SELECT INVESTIGATIVE PANEL
of the Energy & Commerce Committee

Setting the Record Straight: The Unjustifiable Attack on Women's Health Care and Life-Saving Research

December 2016

Report of the Democratic Members

Select Investigative Panel of the House Energy and Commerce Committee

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TABLE OF CONTENTS

A. Correspondence from Select Panel Democrats to House Leadership and Chair Blackburn
B. Correspondence from Select Panel Democrats to Outside Entities
C. Overview of Select Panel Interactions with StemExpress
D. Key Editorials Regarding the Select Panel's Investigation

EXECUTIVE SUMMARY

On July 14, 2015, anti-abortion activist David Daleiden and the "Center for Medical Progress" ("Daleiden/CMP") publicly released the first of their deceptively-edited videos and falsely alleged that providers and others were "profiting" from the sale of fetal tissue. These videos were the product of a multi-year effort to secretly record Planned Parenthood employees and others in order to entrap them into agreeing to violate the law, which proved unsuccessful. Daleiden and his associates used false names and created a fake company ("BioMax Procurement Services") to carry out their fraudulent scheme.

Anti-abortion lawmakers seized on the false videos to attack Planned Parenthood. They tried repeatedly to pass legislation to "defund Planned Parenthood" by denying the organization federal reimbursement for the preventive health services it provides to millions of Americans.

Three House Committees – Oversight and Government Reform, Energy and Commerce, and Judiciary – also immediately launched investigations. While demanding thousands of documents and testimony from Planned Parenthood, all three Republican Chairs refused to question Daleiden and his associates.

None found wrongdoing by Planned Parenthood. As Republican Chairman Jason Chaffetz admitted following the Oversight and Government Reform Committee's investigation:

> "Was there any wrongdoing? I didn't find any."

Nor did thirteen states – Arizona, Florida, Georgia, Indiana, Kansas, Massachusetts, Michigan, Missouri, Nevada, Ohio, Pennsylvania, South Dakota, and Washington – that also investigated. Eight more states found that there was insufficient evidence even to warrant investigation.

A Texas grand jury tasked by Republican lawmakers to investigate Planned Parenthood also cleared the organization of wrongdoing and indicted Daleiden and one of his associates instead. Those charges were later dismissed on technical legal grounds, but Daleiden remains under investigation elsewhere.

House Republicans nonetheless created the Select Investigative Panel ("Select Panel") in October 2015. Founded on false allegations, this investigation has perpetuated those lies and has been used by Republicans as a political weapon to punish women, their doctors, and researchers.

Adopting McCarthy-era tactics to demand names and bully witnesses, Panel Republicans have conducted an end-to-end attack on fetal tissue donation and women's health care. Operating largely out of public view, they have abused congressional authority and made repeated inflammatory claims of criminal misconduct in continued reliance on the discredited Daleiden/CMP videos and without any actual evidence of wrongdoing.

Fifteen months and more than $1.5 million taxpayer dollars later, the American people deserve an accurate accounting of what the Select Panel has learned.

Our report makes 14 findings based on the evidence we obtained, and further discredits the inflammatory Daleiden/CMP video allegations. In general, the report finds:

- Researchers use fetal tissue because it remains an irreplaceable resource for understanding fetal and human development and seeking treatments and cures for a vast array of conditions – including Alzheimer's disease, diabetes, macular degeneration, and HIV/AIDS – that afflict millions.

- Planned Parenthood affiliates do not profit and actually lose money when they facilitate fetal tissue donation, as do other clinics.

- The key concern for providers is always patient safety, and they do not alter the timing or method of abortions or violate the "partial birth abortion ban" to enhance fetal tissue donation.

- There is no evidence that tissue procurement organizations profit by charging and receiving more for fetal tissue than the costs that they incur for their services.

Our report also documents the harm caused to life-saving research and women's health care as well as the grave abuses committed by Panel Republicans over the course of this investigation.

In line with our findings, our report makes 5 recommendations. Because the fundamental goal of the Panel Democrats has always been to ensure that public policy is based on facts – not false, manufactured allegations – our recommendations seek to combat the anti-fact, anti-research, and anti-health approach that Panel Republicans have taken.

Those recommendations are to:

- Support fetal tissue research so that this and future generations might benefit from advances in medical research on new vaccines to prevent the Zika virus, Dengue fever and other infectious conditions and debilitating diseases like ALS ("Lou Gehrig's Disease"), Alzheimer's disease, and infant and childhood leukemia.

- Protect women and reproductive health care providers from illegal anti-abortion violence so that no woman has to fear going to her doctor and no health professional must risk being killed for ensuring that women get the health care that they need.

- Reject efforts to "defund Planned Parenthood" and ensure that Medicaid beneficiaries can continue to receive quality preventive health care at Planned Parenthood health centers across the country.

- Pass legislation that enhances the health and wellbeing of women and their families by ensuring access to the full range of reproductive health care and providing other protections against improper discrimination.

- Require procedures that ensure bipartisan cooperation and participation in any future select investigations.

Set forth below are some highlights from our report.

FETAL TISSUE RESEARCH

The Panel received overwhelming evidence of the indispensable role that fetal tissue research plays in advancing our understanding and treatment of a staggering array of conditions. These include, as highlighted in our report: Alzheimer's disease, ALS, diabetes, HIV/AIDS, infant and childhood leukemia, macular degeneration, preterm birth, spinal cord injury, vaccine research, and the Zika virus.

At the Panel's first hearing, Dr. Lawrence Goldstein – a neuroscientist at the University of California, San Diego – testified about his work using fetal tissue to study Alzheimer's disease and multiple sclerosis ("MS"). That work involves the use of reprogrammed stem cells along with fetal cells to make Alzheimer's-type brain cells in order to "understand what is going wrong and develop drugs that curtail the problems that happen biochemically."

He highlighted the real-world consequences of Republican attacks on fetal tissue research, explaining that an MS research project that he was working on "is basically seeing a supply of fetal material dry up completely and it was a very promising therapy for MS." Another researcher whose work on MS was postponed because of the lack of fetal tissue needed to proceed noted that "this kind of delay . . . results in the additional deaths of people who could have been rescued."

Evidence obtained by the Panel confirmed their experience. Fewer providers now facilitate donation, with only two of the six Planned Parenthood affiliates that had been facilitating donation still providing this service. Three stopped because of the threats and controversy caused by the Daleiden/CMP videos.

Tissue procurement organizations have been similarly affected. One reported to the Panel that "due in large part to the costs born from having to respond to these congressional inquiries, [the company] is no longer doing business. It has come to the end of the line in terms of resources."

As a result, promising research into conditions and diseases that afflict millions of Americans has been halted or delayed. Doctors and researchers who conduct this life-saving research – who have been compared to Nazi war criminals by witnesses and Panel Republicans – fear for their personal and professional wellbeing.

As the University of California, Los Angeles, told the Panel, one laboratory "reduced their effort on studies that require fetal tissues, despite the importance of this research, due to concerns about personal safety."

SAFETY AND ACCESS TO CARE

The threats against Planned Parenthood – and particularly the providers and clinics identified in the fraudulent Daleiden/CMP videos – were immediate and so severe that after release of the first video one affiliate stopped its donation program that same day.

Death threats required a 24-hour security detail for some doctors; and, for security reasons, one has never returned to the clinic where she was working when the videos were released. As she explained to the Panel:

> I still fear for my safety when I'm out in public. More importantly, I fear for the safety of my family members, members who have been harassed simply because they share my name, including some who are even too young to understand what is happening.

In light of the violence directed against providers and researchers, almost everyone contacted by Panel Republicans was reluctant to provide names and personal information without protective rules in place.

Despite this, Panel Republicans used unilateral subpoenas – or the threat of subpoenas – to demand that universities and clinics turn over the names of doctors, researchers, students, and staff involved in reproductive health care or fetal tissue research. Republicans refused to put any rules in place, reneged on public and private promises to safeguard the names that they demanded and – instead – publicly revealed the identities of some of the key targets of their investigation.

Throughout, they refused to explain why they needed to amass a database of names. At the Panel's first hearing in March 2016, Representative Jerrold Nadler pressed for an answer:

> 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."

Panel Republicans similarly refused to provide any objective basis for demanding documents and testimony from doctors who perform abortions. These witnesses – all of whom were women and half of whom are not even involved in fetal tissue donation – were questioned about lawful, constitutionally-protected activities including, for example: who provides private funds for reproductive health care; what do doctors discuss at provider meetings; who do they consult about taking jobs; and whether and how long they have known each other.

Chair Blackburn even sent a "criminal referral" alleging that the relationship between the University of New Mexico ("UNM") and a nearby clinic, Southwestern Women's Options, was "too close" and warranted investigation by the state's Attorney General. Panel Republicans expressed 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. These activities do not implicate a single criminal law.

In response to this referral, Forbes contributor Charles Tiefer wrote:

> 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.

As with the House Un-American Activities Committee and Senator Joe McCarthy, the goal is to punish doctors because they engage in a lawful activity – providing abortion for women who want and need this service – that Panel Republicans oppose. As Representative Nadler remarked "this committee is worse than the McCarthy investigations" because, while McCarthy endangered people's jobs, this Panel "is knowingly endangering people's lives."

The interviews demanded by Panel Republicans did not reveal any wrongdoing. Instead, they confirmed that Planned Parenthood and others provide safe, high-quality, lawful care that affords women a meaningful opportunity to make a fundamentally personal, and constitutionally-protected, decision about pregnancy. As one doctor explained:

> Abortion has been as far as we know with us always historically in all societies, and when abortion is illegal . . .that has very little impact on the actual occurrence or even rate of abortion, but it has a huge impact on its safety.

The fact that Planned Parenthood and others provide "this legal service in as safe as possible manner, it is a big improvement in women's health."

Witness testimony also confirmed that Planned Parenthood provides a broad range of preventive health services – including counseling and education, contraception, and an assortment of health and infectious disease screenings – sometimes in settings where there is no other option for the women and families who need this care.

NO WRONGDOING

By the time the Select Panel was established in October 2015, Congress already knew that Planned Parenthood was not profiting from the sale of fetal tissue. The organization had already produced more than 25,000 pages of documents; its doctors and staff had briefed the Energy and Commerce Committee; and its President, Cecile Richards, had testified for nearly five hours before the House Oversight and Government Reform Committee.

The Select Panel confirmed what Congress already knew – there was no wrongdoing by Planned Parenthood. In fact:

- Only six of Planned Parenthood's fifty nine affiliates have facilitated fetal tissue donation since 2010. Of these six, four no longer do so. Two of the six did not receive any reimbursement for costs; the other four affiliates were reimbursed between $35 and $60 for each donation.

- As of October 2015, Planned Parenthood Federation of America ("PPFA") announced that – in "order to completely debunk" the allegations against it – none of its affiliates that elect to facilitate fetal tissue donation will accept any reimbursement for their costs moving forward.

- The key concern for providers is patient safety, and they do not alter the timing or method of abortion or violate the "partial birth abortion ban" to enhance fetal tissue donation.

As one expert in the use of fetal tissue research publicly stated in July 2015, "[in] reality, $30-$100 probably constitutes a loss for [Planned Parenthood]. The costs associated with collection, processing, storage, and inventory and records management for specimens are very high."

Other clinics contacted by Panel Republicans produced documents showing that many receive no reimbursement for costs when they facilitate fetal tissue donation. Others receive similarly minimal amounts, usually ranging between $50 and $75.

Tissue procurement organizations – StemExpress, Advanced Biosciences Resources, Inc. ("ABR"), DV Biologics, and Novogenix – consistently explained that costs related to fetal tissue procurement exceeded revenue that they received for this service.

Some also explained that, in addition to transferring unaltered fetal tissue to researchers, they also work with a range of specimens and derivative products. These research products are not subject to the federal ban on profit that applies to fetal tissue.

These companies also offered witnesses to explain their business practices and answer the Panel's questions. Panel Republicans refused these offers, electing instead to levy allegations – and to send "criminal referral" letters to the Department of Justice and various state entities – based on their own interpretation of documents and staff-created "exhibits." But the Select Panel uncovered no actual evidence of wrongdoing.

REPUBLICAN ABUSES

On October 25, 2015, and shortly after being named chair, Chair Blackburn stated on FOX News: "you're going to see us work as a fact-finding information gathering committee" that will "follow where those facts take us in finding answers for the American people."

Chair Blackburn has broken that pledge.

After refusing to adopt an investigative plan or rules to govern the Panel's work, Republicans issued forty-two unilateral and unjustifiable subpoenas in violation of House rules, denied Democrats access to Committee records, and held Republican-only negotiations, briefings, and interviews.

They reneged on public and private promises to protect individual safety and security and, instead, publicly identified and condemned targets of their investigation. Many of these individuals and entities were never afforded an opportunity to appear and answer the Panel's questions. For the ten women who were commanded to appear, Chair Blackburn did not attend their interviews where they consistently rebutted inflammatory allegations of wrongdoing.

The abuse of more than $1.5 million additional taxpayer dollars to chase the inflammatory and discredited allegations of anti-abortion extremists for purely partisan and illegitimate purposes – to punish researchers and doctors engaged in lawful activities – dishonors and discredits the House of Representatives.

Section IV of this report sets forth several examples of the abusive conduct of Panel Republicans. This representative list, along with Appendix A – which includes our correspondence with the Chair over the course of this investigation – provides a historical record for Congress to consult before establishing any future select committees or panels.

FINDINGS

OVERALL CONCLUSION

- Like the seventeen other federal and state investigations into the fraudulent Daleiden/CMP video allegations, the Select Panel found no evidence of wrongdoing by health care providers, researchers, or tissue procurement companies.

FETAL TISSUE RESEARCH

- Fetal tissue remains a critical resource for research on a wide array of conditions and diseases -- including Alzheimer's diseases, ALS or "Lou Gehrig's Disease," diabetes, HIV/AIDS, and the Zika virus – that impact millions.

- Researchers use fetal tissue because it has distinct properties that cannot be replicated and plays a distinct role in advancing our understanding of fetal and human development and seeking treatments and cures.

- Congressional and state-level attacks on fetal tissue donation have thwarted life-saving research, causing the kind of delay that "results in the additional deaths of people who could have been rescued."

THE SELECT PANEL ENDANGERED DOCTORS AND WOMEN'S HEALTH CARE

- Reproductive health care providers are under attack in this country for performing safe and legal abortions and the fraudulent Daleiden/CMP videos and follow-on investigations have increased the risk by targeting individuals and falsely accusing them of egregious criminal misconduct.

- The safe and legal reproductive health care services that Planned Parenthood and others provide are critical to the health and wellbeing of women and their families and, for some, the only chance they have to receive this high-quality care.

- Legislative restrictions on reproductive health care harm women's health.

THE SELECT PANEL FOUND NO EVIDENCE OF WRONGDOING

- Planned Parenthood does not profit and actually loses money when it facilitates fetal tissue donation, as do other clinics.

- The law allows and should encourage relationships between universities and community partners – such as the relationship between the University of New Mexico and

Southwestern Women's Options – that provide opportunities for medical training and research.

- Tissue procurement organizations consistently explained – and submitted supporting documents to demonstrate – that their costs related to fetal tissue procurement exceed amounts charged and received, and there is no evidence of unlawful profit in connection with these services.

- There is no evidence that patients were misled or coerced into consenting to donate fetal tissue and witnesses confirmed that they have had no patient complaints.

- The key concern for providers is the safety of their patients and they do not alter the timing or method of performing abortions or violate the "partial birth abortion ban" to enhance fetal tissue donation.

- There is no evidence to support Republican allegations of "babies born alive during abortions."

REPUBLICAN ABUSES

- Panel Republicans squandered more than $1.5 million taxpayer dollars pursuing a "viciously partisan" attack on women's health care and life-saving research.

