammatory allegations that scientists and abortion providers have profited from fetal tissue donation and research. The committee is abusing its power and the effect is very troubling for researchers and patients alike: Scientists and lab techs are receiving hate mail and death threats. The supply of fetal tissue for researchers is drying up. And now, as a result, promising research into MS is stuck in its tracks.

Research using fetal tissue has been done since the 1930's to aid in some of the most important medical advances of our time. According to experts from the American Association of Medical Colleges, the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists, fetal tissue is essential to current research on Parkinson's disease, cancer, diabetes, and many other debilitating conditions. Common vaccines for previously rampant diseases like polio, rabies and chicken pox were also created using fetal tissue research. And it's vital to ongoing studies of the Zika virus, which threatens the health of an ever-growing number of pregnant women and their children.

But today, rather than moving forward with these important studies that will help countless people, some members of Congress, including Rep. Blackburn, are putting a stop to them in order to score political points.

When I was diagnosed with MS, I knew my life would never be the same, especially because at that time there was almost nothing available to treat it. But I told myself every night before I'd go to bed that I had two choices for the next day: give up, or fight. That's true, even today. Every new breakthrough, new treatment, new medication (and I've been on most of them) - this is what has kept me going for 24 years.

Congress should be doing everything in its power to find treatments for and cures to these debilitating diseases, but instead it is doing the opposite.

Stopping this research in its tracks doesn't just harm scientists in a lab, and the grandstanding doesn't just impact one's political career in Washington, DC. This affects millions of people around the world who live with these diseases every single day.

People living with MS, with Alzheimer's, with spinal cord injury, with ALS, with cancer, with diabetes – we have something in common. In spite of everything, we have hope. We live each day trusting that a new treatment is on the horizon, hoping that a cure is possible. Shame on Congress and Rep. Blackburn for making us wait even longer.

Kathleen Cullen lives in Kingston Springs, Tennessee. She was diagnosed with Multiple Sclerosis in 1992.



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WASHINGTON 7/20/2016 @ 4:29PM 5,197 views

Congressional Republicans Try To Criminalize Key Medical Research

A special Panel formed by the House of Representatives to investigate Planned Parenthood recently made a criminal referral to the New Mexico Attorney General about a relationship between the University of New Mexico and a local health care provider. This deserves much more attention than it has gotten. The referral moves into uncharted water by attempting to criminalize, based on speculation rather than evidence, a vital system of research utilizing fetal tissue by which responsible and prestigious universities conduct research seeking potential treatments for diseases from diabetes, to MS, to Alzheimer's.

The Panel's criminal referral depends on the dubious allegation that the University of New Mexico "buys body parts," just by having the normal relationships between universities and local partners, without the university making any sort of cash payment.

Let's drop back and trace the record of this Panel. In October 2015, the House created the Panel in the wake of deceptively edited videos, created by anti-abortion activists. Three Republican-led Congressional committees and 13 states have investigated and found no wrongdoing. Republicans refused to bring in the creator of the videos, David Daleiden, to testify under oath. Notably, when a Texas grand jury did take his testimony, the Texas grand jury not only exonerated Planned Parenthood, it indicted Daleiden – as described by a witness before an April 2016 hearing before the Panel.

So far, the Panel has issued 36 subpoenas, all without a vote by members. Many of the unilateral subpoenas seem to be trolling for the names of doctors, researchers, and others in order to create a Panel database. Not only is there no demonstrable need for this database, it could have severe negative consequences. One individual targeted by investigation has already received death threats. If the database should become public, many others, from medical professionals and researchers to hapless patients, would likely be harassed and their safety could be at risk.

In a credible investigation, before subpoenas are issued there would be an opportunity for voluntary compliance or a reasonable discussion about which information is actually necessary to produce and how it will be handled.

And, in a credible investigation in the medical field, a committee would take special care to do no harm.

But that is not happening here. The Panel also publicly condemned, by name, a doctor and his clinic in May despite, the Colorado Springs tragedy last year when an anti-abortion extremist gunman killed three people and seriously wounded nine others.

A credible investigation would also take into account current law before making criminal referrals. Several federal and state laws have been passed to facilitate tissue and organ donation. At the federal level, the National Organ Transplant Law and NIH Revitalization Act of 1993 allow donation of fetal and adult tissue as long as the transfer is not "for valuable consideration," which

exempts reimbursement for certain costs associated with the donation. That is the key term: “valuable consideration.”

The authoritative analysis of these statutes comes from the Office of Legal Counsel (OLC) of the Department of Justice. It is noteworthy that the OLC analysis came in March 2007, during the Bush Administration, which was hardly a pro-choice administration. OLC expounded on what constitutes “valuable consideration.” It said that the National Organ Transplant Act, while not defining ‘valuable consideration,’ does provide that “[a] person may not knowingly, for valuable consideration, purchase or sell a part” And it determined, “valuable consideration is monetary or at least has a readily measurable pecuniary value.” In contrast, “non-monetary exchanges . . . do not involve valuable consideration.”