I. THE SELECT PANEL HAS THWARTED LIFE-SAVING RESEARCH

TABLE OF CONTENTS

THE SELECT PANEL HAS THWARTED LIFE-SAVING RESEARCH

Over the past year, Select Panel Republicans have conducted an end-to-end attack on fetal tissue donation and research. Operating largely out of public view, they have misused congressional authority, with the ultimate goal of driving doctors, clinics, universities, and companies away from fetal tissue work and ending this life-saving research. Tragically, their stealth campaign is working.

Congressional and state-level attacks on fetal tissue donation have reduced the supply of donated tissue. Only two of the six Planned Parenthood affiliates that had been facilitating donation for patients in the past five years still provide this service; three stopped because of threats and controversy caused by the deceptively-edited and discredited videos released by anti-abortion activist David Daleiden.[1] In fact, the threats against one affiliate were so immediate and severe that it stopped its donation program on July 14, 2015 – the day that the first Center for Medical Progress (CMP) video was released.[2]

Tissue procurement organizations have been similarly affected. The Chief Executive Officer of one company received graphic death threats after being identified in CMP's fraudulent videos. That company has now spent hundreds of thousands of dollars increasing its security measures and responding to investigations spawned by the deceptive videos.[3] Another tissue procurement organization informed the Panel that "due in large part to the costs born from having to respond to these congressional inquiries, [the company] is no longer doing business. It has come to the end of the line in terms of resources."[4] A third company – DV Biologics – no longer provides fetal tissue to researchers.[5]

As a result, promising research into conditions and diseases such as Alzheimer's, diabetes, HIV/AIDS, and the Zika virus, which impact millions of Americans has been halted or delayed. Doctors who conduct life-saving research – who have been compared to Nazi war criminals by witnesses and Panel Republicans[6]– fear for their personal and professional well-being and are reluctant to speak publicly about their work.

Despite these risks, some of the nation's leading researchers and research institutions provided compelling evidence demonstrating that fetal tissue research remains critical to the advancement of medical science and deserves continued bipartisan support. Unfortunately, it also confirms how damaging the attacks on fetal tissue donation and research have already been.

A. Fetal Tissue is a Critical Resource

In their July interim update, Select Panel Republicans roundly rejected or ignored statements and testimony by prominent researchers and concluded that this research is "outdated

technology" and "not mainstream science."[7] Deriding Panel Democrats for "exaggerating the importance" of fetal tissue research, Chair Blackburn has also taken the position that sufficient alternatives exist.[8] Similarly, at a September 2016 business meeting of the Panel, Representative Bucshon declared: "[T]here is no evidence that use of fresh fetal tissue has resulted in any scientific research results. . . . It is being used for expediency and for lower cost."[9]

In reality, the Panel has received overwhelming evidence of 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.[10] As outlined in the examples below, letters and statements from scientists, researchers, public health authorities, and some of the nation's leading academic medical centers have highlighted its past benefits and confirmed the continued value of fetal tissue for research on a broad range of diseases and conditions from infancy through adulthood.

1. Alzheimer's disease

Alzheimer's disease ("Alzheimer's") is the most common cause of dementia among older adults and the sixth leading cause of death in the United States.[11] A progressive neurological disorder, Alzheimer's impairs memory, thinking, and behavior, resulting in the inability to complete simple daily tasks.[12]

As Dr. Lawrence Goldstein, a neuroscientist at the University of California, San Diego ("UCSD"), told the Panel during its first hearing, "[t]his devastating disease affects 5.3 million Americans and costs us in excess of $200 billion to $300 billion a year."[13]

The only scientist who does fetal tissue research invited to testify during this investigation, Dr. Goldstein discussed how fetal tissue is critical for his study. He informed the Panel that in his lab, "the approach we are taking is to use reprogrammed stem cells to make Alzheimer's-type brain cells…to try and understand what is going wrong and to develop drugs that curtail the problems that happen biochemically."[14] Dr. Goldstein explained that fetal astrocytes, a type of support cell in the brain, is "very valuable" for this work and "proving important to us to make new discoveries."[15] Although it is possible to create cells that are similar to astrocytes without using fetal tissue, Dr. Goldstein clarified that these cells are not identical in capacity, and fetal astrocytes remain the "gold standard."[16]

2. Amyotrophic lateral sclerosis (ALS)

Amyotrophic lateral sclerosis ("ALS"), also known as "Lou Gehrig's disease," is a progressive neurological disorder that attacks nerve cells, causing diffuse muscle weakness, disability, and eventually death.[17] Reports suggest that as many as 20,000 Americans have the disease at any given time, and more than 6,000 Americans are diagnosed with the disease annually.[18]

As John Hopkins University informed the Panel, "[a]s the nerve cells degenerate, the muscles they control grow weak and ultimately stop working and ALS patients typically die by suffocation."[19] Johns Hopkins University and other research institutions explained how fetal tissue has already resulted in promising developments with regards to potential ALS treatments.

One research team at Johns Hopkins University found that injecting fetal cells into animal models "appears to protect the existing cells from degenerating."[20] They continued that, "[t]his finding was so promising for a potential ALS treatment that the FDA has approved an investigational new drug application for early stage clinical trials."[21]

Similarly, University of California at Los Angeles ("UCLA") explained that fetal tissue is "of great value for studies of the unique structure of the human brain," including strategies to assist in "determining the underlying causes of neurodegenerative diseases, such as spinal muscular atrophy and amyotrophic lateral sclerosis, and for screening for drugs that could slow disease progression and extend patient lifespan."[22]

3. Diabetes Mellitus

Type 1 diabetes mellitus is an autoimmune disease usually diagnosed in children and young adults.[23] The condition is characterized by the inability to produce insulin, a hormone needed for the body to ensure that glucose moves from the bloodstream into cells. The hallmark of treatment is lifelong insulin therapy.[24] In the United States, type 1 diabetes is responsible for an estimated $14 billion in healthcare costs each year.[25] Over one million Americans currently live with this condition, including approximately 200,000 young adults, and 40,000 new cases are diagnosed annually.[26]

Harvard explained to the Panel that its researchers depend on fetal tissue because it enables them to "model and better understand the auto-immune attack that leads to type 1 diabetes, among other diseases."[27] Harvard also described its efforts to ameliorate the suffering of children with type 1 diabetes by seeking to "make human pancreatic beta cells for transplantation into diabetics, thereby relieving them of the daily finger pricks and insulin injections they need to stay alive."[28]

Fetal tissue is also used in research focused on complications of type 1 diabetes, such as diabetic retinopathy. This disease is characterized by damage to the blood vessels in the back of the eye resulting in vision loss.[29] Diabetic retinopathy is the leading cause of blindness among people with diabetes mellitus, and according to the American Academy of Ophthalmology, eighty percent of patients with type 1 diabetes will develop diabetic retinopathy over the course of their lives.[30] Johns Hopkins University informed the Panel: "Using fetal eye tissue, our researchers were the first to show the location of two forms of the VEGF protein, which are responsible for the growth and disappearance of these blood vessels . . . This discovery can be used to learn more about how tumors and diabetic retinopathy progress."[31]

4. HIV/AIDS

The human immunodeficiency virus attacks the body's immune system, specifically the cells that fight off infection.[32] If left untreated, HIV can lead to AIDS, or acquired immunodeficiency syndrome.[33] Recent reports suggest that more than 1.2 million Americans currently live with HIV; one in eight don't even know they have the condition.[34] In 2014 alone, nearly 21,000 people in the U.S. were estimated to have been diagnosed with AIDS.[35]

The University of Minnesota informed the Panel that fetal tissue research is a critical part of efforts to "develop an intervention to prevent mother-to-child transmission of HIV."[36] As the University of Minnesota further explained: "[t]hat research alone has saved over 1 million infants in the last 10 years, while also reducing elective abortion in HIV positive women by more than half in this country."[37] Other preeminent research institutions informed the Panel that fetal tissue has been vital to enhancing our understanding of and identifying treatments for HIV/AIDS.

Oregon Health & Science University told the Panel that "in HIV/AIDS research, the use of fetal tissue has been critical to advancing animal models that can mimic the human immune system," which "is crucial to developing much needed vaccines for this terrible disease and others…"[38]

The International Society for Stem Cell Research similarly stated that fetal tissue research has "[a]llowed the development of novel approaches to HIV prevention that could not have been studied in other systems" and "[a]llowed for the testing of drugs in human cells in vivo in a way that could not have been done in other preclinical systems."[39]

5. Infant and Childhood Leukemia

Leukemia is a cancer that starts in early blood-forming cells.[40] It is the most common type of cancer affecting children and teens, with reports suggesting that about 2,700 children in the United States are diagnosed with leukemia each year.[41] According to UCLA, "[a]lthough the survival rate of these patients has improved dramatically, approximately 15% of pediatric patients with the most aggressive forms of the leukemia continue to die."[42]

As UCLA explained to the Panel, their researchers rely on fetal tissue in a project focused on improving treatments for a form of lymphocyte leukemia in young children: "A growing body of evidence suggests that these fatal leukemias may be unusually aggressive because they emerged from a unique type of B cell progenitor (B cells are white blood cells that secrete antibodies) generated only during fetal development" and that, through ongoing fetal tissue research, they seek "to identify genes expressed only in fetal B-cell progenitors that contribute to the development of the aggressive forms of leukemia observed in young children."[43]

The Children's Hospital of Pennsylvania ("CHOP") also confirmed the value of fetal tissue research in their efforts to study treatments for infant leukemia. As CHOP explained,

scientists using fetal tissue to prevent and treat infant leukemia can make "faster progress because disease-causing mutations target fetal cells specifically."[44]

6. Macular degeneration

Age-related macular degeneration ("AMD") is characterized by deterioration of the eye's macula, the part of the retina that is responsible for central and high-acuity vision.[45] It is a common cause of visual impairment in older adults, and while it does not lead to complete blindness by itself, those affected have difficulty performing simple everyday activities, such as recognizing faces, driving, and reading.[46]

Harvard told the Panel that it relies on fetal tissue to study AMD because the macula develops during gestation and does not exist in most mammals or other experimental models; therefore "human fetal tissue provides the required starting point for such studies."[47] Similarly, the University of Michigan stressed that animal models, cellular derivatives, and other alternatives are limited when searching for treatments of AMD. They explained that "therapies exist for only ten to fifteen percent of patients and animal models are not very good,"[48] while fetal tissue "behaves more like the type of tissue that researchers are attempting to model."[49]

7. Preterm Birth

Preterm or premature birth of a baby before thirty-seven weeks of pregnancy affects approximately one out of every ten infants born in the United States, with higher rates among communities of color.[50] Babies born prematurely face a higher risk of serious disability, developmental delay, or even death.[51]

The University of Illinois at Chicago explained to the Panel that fetal tissue research is essential for studying "the impact of premature birth on infant health and development,"[52] and the "development of therapies to prevent or reduce the morbidity and mortality from birth defects and developmental disorders."[53]

The Department of Health and Human Services ("HHS") also confirmed that scientists using fetal tissue can "study the immune systems of the fetus and mother, and any incompatibilities arising due to infection or inflammation that may lead to rejection, miscarriage, or preterm birth."[54]

8. Spinal Cord Injury

Spinal cord injury refers to damage to any part of the spinal cord or nerves at the end of the spinal canal, which can lead to partial or complete paralysis.[55] The most common cause of spinal cord injury is trauma, either due to a motor vehicle accident or fall.[56] More than 250,000 Americans currently live with spinal cord injuries, and there are an estimated 12,000 new spinal cord injuries in the U.S. each year.[57]

In his testimony at the Panel's first hearing, Dr. Lawrence Goldstein discussed how research trials involving fetal tissue at the center he directs "are vital to pushing medical science forward and to helping to rescue people who are afflicted with spinal cord injuries, which is a terrible affliction."[58]

Dr. Goldstein explained how researchers have now initiated an FDA-approved phase 1 clinical trial to test the ability for fetal cells "to develop and positively impact the paralysis" for individuals suffering from spinal cord injuries.[59] As associations representing leading research institutions confirmed, fetal tissue research enhances our understanding of methods to improve "recovery from spinal cord injury."[60]

9. Vaccine Research

Thanks to vaccinations, many common and devastating diseases can now be prevented in the United States and across the world.[61] The Centers for Disease Control and Prevention ("CDC") estimates that for children born from 1994 through 2013, routine immunization has prevented more than 700,000 deaths and 21 million hospitalizations.[62]

As Harvard University told the Panel, "[t]he field of vaccine R&D is probably the best known example of how fetal material provides an invaluable resource to scientific and medical progress; most recently in work seeking to better understand and combat the spread of Zika virus, just as it did chicken pox and polio, among others."[63] Other leading research and government institutions confirmed the role that fetal tissue has and continues to play in vaccine-related research.

Yale School of Medicine told the Panel that the vaccines for rubella and varicella, "effectively eradicated a major source of child mortality and mental retardation."[64] HHS also explained that "cell lines derived from fetal tissue have also played an essential role in the creation of new vaccines and remain valuable in important efforts such as the pursuit of a vaccine for Ebola."[65]

Notably, Panel Republicans acknowledge that the development of the polio vaccine relied on fetal tissue research but claim that it could have been done without using fetal tissue. Dr. Goldstein rejected this claim at the Panel's first hearing, explaining that "[t]he fact is, that is how those vaccines were developed," and that "it is so easy to look in the rearview mirror at research and say well, now that we know everything we know, it would have been so much easier to do it a different way."[66] The University of Wisconsin also confirmed that "the development of the human polio vaccine would not have been possible without cells of fetal origin."[67]

Other testimony and documents obtained by the Panel confirmed the unique and critical role that fetal tissue continues to play in research on vaccine development. As explained by one witness interviewed by the Panel, her Planned Parenthood affiliate was asked by a nearby medical college to facilitate donation of tissue for researchers working on vaccines for infectious diseases including "HIV, Hepatitis, Malaria, and Dengue" fever.[68]

As the researcher explained to the Planned Parenthood affiliate, "because we have been limited to human peripheral blood samples for our studies, it has been very difficult to develop successful therapies to prevent or treat these diseases."[69] Unlike these samples, fetal tissue would allow these researchers "to perform necessary experiments for the development and validation of vaccines and immune correlates for the treatment and prevention of lethal infectious diseases."[70]

Unfortunately, the Planned Parenthood affiliate ultimately decided not to move forward with this project because of the controversy surrounding the fraudulent Daleiden/CMP videos.[71]

10. Zika Virus

The current Zika virus epidemic in the Americas is one of the most serious public health emergencies since the Ebola outbreak in West Africa in 2014.[72] While often benign in adults, the Zika virus can have "devastating effects on the developing human fetus," resulting in microcephaly and other conditions.[73]

Dr. Lawrence Goldstein told the Panel during the first hearing: "I think that if you want to understand the Zika virus, the most efficient place to start is with fetal tissue that is infected."[74] Dr. Anthony Fauci, the director of the National Institute of Allergy and Infectious Diseases, agreed that fetal tissue is most needed in circumstances such as the Zika virus:

> I think the argument of the need to have fetal tissue research in a disease in which the virus is affecting fetal tissue, is about as strong a justification as you can get for using fetal tissue in research in this case.[75]

As the International Society for Stem Cell Research (ISSCR) confirmed, insights from fetal tissue research "are already guiding the development of drugs that may protect the unborn baby from the ravages of the Zika virus."[76]

B. Fetal Tissue Plays a Unique and Irreplaceable Role

The alternatives to fetal tissue posited by the Republicans – primarily induced pluripotent stem cells (iPSCs), as well as animal and human adult tissue and cell lines – have been successfully used by researchers. However, scientists and research institutions have repeatedly advised the Panel that tools and technologies are not interchangeable and fetal tissue is still needed for certain research that requires its distinct properties.

As Dr. Goldstein testified, "fetal tissues and cells cannot be easily replaced by embryonic stem cells, reprogrammed stem cells, or adult stem cells."[77] He went on to say that cell lines "are simply not interchangeable,"[78] and that "we need all different types of cells to do research because we don't know what is best."[79]

Dr. Goldstein's testimony was reinforced by the Association of American Medical Colleges:

> The cell lines themselves have limitations, and access to fresh fetal tissue remains critically important. '[O]ff-the-shelf fetal cell lines are of limited use for scientists because they do not faithfully mimic native tissue and represent only a subset of cell types: WI-38 and MRC-5, for example, were derived from fetal lungs. The lines can also accumulate mutations after replicating in vitro over time…For all of these reasons, researchers turn to fresh tissue.'[80]

Johns Hopkins University also advised the Panel that the unique nature of fetal tissue cannot be replicated by iPSCs or other models:

> Our researchers have shown that human fetal cells hold unique properties that are not shared even with human iPSCs: human fetal cells survive, mature and migrate more reliably.[81]

Columbia University recognized that, while "IPS cells may hold the key to unlocking the mysteries on many diseases" it remains true that "there are many instances where FTR [fetal tissue research] are still very much irreplaceable" and remain the "gold standard for the field for now."[82]

The Yale School of Medicine explained that, while sufficient in some instances, animal and adult human tissue cannot completely replace fetal tissue because "the differences are so profound, with so many genes that are expressed differently, that the fetal brain at the molecular level is almost a different organ from the adult brain, making adult brain cells a poor proxy for fetal brain cells."[83]

UCLA provided the Panel with seven representative examples of current research projects that are dependent on "the continued availability of fetal tissue."[84] UCLA explained that "human fetal tissues exhibit biological properties that are distinct from those of tissues derived from children and adults."[85] UCLA further explained the unique role that fetal tissue plays in medical research:

> [T]he direct study of human fetal tissues is essential for an understanding of human development. This understanding is necessary for the advancement of fundamental biology, for the pursuit of therapies for the treatment of developmental diseases, such as Down syndrome and the microcephaly associated with Zika virus infection, and for the pursuit of therapies for the treatment of many other diseases that have been linked to developmental defects, including several cancers.[86]

The University of Minnesota similarly reported to the Panel: "There is currently no substitute for the use of human fetal tissue in some areas of research. Where possible, researchers have looked for alternatives, such as using adult cells that have been reprogrammed to their earlier forms. But those techniques are still being refined and some fields, such as the study of fetal development, are likely to remain reliant on fetal tissue."[87]

The University of Washington ("UW"), which operates the Birth Defects Research Laboratory, also explained the unique role of fetal tissue research.[88] UW provided the Panel with a list of thirty eight diseases and conditions, including ALS, Alzheimer's, multiple sclerosis and the Zika virus for which researchers had requested fetal tissue from UW from 2014-2016.[89] UW explained:

> These research projects investigate human developmental biology which cannot be done using various animal and other cellular systems. The use of human fetal tissue is a vital way to confirm human development because it is a specimen that has developed in its native habitat.[90]

Another university further reinforced to the Panel that fetal tissue has distinct properties that cannot be replicated in research by any available substitute:

> Neither adult stem cells, nor reprogrammed somatic cells approach the versatility and quality of the natural stem cells derived from the fetus which remains the best resource for regenerative medicine…. We are aware of how many times promising solutions for diabetes, cancer, and neurodegenerative diseases have been shown to cure the mouse or rat but fail when tested in humans….There is no comparable substitute for fetal tissue for the accurate understanding of human development.[91]

The approach taken by Panel Republicans discounts the views of the scientific community regarding the value and need for fetal tissue research and ignores the reality of how science works. As HHS advised the Panel:

> It is impossible to predict what types of cells or systems will be necessary for answering particular research questions or developing new treatments and cures. Thus, human fetal tissue is likely to remain a unique and invaluable resource for studying both typical and atypical processes early in development, elucidating the pathogenesis of infectious disease, advancing our understanding of a wide range of conditions, and developing new treatments and cures.[92]

The Association of American Medical Colleges echoed HHS's reasoning:

> By closing the door on one type of research, we may never know what advances we might have attained. For every bit of knowledge

> or advance that has resulted from research using fetal tissue, alone or in combination with other research, there may be other questions and potential lines of inquiry that merit further exploration, using all available methods.[93]

C. Life-saving Research is at Risk

At the Panel's first hearing, Dr. Lawrence Goldstein highlighted the real-world consequences of Republican attacks on fetal tissue research. As he explained, one of the projects he was working on involving research on multiple sclerosis ("MS") "is basically seeing a supply of fetal material dry up completely and it was a very promising therapy for MS."[94]

Subsequent reporting confirmed that another MS research trial planned for this year, which focuses on regenerating myelin (the insulation around nerve fibers) in late stage MS patients, was pushed back to 2019 because researchers lacked the fetal tissue that they needed to proceed.[95] As a neurologist leading the research team explained: "This kind of delay . . . results in the additional deaths of people who could have been rescued."[96]

Leading institutions also told the Panel about the chilling impact on life-saving research. UCLA wrote that "recent national events have increased the challenge of obtaining the fetal tissues" needed for ongoing research projects. UCLA went on to explain:

> One reputable company was forced to close due to legal expenses associated with challenges to its operations. This has delayed important studies and has forced laboratories to spend a considerable amount of time and resources searching for alternative suppliers. One laboratory has identified a reliable source of fetal tissues in Germany. Another laboratory has reduced their effort on studies that require fetal tissues, despite the importance of this research, due to concerns about personal safety.[97]

Another university reported "a paucity of sources from which to obtain human fetal tissue, creating roadblocks to the conduct of important biomedical research. Entities that previously provided the sources of human fetal tissue have either closed, due to external pressure, or currently offer more limited options than previously proffered."[98] That institution further explained that "[o]ver the past year, the supply of fetal tissue has dwindled… to the point where we can no longer depend on this important resource for our studies."[99]

The University of Illinois at Chicago explained that "because of difficulty in obtaining fetal tissues and concerns about their continued availability . . . [a] researcher [studying early life exposure to certain toxicants and risk for prostate cancer] opted to use a less satisfactory alternative, human prostate organoids grown in vitro."[100]

Johns Hopkins University told the Panel that a private funder asked one of its research teams to "alter their research approach" to avoid using fetal tissue because of the recent "adverse publicity" around this research.[101] The University expressed its concern that "changes in the availability of human fetal tissue will result in major setbacks in the understanding of devastating diseases and development of future treatments and cures for patients."[102] It further explained the chilling impact on its research faculty:

> [D]ue to the sensational nature of linking fetal tissue research to broader concerns about abortion, faculty will be discouraged from pursuing important scientific questions due to difficulty in acquiring needed material or out of fear of personal reprisal.[103]

A May 2016 article in the scientific journal *Nature Biotechnology* demonstrates that safety concerns and threats are common throughout the scientific community. According to the *Nature* article:

> One cancer researcher received hate mail after a conservative media website linked the investigator's name to fetal tissue research. In response, the floors of some researchers' laboratories are now permanently locked and de-identified, constraining the scholarly exchange of students, visitors, and ideas.[104]

As a professor of medicine at the University of California, San Francisco who uses fetal tissue to develop therapies that might save babies with lethal congenital disorders further explained:

> We read news of deaths and attacks on abortion clinics, so one has to fear that someone misguided might put something in your mailbox, or do something to your children, and that has really caused a significant amount of anxiety.[105]

This researcher was "one of the rare researchers who uses fetal tissue and agreed to speak on the record," but "twenty others did not reply or declined to comment."[106]

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II. THE SELECT PANEL HAS ENDANGERED DOCTORS AND WOMEN'S HEALTH

TABLE OF CONTENTS

THE SELECT PANEL HAS ENDANGERED DOCTORS AND WOMEN'S HEALTH

House Republicans capitalized on the deceptively-edited Daleiden/CMP video allegations to authorize a sweeping investigation of doctors who provide abortions in this country. Armed with a vague and overbroad resolution and unilateral subpoena authority, Chair Blackburn issued sweeping document demands and required doctors and clinic staff to appear and answer questions, many of which strayed far beyond the Panel's authorizing resolution and involved lawful activities, many of which are protected by the Constitution.

Notably, Panel Republicans only interviewed women who perform abortions or work in the reproductive health care field. They did not interview a single representative from a tissue procurement organization, despite the fact that the ostensible need for the Panel was to investigate this purported industry.[1] These health care providers – half of whom are not even involved in fetal tissue donation – were questioned repeatedly about allegations taken directly from the deceptively-edited Daleiden/CMP videos or the websites of other anti-abortion extremists.

Like the seventeen other federal and state investigations into these fraudulent video allegations, the Select Panel uncovered no evidence of wrongdoing by Planned Parenthood or any other providers. Documents and testimony from these witnesses confirmed, however, that providers are under attack in this country and the false videos and follow-on investigations have only increased their risks. Attacks on these providers and women's health care – including legislative restrictions that are not medically necessary – put women's health and lives at risk.

A. McCarthy-Era Tactics

Throughout the investigation, Chair Blackburn used her unilateral subpoena authority – or the threat of that authority – to demand that universities and clinics "name names" of their doctors, researchers, students, laboratory or clinic personnel involved in fetal tissue research or reproductive health care. They also demanded information – and questioned witnesses who appeared before the Panel – about lawful activities, including the receipt of private sources of funding, meetings between colleagues or acquaintances, and whether and how long providers have known each other.

Panel Democrats and entities targeted by Panel Republicans repeatedly asked Chair Blackburn to explain why amassing a sweeping database of names was necessary and how these names were pertinent to her investigation.

In mid-January, for example, Panel Democrats asked Republicans to:

> [E]xplain the underlying issues/allegations being investigated and how the requests fit in – specifically asking you about the requests for lists of names of fetal tissue researchers or reproductive healthcare providers because of the privacy and security concerns that accompany those requests.[2]

Entities facing the threat of contempt because of their reluctance to name names also asked for an explanation of why the Chair needed those names. For example, responding to the Chair's renewed insistence on the names of its researchers and staff contained in a unilateral subpoena, the University of New Mexico again "ask[ed] that you reconsider this request for the naming of our staff individuals," explaining that:

> We do not understand the basis for your demand to know the names of medical practitioners, student doctors, and lab technicians, and the Majority staff has not responded in any manner to our written request that you explain how production of their names is pertinent to your jurisdiction or a legislative purpose.[3]

During the Panel's first hearing, Representative Jerrold Nadler questioned the need for names and pressed Chair Blackburn to answer this question:

> 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."[4]

Congress's authority to seek information is broad but not unlimited. Members have an obligation to explain what they are investigating and how the information that they seek furthers an authorized investigation. The Supreme Court has held that: "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."[5]

Panel Republicans similarly refused to provide an objective basis for demanding information and testimony from doctors who perform abortion – a legal and therefore safe procedure.

Yet – in the fashion of the House Un-American Activities Committee and Senator Joe McCarthy – Panel Republicans used the Panel to punish doctors because they engage in lawful activity that Panel Republicans oppose.

Panel Republicans even tried to criminalize this lawful behavior, submitting a "criminal referral" letter to the New Mexico Attorney General and requesting an investigation of the "too close" relationship between University of New Mexico and a nearby clinic, Southwestern Women's Options. They expressed displeasure that the University of New Mexico provides

reproductive health care and takes steps to ensure that medical residents and fellows obtain training that is mandated by various accrediting institutions. These activities do not implicate a single criminal law and, in fact, provide exactly the type of critical training opportunities that should be supported.

As Forbes contributor Charles Tiefer wrote regarding Chair Blackburn's "criminal referral" to the New Mexico Attorney General:

> 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.[6]

B. Refusal to Safeguard Individual Privacy and Safety

Nearly everyone contacted by the Panel Republicans was reluctant to provide names and personal information without protective rules in place. As they explained, providers and researchers already face harassment and violence and identifying anyone in connection with this investigation increases these risks. For example, one organization told the Panel that "Many scientists and physicians are deeply concerned for their safety and that of their patients, colleagues, and students in light of inflammatory statements and reports surrounding fetal tissue donation."[7]

Similarly, counsel for a clinic explained the need to redact personally identifiable information, including names, home addresses, phone numbers and email addresses, from documents produced to the Panel:

> [T]his precaution is especially necessary given the heightened risk [of] harassment, violence, intimidation, and harm associated with disclosure of information related to this politically sensitive topic.[8]

The clinic stressed that "We do not raise these safety concerns lightly. In addition to the murder of Dr. George Tiller in his church in Kansas, there is a well-documented and ongoing threat to individuals involved in or associated with the provision of reproductive health services across the country."[9]

These concerns are not hypothetical or exaggerated. Since abortion became legal nationwide, doctors and patients have been murdered, clinics have been vandalized, and ongoing threats have put doctors and their families in fear for their safety. In April 2016, the National Abortion Federation reported that "since 1977, there have been 11 murders, 26 attempted murders, 42 bombings, 185 arsons, and thousands of incidents of criminal activities directed at abortion providers."[10] After the deceptive Daleiden/CMP videos were released, these incidents of violence and harassment surged.[11]

In July 2015 – the month that the first of these videos were released – there was a nine-fold increase in reported incidents of harassment against Planned Parenthood facilities, compared with the prior month.[12] The number of reported death threats against abortion providers also skyrocketed from one in 2014 to ninety-four threats of direct harm in 2015.[13] The number of arson attacks spiked, with four arsons targeting Planned Parenthood facilities in the four-month period following the release of the videos, compared to one in 2014 and none in 2013.[14] In addition, cases of vandalism increased more than five-fold with 67 reported incidents in 2015, up from 12 in 2014.[15] Several individuals targeted by Panel Republicans received graphic death threats after being identified in the inflammatory Daleiden/CMP videos.[16]

In light of the uptick in violence against reproductive health care professionals, federal courts have blocked additional public release of the videos by Daleiden/CMP and have also required public entities to redact names and other personal information when responding to state public records act requests.[17] One of these courts did, however, also permit limited release of materials from Daleiden/CMP to Congress in October 2015 under a subpoena issued by the House Oversight and Government Reform Committee. In doing so, that court expressed its belief "that the committees of Congress will exercise their powers responsibly and with due regard for the rights of affected parties."[18] Unfortunately, within weeks of the production to Congress, some of the footage from CMP and Mr. Daleiden was posted on the internet.[19]

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 released."[20] Despite this, requests to investigate the potential leak went unanswered by Oversight and Government Reform Chairman Jason Chaffetz and Speaker Ryan.

About a month later, in November 2015, a gunman killed three people, injured nine others, and terrorized patients and providers at a Planned Parenthood clinic that is listed on a website operated by Operation Rescue, a group run by former CMP Board Member Troy Newman. That gunman used the same inflammatory language that has been used repeatedly by Chair Blackburn and others – both before and after these shootings – to describe this investigation.[21]

The increased violence and leaks of material left parties contacted by the Select Panel understandably concerned about revealing names and other personal information, even to Congress. Despite this, Panel Republicans refused to put any rules in place to safeguard names or other personal information. Instead, they 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.

C. Release of Names

After being criticized for demanding that entities and individuals "name names," Chair Blackburn publicly acknowledged that "we know that it's important that we act responsibly with each and every name."[22] However, when asked to confirm the steps that would be taken to protect names in advance of the Panel's first deposition, Panel Republicans responded:

> 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.[23]

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.[24] 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.[25] 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.[26]

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.[27] 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.[28]

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 work.[29] 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.[30]

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.[31]

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

Democrats proposed that the Panel work to improve safety for providers; but Panel Republicans have only made matters worse.