In this instance, the panel has no evidence that a local health provider and the University of New Mexico exchanged valuable consideration. The health provider donated fetal tissue and received no money in return. Being “too close” – the committee’s accusation – is exactly the routine relationship that universities and community partners, including medical schools and physicians across the spectrum of medical specialties, have, and that the law allows and should encourage for the sake of medical training and research.

And it’s important not to lose sight of the significance of this debate. Preeminent researchers told the Panel that fetal tissue is critical to promising research on diabetes and various neurological disorders, including Alzheimer’s, MS, schizophrenia, and autism. These researchers informed the Panel that fetal tissue is needed for the next phase in the treatment and cures of autoimmune diseases such as type 1 diabetes.

This Panel’s referral is bogus – and yet, all the more so, it is alarming to those concerned about a dangerous anti-science and anti-research agenda that would hurt women and families across the state and country.

Editorial Congressional witch hunt for 'baby body part' sellers needs to end

By The Times Editorial Board

JULY 25, 2016, 5:00 AM

When a congressional panel investigating the procurement of fetal tissue from abortion clinics was formed last fall, its Republican leader and members made no secret of their mission to expose businesses that “sell baby body parts.” (They even said as much on their website.) Their inquiry was inspired by hidden-camera videos (later discredited) that supposedly showed Planned Parenthood officials negotiating over payments for harvested fetal tissue. It’s illegal in the U.S. to profit from the sale of fetal tissue — payments are limited to the cost of collecting and handling it — so if the committee actually found organizations doing that, it would be legitimate to bust them.

But so far that hasn’t happened. The House Energy and Commerce Committee’s Select Investigative Panel on Infant Lives has yet to find any proof that anyone is selling or buying fetal tissue. After months of investigation and subpoenas for staggering amounts of records — including, most troublingly, the names of people involved in performing abortions and procuring fetal tissue — the chairman and Republican members of the panel released an 88-page interim report this month that is long on innuendo but remarkably short on revelation.

One of the panel’s main findings is actually just speculation: that the University of New Mexico Health Sciences Center may have violated federal law when it awarded faculty positions (without pay but with some benefits) to staff doctors at a local abortion clinic at a time when the clinic was providing fetal tissue for research being done at the school, raising the specter of a quid pro quo. The report also alleges that the school and the clinic violated a New Mexico state law governing anatomical gifts that, the report asserts, prohibits aborted fetal tissue from being donated or received.

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The House Energy and Commerce Committee’s Select Investigative Panel on Infant Lives has yet to find any proof that anyone is selling or buying fetal tissue.

The school has categorically denied both allegations — and noted that the fetal tissue it acquires is used for research on premature babies. The school also contends that the panel is misreading state law. Nonetheless, the panel formally referred the matter to the New Mexico state attorney general, whose office is looking into it.

The panel has also asked the U.S. Department of Health and Human Services to investigate whether technicians from a fetal tissue company, StemExpress, violated patient confidentiality laws by looking at medical records of patients at clinics where its technicians went to collect tissue specimens. In one of two lengthy letters to the panel, a lawyer for StemExpress stated that its technicians did not review medical files — and that the panel would have known this had it interviewed any of the witnesses “repeatedly offered by StemExpress.”

Having found no smoking guns in the University of New Mexico and StemExpress cases, the panel has passed its allegations to other authorities to settle while it continues to search for criminality. Beyond that, the report does little more than serve the panel’s antiabortion narrative in which clinics are desperate to get more business, fetal tissue companies are intent on getting more product, and the technicians who collect these specimens send out emails blithely discussing fetal organs and limbs. Even if this portrait were accurate — and the panel offers little evidence to back that up — it establishes no wrongdoing.

The real danger here is that the panel’s work will chill the activities of fetal tissue suppliers and the researchers who use it to study retinal degeneration, fetal development, the Zika virus and illnesses such as Alzheimer’s disease. One San Diego stem cell researcher told the panel members in March that a project on multiple sclerosis in which he was involved had already been delayed because fetal material had become scarce. Meanwhile, six states have enacted bans this year on the donation of fetal tissue from abortions, and most of those also bar researchers from using such tissue.

The panel’s ranking Democratic member, Rep. Jan Schakowsky, has repeatedly criticized the majority’s tactics, called the investigation a witch hunt and joined a group of 181 Democratic members who have asked the speaker of the House to disband the panel. That would be the best course of action. In any case, the panel’s final report is due by Dec. 31, which should spell the end to its existence.

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AN INDEPENDENT NEWSPAPER

EDITORIALS

GOP ideology is curtailing vital medical research

The Select Investigative Panel on Infant Lives is obstructing lifesaving work.

IT WAS clear from its start that the aim of the House's perversely named Select Investigative Panel on Infant Lives was to put a stop to fetal-tissue research. Unfortunately, it appears the Republican-led panel may be succeeding. This is not because it has found any evidence — or even hint — of wrongdoing, but because its harassment and intimidation of doctors and researchers are having a chilling effect on their lifesaving medical work.