D. Attack on Providers

Although Panel depositions and interviews revealed no evidence of wrongdoing by health care providers, their testimony revealed the extensive, daily harassment, intimidation, and threats of violence directed at them, their families, and women who seek the constitutionally-protected care that they provide. As one clinic employee told the Panel:

> I've been followed outside of the clinic before almost nearly to home. I've had protesters in my neighborhood. We have unbelievable amount of security measures. We have two [local police] officers onsite to where our patients are coming in and going out and our doctor to escort us. We've had to put ballistic materials in the clinic. We've had arson threats. We've had vandalism. We get phone calls screeching, "Murderer, murderer," over the phone on an endless basis. [32]

When asked if she was concerned about the safety of her and her colleagues' families, she responded:

> Yes. I haven't had anybody directly in front of my house, but it was the entrance to my neighborhood as far as the protesting goes, so I'm not sure if they actually figured out which house was mine on the block, but it was close enough. And my owner said her entire street has been pamphleted, Nazi paraphernalia and "murderer among us" and back to school night was protested for my owner's brother. They scare me.[33]

Another clinic employee described the climate of fear and intimidation she faces going to and from work:

> I don't even know how many times I've had to replace my tires on my car because I've had nails and screws in them, you know, just right after I get home from work. It's kind of scary when they know my children's names and what school they go to and where I live. And I never know what's going to happen, but, luckily, I have a pretty strong support system at home. I think I've been followed once, but I'm pretty confident in myself that I would be able to take action, you know, lose them. But just hearing what has happened to other people, I never know when it's going to if it's ever going to happen to me. My license plate they know. Like, all the cars that I drive. I don't know what they would do with that information, but yeah."[34]

The employee also recounted incidents of vandalism against the clinic, including "throwing beer bottles at the clinic," damaging the clinic's sign, and smearing feces under the doorknob.[35]

The Panel has also received testimony about the increased threats and violence following release of the deceptively-edited Daleiden/CMP videos. As one individual who was secretly recorded by Daleiden ("PP Witness #2") explained:

> I was immediately subject to many death threats and had to leave my home the day after the video was released. I was provided with 24/7 armed security detail while I was away, and I had to install a new security system before I was able to safely return to my home. I was terrified for the safety of myself and my family. Like many of my colleagues whose faces were shown on the video, I changed my appearance to safely continue my work. I still fear for my safety when I'm out in public.[36]

The Panel heard similar testimony from a doctor who was also surreptitiously recorded in a Daleiden video ("PP Witness #1"):

> Since the video's release, I have been subject to many death threats. I had to stop much of my work for several months, and I was under 24-hour security detail in the immediate aftermath of the video's release. [37]

The threats against this doctor (PP Witness #1) and the clinic where she was working started the morning that the videos were first released and, "for the staff's safety and for [the doctor's] safety," she "has never gone back to seeing patients" at that clinic.[38]

These discredited videos have a continued impact on PP Witness #1 and her family:

> I still fear for my safety when I'm out in public. More importantly, I fear for the safety of my family members, members who have been harassed simply because they share my name, including some who are even too young to understand what is happening.[39]

Another doctor discussed how the climate of fear and intimidation impacts decisions about whether to practice in the field of reproductive health care. She described the need for clinicians to consider that this choice might endanger their lives because of the violence and harassment directed at doctors who perform abortions.[40] She explained that many residents express fear about potential violence and that some have elected to limit their training time at clinics because of their concerns about violence that might occur while they are there.[41] She also expressed concern that the use of inflammatory language by Panel Republicans to describe this investigation contributes to the atmosphere of fear and puts providers at additional risk.[42]

E. Attack on Women's Health Care

Access to a broad range of affordable and effective family planning methods – which the Centers for Disease Control and Prevention (CDC) recognized as one of the ten greatest public health achievements of the 20th century – is central to the health and wellbeing of women and their families.[43] According to the CDC, family planning allows women to better plan and space pregnancies, increases opportunities for counseling and screening prior to conception, and has decreased infant, child, and maternal deaths.[44]

In February 2016, the American Congress of Obstetricians and Gynecologists (ACOG) underscored the significance of "reproductive life planning" as a means "to reduce unintended pregnancy, promote maternal health, and improve pregnancy outcomes."[45] While reducing unintended pregnancies through education and access to contraception are key components of this care, access to safe and legal abortion also remains critical:

> Levels of unintended pregnancy vary across societies and over time; however, because no reversible method of birth control is perfect and few human beings use methods perfectly, women will always experience unintended pregnancies. Thus, there will always be a need for abortion, and for safe abortion services.[46]

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

1. Contraception and Family Planning Services

As one Planned Parenthood-affiliated doctor ("PP Witness #3") told the Panel, increasing access to contraception to prevent unintended pregnancy "is actually the single most important thing we can do for maternal safety in terms of women's life course overall."[47] She further explained:

> Pregnancies that come too soon, too often, too close together are bad for the woman's health in terms of actual medical risks and also to the health of all of her children, both those already born and those in the future because of adverse outcomes associated with pregnancies that are too frequent and too closely spaced.[48]

PP Witness #3 also described the additional, non-contraceptive health benefits of contraceptive care, noting specifically that "birth control pills prevent ovarian and endometrial cancer."[49] For long-acting reversible contraception (LARC), like the intrauterine device (IUD) and implant, PP Witness #3 explained how recent policy changes have benefitted women by increasing access to "these highly effective" methods of contraception:

> The long acting contraceptives are IUDs and implants, and are related to a number of research projects I've been involved in and were little used in previous years in large part due to expense, and it's been an important series of changes in the policy arena that there is now insurance coverage for contraception and particularly through these kinds of contraceptives, and that gives women much better access to these highly effective methods that are very convenient and easy to use and that are having a beneficial effect for the women who want to use them.[50]

Another Planned Parenthood doctor (PP Witness #1) confirmed the importance of family planning services on maternal and infant health:

> [W]omen need to be able to choose when they want to have a pregnancy and how to time the interval between their pregnancies.[51]

With specific regard to the "huge" role of contraception in addressing the Zika virus, PP Witness #1 said that Planned Parenthood has "been developing a whole variety of materials and creating educational information for both pregnant patients and non-pregnant patients so they can learn how to protect themselves."[52] PP Witness #1 also discussed her concerns that "cost is often a barrier to access for patients" and explained:

> So the more effective methods, things like IUDs and implants, also tend to be the more costly methods. In reality they're actually more cost effective over time, but often requires a patient to pay a large amount of money up front.
>
> So, for example, if they want a copper IUD, which they can use for up to 12 years, it may cost them $1,000 to get that IUD, where if you were to average that out over 12 years, it's actually quite inexpensive. But for a patient who doesn't have the money to pay $30 for a pack of pills every month, it's absolutely impossible for them to access some of those more effective methods.[53]

Confirming that federal funding ensures "care for patients who otherwise just would have no access to contraception, cervical cancer screening, and a variety of other services," PP Witness #1 also described the range of patients that the organization serves:

> We see a very diverse clientele. We see patients with all socioeconomic status. We see patients with all levels of education. We see, as I mentioned, men, women, teens, adolescents. We see older patients. We see, as I mentioned, transgender patients. Really the idea is we want to provide care to anybody who needs care. Their slogan is care no matter what, and it's – it's a reality.[54]

This care is provided in urban and rural settings, and – for patients in some areas – Planned Parenthood is the only entity providing this care.[55]

In spite of the clear public health benefits associated with expanded access to family planning, Republicans in Congress have slashed funding for the Title X family planning program, the only federal program dedicated to supporting family planning services.[56] In the past five years, House Republicans have cut Title X by a staggering $31 million – these cuts far exceed the $13.9 million of cuts made in real dollars over the previous 25 years, between 1985 and 2010.[57]

Title X grantees include state and local health departments, community clinics, and safety-net health care providers – including Planned Parenthood health centers – and support a range of reproductive health services, including contraception counseling and provision, testing and treatment for sexually transmitted infections (STIs), and breast and cervical cancer screenings.[58] Title X funding does not go towards abortion.[59] Services provided by Title X clinics helped women avert over one million unintended pregnancies in 2013 alone, preventing 501,000 unplanned births.[60]

While the Affordable Care Act significantly improved access to contraception by requiring most private health plans to cover contraception without patient cost-sharing,[61] Title X remains a critical funding source for bridging coverage gaps and reducing cost as a barrier to access for uninsured and low-income women.[62]

When asked about the importance of federal funding for comprehensive family planning and related health services under Title X of the Public Health Service Act ("Title X"), PP Witness #3 noted that "for every dollar spent on Title [X] there's a savings of at least five health care dollars in the short run, and so it's a really excellent investment in health."[63] As she explained, while the need for these services has increased, federal funding has not:

> But the Title [X] budget has not increased. In fact, in real dollars I believe it certainly has not increased even though the people who need care that's offered by Title [X] clinics has increased a lot over the last couple decades.
>
> Care has also gotten somewhat more complex. These new, highly effective methods [of contraception] are more expensive. So that's been one challenge. Women in Title [X] clinics also receive a lot of preventive services, and for instance screening for HIV has become part of the bucket. Title [X] provides a lot of services for women in populations heavily hit by the AIDS epidemic and, thus, that's been an increase in the scope of care provided in these clinics gradually over the last 20 years, all of which is to say the expenses involved in providing care in Title [X] clinics and the demand for care has increased dramatically, but the funding has not increased.[64]

2. Safe and Legal Abortion

PP Witness #3 – who has spent more than forty years working on public health and reproductive health care – also told the Panel that "in our own society and in others, legal restrictions on abortion lead to adverse health outcomes but do not lead to a decrease in the amount of abortion overall."[65] The importance of access to safe abortion care is why Planned Parenthood has designated abortion a "core clinical service" for affiliates and a critical component of women's reproductive health care:

> Abortion is a core service, a core clinical service for Planned Parenthood, and it is part of the continuum of women's reproductive health care. Abortion has been as far as we know with us always historically in all societies, and when abortion is illegal, my reading of the literature is that that has very little impact on the actual occurrence or even rate of abortion, but it has a huge impact on its safety.
>
> And so for Planned Parenthood to be able to provide this legal service in as safe as possible manner, it is a big improvement in women's health.[66]

Throughout the investigation, Panel Republicans alleged – without evidence – that "[a]bortion today is about profit, profit, profit"[67] and that "the abortion industry has placed money above the safety of women."[68] However, research overwhelmingly shows that when abortion is legal, it is one of the safest medical procedures available, with a mortality rate of less than one in 100,000.[69] By comparison, the mortality rate of childbirth is nearly twenty-four per 100,000 live births.[70]

Witnesses interviewed by the Panel consistently denied the accusation that they are motivated by a desire to profit from the care that they provide women.

As a staff member at one clinic explained:

> Sometimes terrible things happen in your life, and you just need to be able to have an option. It's important. It's hard to look a woman in the face and she has a wanted baby inside of her that's sick and not going to survive. And most people will never understand what that feels like for her or for us to be there for her…I have patients who come in here and talk about if they couldn't have [an abortion] . . . that they would take their own life.[71]

Another doctor (PP Witness #1) explained that she had decided to dedicate her career to reproductive health care in order to ensure that women have access to safe, quality care:

> I think that one of the problems is if there's just so few providers that I felt it was important for me, feeling that I had skills and

> knowledge, to provide that service to patients, but also to teach others to provide that service to patients so that we lower the risks and we ensure that safe abortion is available to as many women as possible.[72]

Finally, an additional doctor (PP Witness #3) confirmed that she viewed her role as necessary to ensuring women have access to reproductive health care:

> And there was in medical education and medical practice a real lack of attention to women's reproductive health overall. So the fact that in our society Planned Parenthood picks up those roles was very important to me.[73]

3. Legislative Restrictions

PP Witness #1 also provided examples of various legislative restrictions that have been imposed on doctors and clinics that perform abortions, including requiring doctors to submit documentation of every abortion to the state in a manner that doesn't advance public health, requiring clinics to give patients state-mandated but medically inaccurate information about abortion, and demanding costly modifications to facilities.[74]

She explained that these regulations require doctors to "basically violat[e] all of the rules of being a doctor to comply with the law" by forcing them to give women "incorrect or misleading information."[75] These barriers to care harm women because "by delaying a woman's access to abortion, we're actually making it less safe."[76] As PP Witness #1 also confirmed:

> I think if I had to summarize it in one sentence, what I'd say is when abortion is legal or illegal, it doesn't change the amount of abortions that happens.[77]

She went on to note that legal abortion "just improves the safety and protects women."[78]

Another witness from a Planned Parenthood affiliate (PP Witness #2) described the patient safety concerns caused by changes in publicly funded family planning services[79] and overreaching abortion restrictions in Texas.[80] She stressed that many clinics were forced to close as a result of these burdensome state laws and many women had to seek care out of state, resulting in significant challenges.[81]

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III. THE SELECT PANEL FOUND NO EVIDENCE OF WRONGDOING

TABLE OF CONTENTS

THE SELECT PANEL FOUND NO EVIDENCE OF WRONGDOING

Congress modeled the federal law governing fetal tissue donation on the National Organ Transplant Act, which prohibits the transfer of human organs for "valuable consideration" but allows "reasonable payments" associated with the costs of donation, which can be considerable.[1] The federal law regarding restrictions on the "purchase" of human fetal tissue – 42 USC 289g-2(a) – similarly forbids valuable consideration but allows "reasonable payments associated with the transportation, implantation, processing, preservation, quality control, or storage of human fetal tissue."[2]

These reasonable payments are not unlawful, nor do they represent "profit" from the sale of fetal tissue. And contrary to the continued inflammatory claims from Panel Republicans, the Select Panel has no evidence that amounts paid in connection with fetal tissue donation were not reasonable in light of the time, expertise, facilities, supplies, quality control, storage, and transportation involved with facilitating fetal tissue donation.

In fact, the more than 34,000 pages of documents and additional evidence submitted to the Panel demonstrates that many clinics do not accept any payments for facilitating tissue donation; others receive relatively minimal reimbursement – generally ranging from $35 to $75 per donation of the tissue from an abortion, depending on the particulars of the clinic's fetal tissue donation program. As one expert in the use of fetal tissue research publicly stated in July 2015, "[in] reality, $30-$100 probably constitutes a loss for [Planned Parenthood]. The costs associated with collection, processing, storage, and inventory and records management for specimens are very high."[3]

Tissue procurement organizations and research universities also consistently explained that their costs related to fetal tissue procurement exceed amounts charged and received for these services.

The Panel similarly uncovered no evidence to support various other Republican allegations related to consent, unlawful alteration of procedures, infants allegedly "born alive" following abortion procedures, or patient privacy rights.

A. No Evidence of Unlawful Profit From Fetal Tissue Donation

By the time the Select Panel was established in October 2015, three House Committees had already investigated the fraudulent Daleiden/CMP video allegations and uncovered no wrongdoing.

Over the course of these investigations, Planned Parenthood Federation of America (PPFA) produced approximately 25,000 pages of material. PPFA-affiliated physicians and other staff – many of whom had been featured in the deceptively-edited videos – briefed the Energy

and Commerce Committee; and the organization's President, Cecile Richards, testified before the Oversight and Government Reform Committee for nearly five hours. At the close of that Committee's investigation, that Committee's Chairman Jason Chaffetz admitted: "Was there any wrongdoing? I didn't find any."[4]

Evidence obtained by the Select Panel – consisting largely of testimony from witnesses, some of whom had already briefed Congress – confirmed what Congress already knew: PPFA's affiliates do not profit and actually lose money when they facilitate fetal tissue donation for their patients.

1. Planned Parenthood Had Already Demonstrated No Wrongdoing

Immediately following public release of the Daleiden/CMP videos, PPFA explained to Congress how its guidelines address fetal tissue donation and provided details about the small number – only six of its fifty-nine affiliates – that have participated in such programs since 2010.[5]

As PPFA explained, four of these six affiliates were no longer facilitating fetal tissue donation as of August 2015 – and three of them had stopped because of the Daleiden videos.[6] Before these four stopped their donation programs, one had never accepted any reimbursements for costs while the other three affiliates had been receiving from $35 to $60 per donation.[7]

For the two affiliates that still had fetal tissue donation programs as of August 2015, one was receiving $45 to $60 per donation, and the other affiliate received no reimbursement for its costs.[8]

Documents produced to Congress confirmed these amounts and outlined the various services and costs that these payments reimbursed. For example, the agreement between one tissue procurement organization (Novogenix) and a PPFA affiliate showed that the affiliate would receive $45 per donation for its services, which were identified as including "reasonable administrative costs associated with the identification of potential donors, as well as the obtaining of informed consent."[9] Agreements with Advanced Bioscience Resources, Inc. ("ABR") and StemExpress reflected payment for "services and facilities" associated with donation, including seeking consent from donors, creating and maintaining donation records, and "processing, preservation, quality control, transportation, and storage."[10] Affiliates were reimbursed between $35 to $55 per donation by StemExpress and up to $60 per donation by ABR.

However, PPFA announced that, as of October 2015 – "in order to completely debunk the disingenuous argument that our opponents have been using" – none of its affiliates would accept reimbursement for the costs of donation going forward.[11]

As PPFA explained, all affiliates are required to provide "core services," including well-women visits, and education and prescriptions for all FDA-approved methods of contraception. Fetal tissue donation is not a core service and affiliates may elect to participate, or not, without

prior approval from PPFA.[12] For those affiliates that elect to participate, PPFA has recommended guidelines and forms that "exceed the legal requirements" imposed by the federal prohibitions regarding fetal tissue contained in 42 U.S.C. 289g-2.[13] Among other things, and before the organization announced that its affiliates would no longer accept reimbursement for their costs, those guidelines recommended audits to analyze and demonstrate an affiliate's donation-related costs even though federal law has no accounting or documentation requirements.[14] Planned Parenthood acknowledged in November 2015 that the participating affiliates had not conducted or could not locate the recommended audits, but that they performed a "good-faith accounting of their costs," which were provided to Congress.[15]

Those reports provide estimated costs for space occupied and supplies utilized as well as various tasks performed by clinic staff, including, coordination with tissue procurement organizations; consenting patients; preparing, processing, and copying consent forms; and processing, storing, and transferring tissue.[16] The Government Accountability Office ("GAO") recognized these types of expenses as reimbursable costs sixteen years ago, in its 2000 report on "Human Fetal Tissue: Acquisition for Federally-Funded Biomedical Research."[17]

Planned Parenthood also explained to Congress in November 2015 that, for the few affiliates that facilitate fetal tissue donation and without accounting for costs, amounts received from these programs represented from 0.003% to 0.021% of their total revenue. As the organization explained: "It defies logic – and common sense – to assert that these very modest reimbursements motivated affiliates to facilitate tissue donation out of a desire to 'profit' from fetal tissue donation."[18]

2. Select Panel Confirmed No Wrongdoing by Planned Parenthood

Congress had all of this information when Panel Republicans issued their interim update in July but they did not mention it. They also did not interview a single witness associated with Planned Parenthood until October 2016. When they did, these witnesses confirmed what Planned Parenthood explained to Congress more than a year ago, and before this Panel even started its work.

For example, one witness (PP Witness #1) – who had also previously briefed the Energy and Commerce Committee – told the Panel that that she had "no reason to believe" that the Planned Parenthood affiliate where she had been working when Daleiden/CMP released their videos "was ever compensated for more than its cost related to tissue donation."[19] PP Witness #1 explained that, as a physician who facilitated fetal tissue donation, she understood the costs involved in the donation process, and that "[t]his is not something with any revenue stream that affiliates are looking at. This is a way to offer patients a service that they want and to do good for the medical community."[20]

This witness had been secretly recorded without consent by David Daleiden, who misrepresented himself as "Robert Sarkis" and claimed to work for a fake company ("BioMax Procurement Services"). PP Witness #1 explained why she agreed to meet with Daleiden:

> In my experience, women frequently desire to donate their tissue to medical research. In my view, they should have the opportunity to do so, provided, of course, that all applicable laws are followed. I attended this lunch [with Daleiden] because I believe that fetal tissue research is a good thing, and I wanted to help this small company in its stated goal of facilitating legal tissue donation.[21]

PP Witness #1 further explained that – posing as "Robert Sarkis" – David Daleiden "went on and on about all of the fabulous, you know, potential research that was being done" with fetal tissue, and that – while she personally had no role in establishing agreements for donation on Planned Parenthood's behalf—she wanted to help "Robert Sarkis" in his stated goal of furthering fetal tissue research. As PP Witness #1 made clear to the Panel, she was never interested in profiting from fetal tissue donation:

> Minority counsel: And were you interested in profiting from the unlawful sale of fetal tissue?
>
> Witness: Never.
>
> Minority counsel: Did you agree at any time to engage in the unlawful sale of fetal tissue?
>
> Witness: I did not.
>
> Minority counsel: Did you agree at any time to otherwise break any laws?
>
> Witness: I did not.[22]

Panel Republicans nonetheless questioned the witness using select portions from unsourced "transcripts" of the Daleiden/CMP videos. As the PP Witness #1 explained:

> If you review the entire two hour and 42 minute video, you will see me repeat ten times that Planned Parenthood does not make a profit from fetal tissue donations. Over and over again, I explained that Planned Parenthood offers tissue donation as a service to its patients.[23]

The Panel also interviewed the research coordinator for another Planned Parenthood affiliate (PP Witness #2) who similarly confirmed that "to my knowledge, there's never been any profit" from fetal tissue donation.[24] She explained that "during my time [with the affiliate] we have never partnered with a tissue procurement organization and have never engaged in research involving fetal tissue obtained from second-trimester abortions."[25]

As the PP Witness #2 further explained, that affiliate had only participated in a limited number of donation programs for nearby university researchers, with the last of those ending in

2011. For that program, the affiliate facilitated donation for researchers who were studying "a molecule called dystroglycan on placentas in an effort to prevent miscarriages."[26] PP witness #2 explained the additional work required of clinic staff, including the back-and-forth process of obtaining patient consent for donation, and the need to "keep and maintain study-related documents" and files.[27]

She also outlined the logistics that would accompany specimen collection:

> That is a much higher level of preparation that has to happen in the procedure room with specialized equipment that has to be swapped out prior to the procedure, very time intensive activity, in addition to collecting a blood specimen, which, again, that is not our clinical standard of care to collect a blood specimen at that point in the visit, so that also had to be incorporated into the clinic's activities and ensure that it's properly labeled and it's properly paired with the correct specimen.[28]

As the PP Witness #2 explained, her "back-of-the-envelope" assessment of costs for these various tasks reflected her:

> General understanding of what the staff that would be reviewing and obtaining the informed consent and the staff that are working in the procedure room that would do the work of setting it up, a general understanding of what their salary base would be and approximately how much time, of course on the narrow end, because, of course, we can't have valuable consideration. So, you know, again, it was just cost basis.[29]

PP Witness #2 also explained that, for this project, she "was getting feedback from the clinic that it was taking longer than my back-of-the-envelope original projection. I was grossly undercalculating, and so we had to revise it" to more accurately reflect the staff time and costs involved.[30]

Panel Republicans acknowledged that "you set these prices based on, you know, a thoughtful—just because you said back of the envelope doesn't mean it's not thoughtful – thoughtful estimate of what the staff time, the sterile procedure costs."[31] And, as PP Witness #2 confirmed, "there's never been any profit" in the limited instances where her affiliate participated in fetal tissue donation for university research.[32] She also explained, "I love the work that I do, and I appreciate that our work contributes to advances in medical science."[33]

PP Witness #2 also met with and was secretly recorded by David Daleiden, who similarly misrepresented himself to her as "Robert Sarkis" and posed as an employee of the fake procurement company "BioMax." She agreed to arrange a site visit for Daleiden because he "came recommended to me by several trusted colleagues and had attended various industry conferences in which security is extremely tight."[34] This type of site visit is "typical practice"

and "not out of the norm" for clinics and potential research partners seeking to "assess the feasibility of conducting a proposed study."[35]

As PP Witness #2 told the Panel, her "trust was misplaced," as she later learned that Daleiden and his associate had deceived "me and others into believing that they were people that they were not."[36] During their visit:

> [Daleiden and his associate] repeatedly implied they would pay significant amounts of money for fetal tissue. I repeatedly refused to engage in their attempts to discuss payments that could be in violation of PPFA guidelines and applicable laws and instead made it clear for fetal tissue research, we only seek to recover costs.[37]

Panel Republicans also questioned PP Witness #2 using select portions of an unsourced "transcript" of the Daleiden/CMP videos.

With regard to one exchange in the transcript reflecting the witness as saying "I go to great efforts to demonstrate what the cost, actual cost is to us – to whomever asks – and then, this is what is budgeted. So they know, okay, you're covering costs, there's margin, that's covering overhead, or whatever we need, just to make sure everything is covered," PP Witness #2 explained:

> I think you can see from the context of that entire paragraph that if you take away my intent – and, again, I used that paragraph in my opening statement to reflect that our intent is to recoup costs. And however I spoke, misspoke, bumbled through it, that was my intent was to just demonstrate that we recover costs.

She further acknowledged that "it didn't come across as clear as I had intended, but the intent was to make sure that it was clear that we do not make a profit off of our fetal tissue studies."[38]

As PP Witness #2 also made clear, "while watching the [CMP/Daleiden] videos, it was clear that my words had repeatedly been taken out of context in an attempt to make it seem like [the affiliate] is engaging in illegal activity."[39]

Like others, PP Witness #2 made clear that she was not seeking profit:

> Minority counsel: So Merriam Webster dictionary defines entrapment as, quote, "The illegal act of tricking someone into committing a crime so that the person you have tricked can be arrested."
>
> From your perspective, do you believe that Mr. Daleiden wanted to trick you into committing or agreeing to commit a crime?

Witness: It sure seems like it.

Minority counsel: And were you interested at any time in profiting off the sale of fetal tissue?

Witness: No.

Minority counsel: And did you agree to otherwise break any laws?

Witness: No, I did not.

This is also the conclusion of federal judge William H. Orrick who determined that:

> Having reviewed the records or transcripts in full and in context, I find that no NAF [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.[40]

B. No Wrongdoing by University of New Mexico and Southwestern Women's Options

Panel Republicans have repeatedly criticized the relationship between the University of New Mexico ("UNM") and Southwestern Women's Options ("SWO"), a nearby reproductive health care clinic, but the Panel has no evidence of wrongdoing by either entity. With regard to fetal tissue donation, the Panel has known since January 2016 that SWO receives no money for tissue donated by its patients to UNM researchers. While Panel Republicans also express 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, these activities do not implicate a single criminal law.

The Select Panel has known since January 2016 that "tissue is donated at no cost" when SWO facilitates donation by its patients to UNM researchers.[41] Chair Blackburn nonetheless issued unilateral subpoenas for depositions of university and clinic doctors, claiming these were "necessary" because "some abortion supporters seem to be clearly rattled with the basic facts coming to light."[42] The Chair never asked if these doctors would appear voluntarily and refused to pay their expenses for appearing, though Republicans reimbursed some of their own witnesses at public hearings.[43]

After interviewing these witnesses, Panel Republicans sent a "criminal referral" letter to the New Mexico Attorney General.[44] Though acknowledging that SWO receives no money for services related to fetal tissue donation, Chair Blackburn alleged that SWO received other unlawful "benefits" because three SWO doctors serve as volunteer faculty for UNM and helped train their fellows and residents. In so doing, Chair Blackburn failed to mention evidence

obtained by the Panel rebutting her numerous allegations and the contrary legal opinion of the United States Justice Department's Office of Legal Counsel ("OLC").[45]

OLC concluded in 2007 that the federal prohibition on "valuable consideration" does not reach non-monetary benefits exchanged in connection with organ donation programs.[46] Providing that opinion in the context of the National Organ Transplant Act, the OLC noted that use of 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" and concluded that that "'valuable consideration' is monetary or at least has a readily measurable pecuniary value."[47] But even if the law somehow reached non-pecuniary benefits, UNM and SWO demonstrated that there are no "benefits" provided by UNM to SWO in exchange for fetal tissue donated by SWO patients to UNM researchers.

As UNM explained to the Panel, 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."[48] Thus, the alleged unlawful "benefits" identified by Chair Blackburn (e.g., use of the campus library and gym) are available to all volunteer faculty and "are not material inducements to provide fetal tissue."[49]

Likewise, both entities explained that SWO physicians did not receive medical malpractice insurance coverage from UNM in exchange for fetal tissue donation. Instead, SWO "had to obtain and pay for its own insurance coverage" independent of any coverage that may have been provided under the New Mexico Tort Claims Act, which applies to malpractice claims arising from care provided by "UNM medical students, residents, fellows and faculty."[50] Moreover, SWO has never made a claim for coverage under UNM's state-issued insurance.[51]

Finally, 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."[52] This training, which is mandated by various accrediting institutions, is critical to women's health care and ensuring that the care women receive remains safe.

The effort by Panel Republicans to criminalize a common educational practice and demonize valuable community-university partnerships – at least when it comes to training the next generation of reproductive health care providers – has no basis in law or in fact.[53]

C. Independent Clinics Do Not Profit From Fetal Tissue Donation

Republicans also sought and obtained information from independent (i.e., not affiliated with Planned Parenthood) clinics. Documents and materials produced by these clinics and tissue procurement organizations show that many – six out of the twenty-two of those identified to the

Panel – receive no money for services provided when they facilitate fetal tissue donation, not even the "reasonable payments" expressly permitted by law.

Other clinics produced documents showing minimal "reasonable payments" that varied based on how these clinics elected to partner with tissue procurement organizations. In situations where tissue procurement organizations had staff on-site in the clinic to fulfill certain responsibilities, providers generally received approximately $50 to $75 per donation. When tissue procurement organizations had no staff on-site, providers generally received $50 to $250 per donation, a higher amount presumably since they were responsible for all aspects of fetal tissue donation.

The costs identified by clinics in agreements with tissue procurement organizations included processing, preservation, quality control, transportation, obtaining informed consent, and maintenance of records. As is true for the few Planned Parenthood affiliates that participate in donation programs, the types of costs identified and amounts received by these independent clinics on a per-donation basis are similar to those identified by the Government Accountability Office ("GAO") sixteen years ago.[54]

D. No Evidence of Unlawful Profit by Tissue Procurement Organizations

Over the course of this investigation, four tissue procurement companies – StemExpress, ABR, DV Biologics, and Novogenix – produced more than 8,000 pages of documents, including email correspondence, purchase orders, invoices, accounting records, and other documentation related to fetal tissue transactions.

These companies consistently explained that costs related to fetal tissue procurement outweigh revenue that they receive for this service. Some also explained that, in addition to transferring unaltered fetal tissue to researchers, they also work with human blood, adult tissue products, bone marrow, adult primary cells, and other manufactured isolated cells that researchers need to perform their research. Unlike unaltered fetal tissue, these products are not subject to the federal ban on "valuable consideration" and it is not against the law for companies to profit from these services.[55]

These companies also offered witnesses to explain their business practices and answer the Panel's questions. Panel Republicans refused these offers, electing instead to levy allegations based on their own interpretation of documents and staff-created exhibits and questioned witnesses with no personal knowledge of the facts in an apparent effort to confirm their preferred partisan narratives. But, as outlined below, the Select Panel uncovered no actual evidence of wrongdoing by these tissue procurement companies.

1. StemExpress

Panel Republicans aggressively targeted the same company – StemExpress – that received the most attention in the Daleiden videos and alleged throughout the investigation that they had uncovered "evidence" of criminal misconduct by the company.[56] In reality, the approximately 1,700 pages of documents and accompanying explanations provided to the Panel by StemExpress do not show unlawful profit or other misconduct.