The panel was created after undercover videos purported to show that Planned Parenthood profited from the illegal sale of fetal tissue recovered from abortions. The allegations, the work of antiabortion activists, have been thoroughly discredited. Previous investigations by three House committees found no misconduct, and 20 states conducted investigations that found nothing amiss or determined there was no credible evidence even to warrant investigation.

None of that deterred Republicans on a witch hunt. Under the chairmanship of Rep. Marsha Blackburn (R-Tenn.), the panel has churned out subpoenas, intimidated witnesses, used inflammatory rhetoric and been reckless with information about individuals, which has resulted in concerns for their security. Its most recent outrage was voting to recommend criminal contempt charges against a small biotech company and its owner for allegedly failing to produce accounting documents and other information sought by the panel. Never mind that the company had been trying to cooperate, supplying more than 1,700 documents and offering individuals to testify.

Democrats called the effort to seek contempt charges illegitimate and walked out of the proceedings. According to Rep. Jan Schakowsky (D-Ill.), ranking minority-party member, the fear being sowed by the Republican majority is affecting

critical medical research. Universities and researchers have reported difficulty in obtaining fetal tissue. One tissue procurement company is no longer doing business, due in part to the costs of having to answer congressional inquiries. Promising studies and critical trials, for conditions such as multiple sclerosis and Alzheimer's disease, have been halted or delayed due to the reduced availability of fetal tissue for research. Also at risk is research to deal with the Zika virus because, according to a leading association of research scientists, the use of donated fetal tissue has provided the best understanding of how that virus behaves in the body. So much for the ridiculous contention of Republicans that fetal-tissue research is "outdated" and "not mainstream science."

It is time to let the doctors and scientists do their lifesaving work unimpeded by shortsighted political ideology.

SCIENCE

House Republicans Wage War on Medical Research



122 OCT 23, 2018 12:21 PM EDT

By Albert R. Hunt

The House Energy and Commerce Committee has a Select Investigative Panel on Infant Lives that has held only two hearings since it was created a year ago. Its meetings are marked by walkouts and little substantive discussion. Many House members, including some Republicans, hope it will expire by year-end.

Some medical experts say this special committee may seem like a joke but is nonetheless having a chilling effect on important medical research. The issue is the use of fetal tissue taken from aborted fetus that would otherwise be discarded.

The genesis of the panel was a secret and selectively edited video of Planned Parenthood officials discussing the sale of these tissues. The language was indelicate, actually stupid, and Planned Parenthood apologized. But the notion that there was a racket illicitly making money from the sale of fetal tissue is bogus.

Yet that's the premise of the special panel chaired by Representative Marsha Blackburn of Tennessee, a Republican who is a staunch opponent of abortion. The point of a select committee is to provide oversight and correct public abuses, perhaps leading to legislation.

A spokesman for the panel says its purpose is the "important task" of seeing if any abortion clinics or procurement organizations are making a profit from the sale of fetal tissue, which would be a violation of federal law.

Planned Parenthood and other targets of the panel have supplied detailed information showing they do not make a profit on these interventions, but actually lose money. Since the video was aired, there have been 17 state and federal investigations that have turned up no wrongdoing.

The select panel was born of pure politics. After the video surfaced, conservatives wanted to shut down the government unless Planned Parenthood was defunded. (None of the federal funds to Planned Parenthood, which engages in a range of women's health issues, can be used for abortion.) The panel was appointed to avoid a showdown.

It hasn't achieved anything of substance, but has energized activists who go after fetal-tissue suppliers. This is causing problems for some projects.

"There is a chilling effect on some avenues of research," says Dr. Lawrence Goldstein, a professor of cellular and molecular medicine at the University of California, San Diego. "One project that was developing discarded fetal material as a therapy for multiple sclerosis has been discontinued because of the absence of donated material." Researchers have provided other similar examples.

The prestigious Brigham and Women's Hospital in Boston no longer accepts applications from researchers seeking fetal tissue from abortions performed there. Hospital officials said the decision wasn't directly related to the House panel's criticisms but to the overall environment.

The panel is threatening a stem-cell provider, StemExpress, with a contempt citation. The committee spokesman said the small California company has "refused to fully comply and turn over all its required accounting and banking records."

The company and the committee's Democrats say it has turned over 1,700 pages of documents and offered witnesses to explain business practices, including how fetal tissue work is a money-loser.

Fetal-tissue research and abortion shouldn't be linked. This research has gone on in the U.S. since the earlier part of the last century. These tissues offer important differences with other stem cells and have made unique contributions to research.

"Fetal tissue continues to be a critical resource for important efforts such as research on degenerative eye diseases, human development disorders such as Down syndrome and infectious diseases among a host of other diseases," the Department of Health and Human Services reports.

Fetal cells have helped develop vaccines for rubella, chicken pox and polio. They are currently being used in trials for a variety of disease treatments, including Parkinson's and diabetes.

In response to the committee, the UCLA Medical Center noted that "human fetal tissues exhibit biological properties that are distinct from those of tissues derived from children or adults, and these properties, often related to an enhanced capacity for growth and regeneration can be highly desirable for the development of novel therapies."