StemExpress is a "small life sciences company that supports leading research institutions" by providing "stem cells and other human tissue critical to medical research."[57] The "overwhelming majority" of its work involves "isolating and purifying cells derived from donated adult tissue and blood" – not fetal tissue.[58] These products are not subject to the ban on "valuable consideration" and it is not against the law for StemExpress to profit from their sale. With regard to fetal tissue, "StemExpress does not provide fetal tissue to its customers to make money; rather, it is offered to support the needs of the world's best researchers in their efforts to treat and cure diseases."[59]

Fetal tissue procurement "has constituted roughly 1% of the company's total revenue before accounting for costs and expenses."[60] The other approximately 99% of StemExpress's business relates to human blood, adult tissue products, bone marrow, adult primary cells, and other manufactured isolated cells that researchers need to perform their research. As the company made clear:

> "[F]etal tissue revenue is an exceedingly small fraction of StemExpress's total revenue in any given year. Any revenue derived from fetal tissue must be offset by reasonable costs and expenses related to the processing, preservation, quality control, transportation, and storage of fetal tissue."[61]

Once these costs are factored in, the company lost money on its services related to fetal tissue donation. As the company explained:

> From 2014 to 2015, StemExpress collected $74,955 in gross revenue from providing fetal tissue but incurred an estimated $95,160 in costs and expenses related to the processing, preservation, quality control, transportation, and storage of fetal tissue. The financial impact of these substantial costs is a two-year loss estimated at $20,205 on providing fetal tissue to clients.[62]

StemExpress explained to the Panel that it generally charged researchers "roughly $500 to $600 for unaltered tissues" but the costs related to each transfer were "approximately $750 to $1,000."[63] The hundreds of invoices and purchase orders produced by StemExpress to the Panel are consistent with the company's explanation, with amounts differing depending on the type of tissue because costs incurred are "not uniform across all procurement of fetal tissues."[64] In limited circumstances, invoices and accounting records indicate that StemExpress charged higher

amounts for certain types of tissue. For example, StemExpress explained that it charged one researcher $890 for a specimen given that it involved "procurement of four separate and distinct tissues,"[65] and another researcher $950 for a disease-specific request given the long time such requests remained on the schedule and the need to establish "specific procurement partnerships."[66]

To demonstrate costs, the company provided an estimated breakdown for employee labor, supplies, shipping, clinic reimbursement, and screening of tissue for infectious disease.[67] By agreement with the Majority, StemExpress also created accounting reports that detailed estimated costs and expenses and confirmed that the company lost money on fetal tissue procurement.[68]

Characterizing these agreed-upon documents as self-serving accounts, Chair Blackburn demanded additional records from the company's bank and accountant.[69] But these documents, provided to the Panel by the company's bank, shed no light on the company's fetal tissue services because they do not distinguish what amounts, if any, relate to the approximately 1% of the company's business related to fetal tissue procurement – as opposed to the 99% of its business involving other services. Chair Blackburn nonetheless elected to pursue criminal contempt against StemExpress in September for alleged failure to produce even more banking and accounting records – and did so without ever responding to the explanation of compliance sent by the company four months earlier.[70]

While Panel Republicans have pointed to what they describe as unjustified estimated expenses by StemExpress, such as overstating shipping and infectious disease screening costs that are passed on to researcher customers,[71] the documents produced by the company have already addressed some of these claims. For example, documents produced by StemExpress explain that shipping expenses included costs for shipping supplies from StemExpress's headquarters to clinics as well as costs for shipping specimen to an outside laboratory or to the StemExpress headquarters laboratory for infectious disease screening.[72] These costs were separate from shipping costs associated with sending tissue directly to a researcher.

With regard to any remaining allegations of unjustifiable costs or unlawful profit, Panel Republicans steadfastly refused to interview witnesses offered by the company to explain its business practices and answer the Panel's questions. This included the company's Procurement Director, who had previously served as a Procurement Manager, and another witness who had performed accounting work for the company.[73] Nor did they ask to re-interview the company's Chief Executive Officer, who had already appeared voluntarily for a bipartisan briefing with staff of the Energy and Commerce committee during its investigation.[74] As the company noted, "[r]ather than depose any of these individuals, the Select Panel appears intent on driving a predetermined narrative that suits its ends."[75]

2. Advanced Bioscience Resources, Inc.

Advanced Bioscience Resources, Inc. ("ABR") is "a small, non-profit operation" that was "established to help lifesaving medical research."[76]

In documents first produced to the Energy and Commerce Committee in October 2015 and then reproduced to the Select Panel, ABR included thousands of pages of invoices showing that the company charged researchers between $200 and $550 per specimen to cover their costs. ABR also produced a breakdown of total income, income from fetal tissue, and total expenses for 2009 through 2013[77] demonstrating that ABR did not profit but, instead, "operated at a significant loss almost every year for the past five years."[78]

In their "interim update," Panel Republicans asserted that "materials produced to the Panel by ABR created an unclear picture of their conduct and income."[79] They nonetheless created their own narrative about the company's purported business practices, including an unsourced recitation of how ABR receives and processes researcher requests.[80]

Panel Republicans did not interview a single witness from ABR who could have explained the company's business practices and answered the Panel's questions. Nor did they re-interview ABR's President, who had previously briefed the Energy & Commerce Committee during its prior investigation into the fraudulent Daleiden/CMP video allegations.

3. Novogenix

Novogenix was a small company established to help "propel regenerative medicine to the forefront of available treatment options for patients."[81] The company also was a target of the Daleiden/CMP videos and cooperated with previous congressional investigations. When initially contacted by the Select Panel in December 2015, the company informed us that "[d]ue in large part to the costs born from having to respond to these congressional inquiries, our client is no longer doing business."[82]

As the company explained in a September 2015 letter to the Energy and Commerce Committee:

> "In each fiscal year, from Fiscal Years 2011 through the present, Novogenix has yielded a loss for its work related to fetal tissue and stem cells therefrom…"[83]

Documents provided to the Energy & Commerce Committee are consistent with this explanation, including a detailed accounting for fiscal years 2011 through 2015 based on contemporaneous data and documentation. In briefings and follow-up with that Committee, Novogenix explained that it received between $200 and $250 per specimen from researchers as reimbursement for their costs, which included preparation, processing, and transport of fetal tissue.[84] Novogenix invoices and purchase orders produced by universities conducting fetal tissue research that received their tissue from Novogenix confirmed the company's explanation.

Panel Republicans did not interview a single witness from Novogenix who could have explained the company's business practices and answered the Panel's questions.

4. DV Biologics

DV Biologics is a small biotech company whose mission is to "provide biological tools needed to advance the innovation of technology that will ultimately be used to treat or prevent multiple human degenerative disorders and diseases."[85] The company explained to the Panel in January 2016 that in regards to itself and its parent company, DaVinci Biosciences, the "overwhelming majority of the companies' activities involved adult tissue."[86] Unlike fetal tissue, these products are not subject to the ban on "valuable consideration" and may be profitable. And, in a subsequent letter to the Panel, DV Biologics explained that they do not presently transfer "any materials derived from fetal tissue" for research purposes.[87]

DV Biologics' and DaVinci Biosciences' prior work with fetal tissue consisted of isolation, incubation, and culturing cells in the appropriate medium.[88] As explained to the Panel, the sole source for this tissue was Planned Parenthood of Orange and San Bernardino Counties, and DV Biologics "did not pay any money to Planned Parenthood for the donated fetal tissue" it received.[89]

As it explained to the Panel, the company "operated at a loss. Therefore, it did not receive more than 'reasonable payment'" in connection with fetal tissue.[90] In support of this explanation, DV Biologics produced hundreds of invoices – reflecting charges to researchers between approximately $175 and $604 for fetal tissue specimens – and detailed spreadsheets tracking, for each specimen type, expenses related to processing, preservation, storage, quality control, and other administrative expenses along with a formula describing their costs related to fetal tissue procurement.

Panel Republicans did not interview anyone from DV Biologics and, in their July interim update, represented that the company had "fully complied" with its requests for information and did not raise any concerns about the company's practices.[91]

In October 2016, the Orange County, California, District Attorney filed a civil complaint in state court against DV Biologics for unlawful, unfair, and fraudulent business practices related to the company's fetal tissue procurement services. The complaint references the company's work with fetal and adult tissue, and the cause of action alleges unlawful practice in connection with fetal tissue and derivative products. It is not clear what, if any, of these products and services are subject to the federal ban on "valuable consideration" for unaltered fetal tissue.

Chair Blackburn nonetheless issued a press release about the complaint but, in stark contrast to the District Attorney who brought the case – and whose office made clear that Planned Parenthood was not part of their investigation or complaint – the Chair accused Planned Parenthood of wrongdoing.[92]

After seeing this release – which claimed that "evidence uncovered during the Panel's investigation" supported the Chair's claim – Panel Democrats asked Republicans for that evidence.[93] When Panel Republicans ignored this request, Democrats contacted DV Biologics and learned that the company had provided documents and information to Panel Republicans

pursuant to congressional subpoena five months earlier. Panel Republicans never shared that information, which – as counsel for DV Biologics subsequently explained – reflects charitable contributions of $3,600 over an eight year period (from 2008 to the present)[94] that were not related to fetal tissue donation.

E. No Evidence to Support Other Republican Allegations

While the federal prohibition on the transfer of fetal tissue for "valuable consideration" applies to all transfers involving interstate commerce, certain additional requirements apply only when donated tissue is used in federally-funded research involving the "transplantation of human fetal tissue for therapeutic purposes."[95]

The federal government has not funded this type of research since 2007.[96] This means that additional rules requiring, among other things, informed donor consent and certification that there has been no alteration of the "timing, method, or procedures used to terminate the pregnancy" have not applied to tissue donated in the United States over the past nine years.[97] Though not legally required, PPFA guidance nonetheless incorporates these additional rules as recommended practices,[98] and the Select Panel found no evidence that these rules have been violated.

The Panel also uncovered no evidence that providers and tissue procurement organizations are violating patient privacy rights or that infants are surviving abortion procedures, as Panel Republican have alleged.

1. No Wrongdoing Regarding Patient Consent by Planned Parenthood

The law governing federally-funded transplantation research requires written consent and additional donor statements – including affirmation that the patient made the decision to have an abortion before considering tissue donation – that are not required where donation is not made for this federally-funded purpose. While these requirements do not apply to its programs, PPFA has nonetheless voluntarily captured these requirements on its sample consent form,[99] which includes the following preamble:

> Research using the blood from pregnant women and tissue that has been aborted has been used to treat and find a cure for such diseases as diabetes, Parkinson's disease, Alzheimer's disease, cancer, and AIDS.[100]

Panel Republicans repeatedly criticized this statement because none of the listed diseases have yet been cured, and questioned the validity of patient consent as a result.[101] However, while the providers interviewed by the Panel generally agreed that the statement "has been used" to find a cure was "inaccurate," none had ever been told by a patient that she did not understand the form or had been coerced or misled into donating tissue. For example, one PPFA-affiliated physician (PP Witness #1) acknowledged that "to my knowledge there is no cure for AIDS" so

"that is probably an inaccurate statement."[102] PP Witness #1 further explained, however, that none of her patients had ever asked for more information or complained about their decision to donate tissue:

> Minority counsel: [Y]ou were asked a number of questions about that first paragraph. In particular, just more broadly speaking, has any patient ever come in and asked you for more information about that first paragraph and what it says about research that can be done using blood from pregnant women and tissue that has been aborted?
>
> Witness: No, they have not.
>
> Minority counsel: Did any patient ever come in and indicate to you that they felt that was misleading, that first paragraph?
>
> Witness: No, they have not.
>
> Minority counsel: Or that they felt that they had somehow been convinced, hoodwinked, misled into donating because of what's in that first paragraph.
>
> Witness: No, they have not.[103]

She also explained that "[i]f anything, the most common question I get is, 'Can I donate my tissue'?" and provided the following example:

> I had a patient who was terminating for fetal indication. There was an abnormality in the pregnancy and her and her partner both expressed to me that if there was anything good that could come out of their terrible experience, they'd like to, you know, add to the information on this disease so that other families didn't have to experience what they did.[104]

PP Witness #1 also acknowledged that the option to donate fetal tissue for research provides an alternative for women given that the tissue would otherwise be disposed of.[105]

Panel Republicans and some witnesses also questioned whether an Institutional Review Board ("IRB") – a committee designated to approve, monitor, and review research involving human subjects – would approve PPFA's standard consent form because of the statements about cures.[106] In their interim update, Panel Republicans contended that testimony from the Panel's first hearing "raised concerns that the principles embodied in the Belmont Report, and later incorporated into federal regulations, are not being followed by abortion providers seeking consent for the donation of human fetal tissue."[107]

Documents produced to the Panel disprove this contention and show that PPFA's standard form was approved by an IRB. In that case, a medical college's IRB approved the form

for use in a proposed project involving donation of tissue from a PPFA affiliate to researchers working on vaccines for infectious diseases including "HIV, Hepatitis, Malaria, and Dengue" fever.[108] As the researcher had explained, fetal tissue was critical to this study: "Basically because we have been limited to human peripheral blood samples for our studies, it has been very difficult to develop successful therapies to prevent or treat these diseases."[109]

After determining that the research project did not involve human subjects, the IRB approved PPFA's standard consent form for use by patients donating to this project.[110] In addition, the IRB found that because "samples will be obtained and the information obtained will be de-identified, no authorization or waiver of authorization by patients for the release of individually identified protected health information will be required."[111] This example is consistent with information obtained by the Panel regarding other PPFA affiliate donation programs, which similarly appear not to involve human subject research and to require de-identified donations, and there is no evidence that consent was inadequate.

Unfortunately, and as PP Witness #2 further explained, the PPFA affiliate decided not to move forward with this project because "all the controversy and all the inquiries and all the allegations and all the questions" caused by the deceptively-edited Daleiden/CMP videos.[112]

2. Providers Do Not Alter Timing or Method of Abortions for Fetal Tissue Donation

As with the consent requirement, the requirement that there be no alteration to the method of abortion applies only to federally funded transplantation research. Yet PPFA guidance also voluntary includes the recommendation that "no substantive alteration in the timing of terminating the pregnancy or the method used was made for the purpose of obtaining the blood and/or tissue."[113]

In August 2015, PPFA and some of its providers addressed the inflammatory claims perpetuated in the Daleiden/CMP videos that doctors were altering methods used to terminate pregnancies and violating the Partial-Birth Abortion Ban in order to obtain "intact fetuses" for donation.[114] As PPFA explained, "there are only a few methods of abortion," and – Planned Parenthood health centers – provide only (1) for early abortions, "medication abortion or surgical abortion involving mechanical or manual aspiration," and (2) for abortions from approximately 13 weeks of gestation, dilation and extraction ("D&E"). PPFA does not perform inductions or hysterotomies, and "a decision about the method to be used is made by the physician in consultation with the woman, taking into account the relevant variables that would bear on that decision."[115]

PPFA's Chief Medical Officer explained to the Energy and Commerce Committee in the fall of 2015 that fetuses are not removed intact during D&E procedures and, as another PPFA-affiliated physician explained, no PPFA doctor would intentionally perform an intact D&E because doing so might violate the Partial-Birth Abortion Act.[116]

While performing a procedure, providers sometimes make small adjustments in technique for clinical reasons, including – for example – adjustments in how the physician is holding or

positioning a surgical instrument. These adjustments are not changes to the timing, method, or procedure of an abortion and do not put patient safety at risk. As PPFA had explained to Congress in August 2015:

> In performing the selected method, a physician may need to make multiple adjustments to the method as the surgery proceeds. These adjustments are clinical judgments – not a change of method – made by the physician as the abortion proceeds and are always intended to achieve the women's desired result as safely as possible. The key point, as the 1988 blue-ribbon commission [on fetal tissue research] recognized, is that there be no change that would impact the safety or well-being of the patient.[117]

When re-interviewed by Panel Republicans, one of the same PPFA-affiliated doctors (PP Witness #1) who already had briefed the Energy and Commerce Committee more than a year earlier again explained:

> If a patient has consented to donate her tissue I do not change the timing, method, or procedure that I use when completing her abortion.
>
> Each provider uses different techniques to complete a given medical procedure, and I am no different. How I complete a particular abortion procedure may be quite different from how another abortion provider completes the same procedure. This is common in the medical profession and it's a practice designed to make the abortion safer for a given patient and set of circumstances.
>
> The D&E abortion method involves removing the fetus in multiple parts using forceps. If a patient has decided to have an abortion and wants to donate the tissue, of course I abide by her wishes, and while during a particular D&E I may try not to damage certain tissue sought for research, I am not always able to satisfy my patient's request.
>
> First and foremost, my patient's safety always comes before any tissue donation. Moreover, every patient is different. Sometimes I simply am not able to procure usable tissue during an abortion even if my patient has consented to the donation of her tissue.[118]

As PP Witness #1 further explained, "there are a variety of situational and patient factors that might cause a surgeon to change their technique," including – for example – "if there is not adequate dilation, that provider may change their technique by using a different instrument and a different size or shape so that they can accomplish the procedure."[119] Where a patient has expressed a desire to donate tissue, any adjustments were to "accommodate the patient's wishes

the best that I can" and that she "ha[d] not," and she "would never" make an adjustment that would put a patient's safety at risk.[120]

Panel Republicans asked PP Witness #1 several times whether she – or other doctors – ever adjust the position of the fetus from a head-first (vertex) presentation to feet-first (breech) to enhance tissue donation, as has been alleged by Daleiden/CMP. She made clear that she had never done so and was not aware of anyone else who had either.

> Majority counsel: So are you aware of any instances where a physician has altered a procedure to procure a particular body part.
>
> Witness: I am not.[121]

As PP Witness #1 also explained, neither she nor any other PPFA-affiliated physician violate the Partial-Birth Abortion Ban.

> Minority counsel: . . . Have you ever relied on the illegal partial birth abortion procedure to get a more intact specimen?
>
> Witness: No, I have not.
>
> Minority counsel: Have any of your colleagues to the best of your knowledge ever relied on, "illegal partial birth abortion procedures" for fetal tissue donation or any other purpose?
>
> Witness: No. In fact, all of my Planned Parenthood colleagues have to document how they complied with the ban. So, no, they have not.[122]

Another doctor (PP Witness #3) similarly told the Panel "I know of no one violating the ["Partial Birth Abortion"] ban, period, and then I certainly don't know of anyone violating the ban for the purpose of collecting tissue."[123]

3. No Evidence of Privacy Violations

In their interim update, Panel Republicans claimed to have discovered "systematic violations" of patient privacy rules by StemExpress and several PPFA health centers. These claims were subsequently dismissed by the Department of Health and Human Services ("HHS") for lack of evidence.

On May 31, 2016, Panel Republicans leaked to FOX News an advance copy of a June 1, 2016, letter to HHS that had not yet been sent to the Department or shared with Panel

Democrats. In that letter, Chair Blackburn alleged that the Panel had "uncovered information" indicating "systematic violations" of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and asked HHS to investigate.[124]

In making these claims, Chair Blackburn relied upon a staff-created "work sequence" that purportedly represents the "daily routine" of a StemExpress tissue procurement technician as the basis of alleged wrongdoing.[125] But the Select Panel never interviewed any StemExpress employees or otherwise verified this staff-created narrative with the company.

On August 18, 2016, HHS' Office of Civil Rights ("OCR") sent a letter to the Panel seeking further information to support Chair Blackburn's claims. In that letter, OCR explained that, without further information, OCR "will not be able to investigate your cases" and the file would be closed.[126] Panel Republicans never responded.

On September 12, 2016, Panel Democrats responded to the OCR's letter and explained that the Panel had no evidence that patient privacy rights were violated and that documents produced to the Panel removed the possibility of any ongoing HIPAA violations.[127] On November 16, HHS confirmed that this matter has been closed.[128] Nonetheless, Chair Blackburn repeated these same allegations in a November 2, 2016, letter to the Department of Justice urging them to conduct an investigation into whether StemExpress violated various federal laws.[129]

4. No Evidence of "Babies Born Alive During Abortions"

In their interim update, Panel Republicans claimed that "the induction abortion procedure has increased the likelihood that infants will be born alive during abortions" and expressed concern about "babies being born alive and the sale of baby body parts at some late-term abortion clinics."[130]

These claims were rebutted by doctors and clinic staff interviewed by the Panel. For example, Panel Republicans questioned one clinic's staff about an alleged "surprise event" that Republicans claimed to have learned about from "two former employees," as captured in the following exchange:

Majority counsel: One last question then. Were you in the clinic when there was a little surprise event related to a second twin that might not have been seen initially on the sonogram and so the digoxin was inserted into one twin, but then, during delivery, there was another heartbeat, a missed twin?

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 her 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.

Minority counsel: And I want to make clear that this 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, there has never been a baby born alive at the clinic.

Majority counsel: I just want to – I understand. I'm not sure the second baby was born alive. I just want to know if you were in the clinic? According to the two former employees, this created a little conflict in the clinic. Were you there at the time that this happened?

Witness: No, sir. I have never heard of such a thing in my clinic.

Majority counsel: Never heard of it.

Witness: Never.

Majority counsel: Okay. I just want to make sure.[131]

The witness subsequently confirmed that during her eleven years in the clinic – including the last five years, during which the doctor targeted by Panel Republicans had practiced at the clinic – "there has never been an infant born alive in our office ever, not even once."[132]

She and other staff from this same clinic also testified that, while they had never had an infant survive a failed abortion procedure, if it ever happened they would call 911 immediately and take steps to keep the fetus alive until the ambulance arrived.[133]

A doctor interviewed by the Panel (PP Witness #1) similarly told the Panel that she had never heard of any instances where babies were born alive following abortion procedures at any Planned Parenthood clinic. As she made clear:

> So in my experience I have never had a viable infant, a viable fetus born with signs of life. If it were to happen to me, I would call an ambulance and give the fetus comfort care until the ambulance arrived if it was viable or looked like it was periviable.[134]

Another doctor who practices in a university setting was asked and told the Panel *fourteen times* that she had never experienced a baby born alive following an abortion procedure.[135]

These witnesses debunked all of the Republican's claims regarding infants "born alive" following abortion procedures.

ENDNOTES

[1] National Organ Transplant Act, Pub. L. No. 98-507; 42 U.S.C. §274e (1984); *see also* Memorandum by Select Investigative Panel Democratic Staff Re: Hearing on "The Pricing of Fetal Tissue" (Apr. 19, 2016) (noting that HHS said "the average cost of transplantation in 2011 ranged from $262,000 for a single kidney to over $1,148,000 for a heart-lung transplant.").
[2] 42 U.S.C. § 289g-2.
[3] Dave Levitan, *Unspinning the Planned Parenthood Video*, FACTCHECK.ORG (July 21, 2015), http://www.factcheck.org/2015/07/unspinning-the-planned-parenthood-video/.
[4] *Planned Parenthood Exposed: Examining Abortion Procedures and Medical Ethics at the Nation's Largest Abortion Provider, Hearing Before the H. Comm. on Judiciary*, 114th Cong. 64 (Oct. 8, 2015).
[5] Letter from Cecile Richards, President, Planned Parenthood Fed'n of America to Speaker John A. Boehner, et al. (Aug. 27, 2015).
[6] *Id.*
[7] Letter from K. Lee Blalack II, O'Melveny & Myers LLP to Hon. Fred Upton, Chairman, H. Comm on Energy and Commerce, et al. (Nov. 10, 2015).
[8] *See* Response from Planned Parenthood Fed'n of America to H. Comm. on Energy and Commerce, Subcomm. on Oversight and Investigations, *"Follow-Up Questions Dated Aug. 20, 2015"*; Letter from K. Lee Blalack II, O'Melveny & Myers LLP to Hon. Fred Upton, Chairman, H. Comm. on Energy and Commerce, et al. (Nov. 10, 2015).
[9] Specimen Donation Agreement between Novogenix Laboratories, LLC and Planned Parenthood Los Angeles (Sept. 2, 2015) (NOVOEC-0000165–NOVOEC-0000171).
[10] *See* Agreement between Advanced Bioscience Resources, Inc. and Planned Parenthood Mar Monte (SP000011–SP000012); Agreement between StemExpress LLC and Planned Parenthood Mar Monte (STEM.HOUSE.SELECT_0004–0006).
[11] Letter from Cecile Richards, President, Planned Parenthood Fed'n of America to Dr. Francis Collins, Director, Nat'l Inst. of Health (Oct. 13, 2015).
[12] As of November 2013, affiliates have been permitted to facilitate fetal tissue donation without prior approval from PPFA. Prior to that time, PPFA guidance instructed affiliates to submit requests for fetal tissue donation programs for review and approval. The November 2013 change was part of a broader overhaul designed to reduce administrative burdens on affiliates and support expansion of services by allowing affiliates to offer a range of non-core services without prior approval. *See* e.g., Response from Planned Parenthood Federation of America to H. Comm. on Energy and Commerce, Subcomm. on Oversight and Investigations, *"Follow-Up Questions Dated Aug. 20, 2015."*; Planned Parenthood Federation of America, Manual of Medical Standards and Guidelines, Programs for Donation for Blood And/Or Aborted Pregnancy Tissue for Medical Research, Education, and Treatment (June 2011).
[13] Letter from Cecile Richards, President, Planned Parenthood Fed'n of America to Dr. Francis Collins, Director, Nat'l Inst. of Health (Oct. 13, 2015).
[14] Letter from K. Lee Blalack II, O'Melveny & Myers LLP to Hon. Fred Upton, Chairman, H. Comm. on Energy and Commerce, et al. (Nov. 10, 2015), at 3; Planned Parenthood Fed'n of America Memorandum *Re: Federal Regulations for Aborted Pregnancy Tissue Donation Programs* (PPFA-HOU_E&C-000150).
[15] Letter from K. Lee Blalack II, O'Melveny & Myers LLP to Planned Parenthood Fed'n of America to Hon. Fred Upton, Chairman, H. Comm. on Energy and Commerce, et al. (Nov. 10, 2015), at 3.
[16] *Id.* at 2.
[17] *See* U.S. Gov't Accountability Office, Letter to Sens. Arlen Specter, Tom Harkin, and Bob Smith, Human Fetal Tissue: Acquisition for Federally Funded Biomedical Research (Oct. 4, 2000).
[18] Letter from K. Lee Blalack II, O'Melveny & Myers LLP to Hon. Fred Upton, Chairman, H. Comm. on Energy and Commerce, et al. (Nov. 10, 2015), at 4.
[19] Transcribed Interview of the Select Investigative Panel, H. Energy and Commerce Comm. (Oct. 6, 2016).
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] Transcribed Interview of the Select Investigative Panel, H. Energy and Commerce Comm. (Oct. 19, 2016).

[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] *Id.*
[30] Transcribed Interview of the Select Investigative Panel, H. Energy and Commerce Comm. (Oct. 19, 2016).
[31] *Id.*
[32] *Id.*
[33] *Id.*
[34] *Id.*
[35] *Id.*
[36] Transcribed Interview of the Select Investigative Panel, H. Energy and Commerce Comm. (Oct. 19, 2016).
[37] *Id.*
[38] *Id.*
[39] *Id.*
[40] 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).
[41] Letter from Stephen M. Ryan, McDermott Will & Emery LLP to Hon. Marsha Blackburn, Chair, and Hon. Jan Schakowsky, Ranking Member, Select Investigative Panel (Jan. 29, 2016)
[42] THE ENERGY AND COMMERCE COMM., SELECT INVESTIGATIVE PANEL, *Select Investigative Panel Issues 12 New Subpoenas to Fetal Tissue Procurement Organizations* (Mar. 30, 2016), https://energycommerce.house.gov/news-center/press-releases/select-investigative-panel-issues-12-new-subpoenas-fetal-tissue.
[43] April 2016 Monthly Report to Comm. on H. Administration (May 18, 2016), https://cha.house.gov/sites/republicans.cha.house.gov/files/4_16%20Energy%20and%20commerce.pdf.
[44] *See* Letter from Hon. Marsha Blackburn, Chair, Select Investigative Panel to Hon. Hector H. Balderas, Jr., Attorney General of New Mexico (June 23, 2016).
[45] *See* Letter from Select Panel Democrats to Hon. Hector H. Balderas, Jr. Attorney General of New Mexico (July 12, 2016) [Appendix B, Correspondence from Select Panel Democrats to Outside Entities].
[46] Dep't of Justice, Office of Legal Counsel, *Legality of Alternative Organ Donation Practices Under 42 U.S.C. §274e* (Mar. 28, 2007).
[47] *Id.*
[48] Letter from Stephen M. Ryan, McDermott Will & Emery LLP to Hon. Marsha Blackburn, Chair, and Hon. Jan Schakowsky, Ranking Member, Select Investigative Panel, (June 27, 2016), at 3.
[49] *Id.*
[50] *Id.* at 3-4.
[51] *Id.* at 3.
[52] *See* Letter from Stephen M. Ryan, McDermott Will & Emery LLP to Hon. Marsha Blackburn, Chair, and Hon. Jan Schakowsky, Ranking Member, Select Investigative Panel (June 27, 2016).
[53] *See* Letter from Select Panel Democrats to Hon. Hector H. Balderas, Jr., Attorney General of New Mexico (July 12, 2016) [Appendix B, Correspondence from Select Panel Democrats to Outside Entities].
[54] U.S. Gov't Accountability Office, Letter to Sens. Arlen Specter, Tom Harkin, and Bob Smith, Human Fetal Tissue: Acquisition for Federally Funded Biomedical Research (Oct. 4, 2000), at 5-6.
[55] *See e.g., id.* at 2, n.1 (explaining that its definition of fetal tissue excludes "research involving derivatives of human fetal tissue such as human fetal cell cultures and human fetal cell lines…").
[56] *See e.g., Criminal Contempt Report of the Select Investigative Panel of the Comm. on Energy and Commerce* (Sept. 19, 2016); Republican Interim Update.
[57] StemExpress First Response to House Select Panel Document Requests (Jan. 15, 2016) (STEM.HOUSE.SELECT_ 0228).
[58] StemExpress First Response to House Select Panel Document Requests (Jan. 15, 2016) (STEM.HOUSE.SELECT_ 0232).
[59] Letter from Amandeep S. Sidhu, McDermott Will and 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), at 4.
[60] Letter from Amandeep S. Sidhu, McDermott Will and Emery LLP to Hon. Marsha Blackburn and Hon. Jan Schakowsky *Re: StemExpress Statement Regarding Select Investigative Panel and April 20, 2016 Hearing on "The Pricing of Fetal Tissue"* (Apr. 19, 2016), at 5.

[61] *Id.* at 3.
[62] *Id.*
[63] StemExpress First Response to House Select Panel Document Requests (Jan. 15, 2016) (STEM.HOUSE.SELECT_ 0232).
[64] StemExpress First Response to House Select Panel Document Requests (Jan. 15, 2016) (STEM.HOUSE.SELECT_ 0238).
[65] "Fetal Tissue Sales by Client Detail, January – December 2015" (May 10, 2016) (STEM.HOUSE.SELECT_ 0948).
[66] "Sales by Product/ Service Detail, January – December 2011" (May 10, 2016) (STEM.HOUSE.SELECT_ 0916).
[67] *See* Letter from Amandeep S. Sidhu, McDermott Will and Emery LLP to Hon. Marsha Blackburn and Hon. Jan Schakowsky *Re: StemExpress Statement Regarding Select Investigative Panel and April 20, 2016 Hearing on "The Pricing of Fetal Tissue"* (Apr. 19, 2016), at 4; StemExpress First Response to House Select Panel Document Requests (Jan. 15, 2016) (STEM.HOUSE.SELECT_ 0238).
[68] *See* StemExpress Sixth Response to House Select Panel Subpoenas (May 10, 2016) (STEM.HOUSE.SELECT_ 0916 - 0948).
[69] THE ENERGY AND COMMERCE COMM., SELECT INVESTIGATIVE PANEL, *Select Investigative Panel Issues Subpoenas for StemExpress Accounting and Banking Records* (May 5, 2016), https://energycommerce.house.gov/news-center/press-releases/select-investigative-panel-issues-subpoenas-stemexpress-accounting.
[70] *See* Letter from Amandeep S. Sidhu, McDermott Will and Emery LLP to Hon. Marsha Blackburn and Hon. Jan Schakowsky *Re: StemExpress Response to Chairman Blackburn's April 28 Letter to StemExpress"* (May 6, 2016); *See also* Appendix C, Overview of Select Panel Interactions with StemExpress.
[71] *See e.g.* Letter from Hon. Marsha Blackburn, Chair, Select Investigative Panel, to Hon. Loretta Lynch, Attorney General, U.S. Dep't of Justice (Nov. 2, 2016), at 7; *Criminal Contempt Report of the Select Investigative Panel of the H. Comm. on Energy and Commerce* (Sept. 19, 2016), at 11-12; Republican Interim Update, at 41.
[72] *See* StemExpress Sixth Response to House Select Panel Subpoenas (May 10, 2016) (STEM.HOUSE.SELECT_ 0909 - 0911).
[73] *StemExpress Fourth Response to House Select Panel Subpoena* (Mar. 28, 2016) (STEM.HOUSE.SELECT_ 0706); *StemExpress Third Response to House Select Panel Subpoena* (Mar. 14, 2016) (STEM.HOUSE.SELECT_ 0666).
[74] Memorandum from Comm. on Energy and Commerce Democratic Staff Re: Update on the Committee's Ongoing Investigation of Planned Parenthood Federation of America (Sept. 9, 2015), at 8-9.
[75] Letter from Amandeep S. Sidhu, McDermott Will and 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), at 6.
[76] *See.* "Advanced Bioscience Resources, Inc." (Feb. 24, 2016) (SP000756); Letter from Johnathan E. Lopez, Orrick Herrington and Sutcliffe LLP to Hon. Marsha Blackburn, Chair, Select Investigative Panel *Re: Select Panel on Infant Lives Document Request – December 17, 2015* (Jan. 8, 2016).
[77] "ABR Financials" (Oct. 6, 2015) (SP000063).
[78] Letter from Jonathan E. Lopez, Orrick Herrington and Sutcliffe LLP to Hon. Fred Upton, Chairman, Comm. on Energy and Commerce, *Re: Advanced Bioscience Resources, Inc.* (Oct. 6, 2015) (SP000060).
[79] Republican Interim Update, at 43.
[80] *Id.* at 44-45.
[81] "Novogenix Research Summary" (Sept. 2, 2015) (NOVOEC-0000173).
[82] Letter from Joshua A. Levy, Cunningham Levy Muse LLP to Select Panel Republican staff *Re: Novogenix Laboratories, LLC* (Dec. 22, 2015).
[83] Letter from Joshua A. Levy, Cunningham Levy Muse LLP to Energy and Commerce Comm. Republican staff *Re: Novogenix Laboratories, LLC* (Sept. 2, 2015), at 4.
[84] *See "Follow-up to September 22, 2015 letter"* (Oct. 6, 2015) (NOVOEC – 0000174); Letter from Joshua A. Levy, Cunningham Levy Muse LLP to Energy and Commerce Comm. Republican staff *Re: Novogenix Laboratories, LLC* (Sept. 2, 2015) at 2, n.3; *see also See* Memorandum from Comm. on Energy and Commerce Democratic Staff Re: Update on the Committee's Ongoing Investigation of Planned Parenthood Federation of America (Sept. 9, 2015).
[85] DV BIOLOGICS, ABOUT US, http://www.dvbiologics.com/about-us (last visited Nov. 29, 2016).
[86] Letter from R. Joseph Burby IV, Bryan Cave LLP to Hon. Marsha Blackburn, Chair, Select Investigative Panel *Re DV Biologics, LLC* (Jan. 29, 2016), at 1.

[87] Letter from Michael R. Tein, Lewis Tein PL to Select Panel Republican staff *Re: In the Matter of the Subpoena to DV Biologics, LLC* (May 16, 2016), at 2.
[88] *"DaVinci Biosciences LLC Characterization of Human Fetal Stem Cells and Determination of Research and Therapeutic Tool Potential* (Jan 29, 2016) (DVB_00001611).
[89] Letter from R. Joseph Burby IV, Bryan Cave LLP to Hon. Marsha Blackburn, Chair, Select Investigative Panel *Re DV Biologics, LLC* (Jan. 29, 2016), at 3.
[90] Letter from Michael R. Tein, Lewis Tein PL to Select Panel Republican staff *Re: In the Matter of the Subpoena to DV Biologics, LLC* (May 16, 2016), at 2.
[91] Republican Interim Update, at 87.
[92] *See* THE ENERGY AND COMMERCE COMM., SELECT INVESTIGATIVE PANEL, *Blackburn Statement on Lawsuit Filed by CA District Attorney Against Tissue Procurement Businesses* (Oct. 12, 2016), https://energycommerce.house.gov/news-center/press-releases/blackburn-statement-lawsuit-filed-ca-district-attorney-against-tissue; Christopher Goffard and Soumya Karlamangla, *Orange County prosecutors file suit against biological suppliers, alleging unlawful pricing of fetal tissue*, LA TIMES (Oct. 13, 2016) ("He [District Attorney Rackauckas] said there was no evidence that the companies exchanged money with Planned Parenthood, or that Planned Parenthood did anything unlawful."), http://www.latimes.com/local/lanow/la-me-ln-fetal-tissue-charges-orange-county-20161012-snap-story.html.
[93] Email correspondence from Select Panel Democratic staff to Select Panel Republican staff (Oct. 13, 2016), on file with the Democratic Members.
[94] Letter from DaVinci Biosciences VP of Operations to Select Panel Republican staff *Re: DV Biologics* (Aug. 10, 2016).
[95] 42 U.S.C. § 289g-1(b).
[96] Letter from Jim R. Esquea, Assistant Sec'y for Legislation, Dep't of Health and Human Services to Hon. Fred Upton, Chairman, H. Comm. on Energy and Commerce (July 14, 2015).
[97] 42 U.S.C. § 289g-1(b)(1) and (2).
[98] Planned Parenthood Fed'n of America, Programs for Donation of Blood And/Or Aborted Pregnancy Tissue for Medical Research (May 2015) (PPFA-HOU_E&C-000043-44) ("Federal law establishes additional requirements applicable whenever the research involving fetal tissue is conducted or supported by the federal government. PPFA recommends that these requirements be adhered to without regard to whether the tissue donation program is federally supported or not.").
[99] Sample Consent for the Donation of Blood and/or Aborted Pregnancy Tissue for Medical Research (May 2015) (PPFA-HOU_E&C-000045). Variations of this basic form have been used by Planned Parenthood affiliates that facilitated fetal tissue donation, with slight modifications, since at least 2001.
[100] Planned Parenthood Fed'n of America, Manual of Medical Standards and Guidelines: Programs for Donation of Blood And/Or Aborted Pregnancy Tissue for Medical Research, Education, or Treatment" (June 2011) (PPFA-HOU_E&C-000031).
[101] *See, e.g., Bioethics and Fetal Tissue: Hearing Before the Select Investigative Panel, H. Comm. On Energy and Commerce*, 114th Cong. (unedited transcript 115) (Mar. 2, 2016) (statement by Rep. Harris).
[102] Transcribed Interview of the Select Investigative Panel, H. Energy and Commerce Comm. (Oct. 6, 2016).
[103] *Id*.
[104] *Id*.
[105] *Id*.
[106] *Bioethics and Fetal Tissue: Hearing Before the Select Investigative Panel, H. Comm. On Energy and Commerce*, 114th Cong. (unedited transcript 92) (Mar. 2, 2016).
[107] Republican Interim Update, at 4.
[108] Transcribed Interview of the Select Investigative Panel, H. Energy and Commerce Comm. (Oct. 19, 2016).
[109] *Id*.
[110] *Id*.
[111] *Id*.
[112] *Id*.
[113] Planned Parenthood Fed'n of America, Programs for Donation of Blood and/or Aborted Pregnancy Tissue for Medical Research (May 2015) (PPFA-HOU_E&C-000043-44).
[114] *See* Memorandum from Comm. on Energy and Commerce Democratic Staff Re: Update on the Committee's Ongoing Investigation of Planned Parenthood Federation of America (Sept. 9, 2015); Letter from Cecile Richards, President, Planned Parenthood Fed'n of America to Speaker John A. Boehner, et al. (Aug. 27, 2015).

[115] Letter from Cecile Richards, President, Planned Parenthood Fed'n of America to Speaker John A. Boehner, et al., at 6 (Aug. 27, 2015).
[116] Memorandum from Comm. on Energy and Commerce Democratic Staff Re: Update on the Committee's Ongoing Investigation of Planned Parenthood Federation of America, at 10 (Sept. 9, 2015).
[117] Letter from Cecile Richards, President, Planned Parenthood Fed'n of America to Speaker John A. Boehner, et al., at 6 (Aug. 27, 2015).
[118] Transcribed Interview of the Select Investigative Panel, H. Energy and Commerce Comm. (Oct. 6, 2016).
[119] *Id.*
[120] *Id.*
[121] *Id.*
[122] *Id.*
[123] Transcribed Interview of the Select Investigative Panel, H. Energy and Commerce Comm. (Nov. 1, 2016).
[124] 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).
[125] *Id.* at 2-3.
[126] Letter from Michael Leoz, Regional Manager, Office for Civil Rights, Dep't of Health and Human Services, to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Aug. 18, 2016).
[127] Letter from Select Panel Democrats to Mr. Michael Leoz, Regional Manager, Office for Civil Rights, Dep't of Health and Human Services (Sept. 12, 2016).
[128] Email correspondence from Dep't of Health and Human Services staff to Select Panel Democratic staff (Nov. 16, 2016), on file with the Democratic Members.
[129] *See* Letter from Hon. Marsha Blackburn, Chair, Select Investigative Panel to Hon. Loretta Lynch, Attorney General, U.S. Dep't of Justice (Nov. 2, 2016), at 8.
[130] Republican Interim Update, at iv.
[131] Transcribed Interviews of the Select Investigative Panel, H. Energy and Commerce Comm. (July 21, 2016).
[132] *Id.*
[133] *Id.*
[134] Transcribed Interview of the Select Investigative Panel, H. Energy and Commerce Comm. (Oct 6, 2016).
[135] Deposition of [Dr. Administrator] by the Select Investigative Panel, H. Energy and Commerce Comm. (May 11, 2016).

IV. PANEL REPUBLICANS SQUANDERED TAXPAYER DOLLARS PURSUING THEIR "VICIOUSLY PARTISAN" ATTACKS

PANEL REPUBLICANS SQUANDERED TAXPAYER DOLLARS PURSUING THEIR "VICIOUSLY PARTISAN" ATTACKS

Panel Republicans took the position that "this panel does not have to be viciously partisan" and lamented the Panel Democrats alleged "lack of cooperation" in the investigation.[1] Chair Blackburn publicly expressed "hope that 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]

Representative Sean Duffy sounded a similar theme during the Panel's business meeting on September 21, 2016:

> But what concerns me is that at every turn my friends across the aisle will drag their feet, they will complain. I would just ask let's all cooperate together.[3]

Unfortunately, these words do not match their actions. From the outset, the "investigation" led by Panel Republicans has not been an objective, fact-based inquiry for the truth, but a political weapon to harass and intimidate health care providers and researchers.

Republicans refused to adopt an investigative plan or rules to govern the Panel's work, denied Democrats access to Committee records, issued unilateral and unjustifiable subpoenas in violation of House rules, and held Republican-only negotiations, briefings, and interviews.

Their abuse of congressional authority and taxpayer dollars discredits the House of Representatives. It has also chilled life-saving research and put doctors and women's health care at greater risk.

In order to create a historical record for Congress to consult before it establishes any future select "investigations," some of the Panel Republican's many abuses are set forth in the examples below and reflected in Appendix A, correspondence sent by Panel Democrats to Chair Blackburn and House leadership over the course of the investigation.

TABLE OF CONTENTS

A. Abuse of Process

1. Republicans Created the Select Panel as a Political Ploy to Avoid a Government Shutdown and Pacify Their Anti-Abortion Base

During the 114th Congress, Republicans voted repeatedly to "defund Planned Parenthood" but lacked the votes in the Senate to achieve this goal and faced a veto threat from the President. Frustrated by these failures, a group of conservative lawmakers announced in September 2015 that they would not vote for any spending measure that permitted continued federal funding for any of the critical, and federally supported health care services provided by Planned Parenthood to low income patients.[4]

Facing the threat of a government shutdown, then-Speaker Boehner crafted a compromise: create a select panel to investigate Planned Parenthood and hold a separate vote on a stand-alone measure to "defund Planned Parenthood" in the House.[5] The compromise cleared the path for passage of a funding bill that kept the government open.[6]

On October 7, 2015, the House passed the resolution formally establishing the Panel.[7] Democrats voted overwhelmingly against its creation as a "baseless and politically motivated attacks against Planned Parenthood"[8], a "kangaroo court"[9] and a "political stunt."[10]

While "House Republicans insist[ed] that their new committee to investigate Planned Parenthood won't be political," Republican leaders sought the advice of outside anti-abortion groups in determining who to appoint to the Panel.[11] As reported at the time:

> Outside advocates and leaders in the anti-abortion community urged Republican leaders to expand the committee to lawmakers outside Energy and Commerce to include more stalwarts of their movement. GOP leadership agreed and has also listened to outside advice on exactly whom to appoint.[12]

Penny Nance, the president and CEO of Concerned Women for America Legislative Action Committee, told the press on October 7, 2015 – nearly two weeks before Speaker Boehner announced his appointments – that she "was satisfied with Blackburn as chairwoman" and was urging appointment of several other members, including six – Reps. Joe Pitts, Diane Black, Vicky Hartzler, Andy Harris, Mia Love, and Larry Bucshon – who ultimately were appointed.[13]

On October 23, 2015, as one of his final acts before leaving Congress, Speaker Boehner appointed Rep. Marsha Blackburn as Panel Chair,[14] along with seven other anti-choice members who have led the Republican efforts to curtail women's reproductive rights.

2. REPUBLICANS PROCEEDED WITH NO SET SCHEDULE AND NO SET BUDGET

The Select Investigative Panel was created by House Resolution 461 on October 7, 2015, without any set schedule, target date for its report, or budget.[15]

On November 17, 2015, Republicans use a closed-door process to transfer $300,000 for use by the Select Panel through the end of 2015. Democratic members of the Committee on House Administration opposed the transfer of funds as "wasteful" and "unnecessary" and called for a public meeting to "ensure the opportunity for amendments and thorough debate."[16] The request was ignored and the money was transferred for use by the Select Panel without any opportunity for amendment or debate.

On June 16, 2016, Republicans again used this same closed-door process to transfer an additional $490,000 to the Select Panel without any amendment or debate. The Democratic members of the Committee on House Administration again objected and requested a special meeting of the Committee to consider the majority's proposal.[17] The request was ignored and the money was transferred for use by the Select Panel.

On November 16, 2016, the Committee on House Administration approved a resolution providing an additional $800,000 for the Panel, bringing the total cost of the Panel to $1,590,000. House Administration Ranking Member Brady expressed concern at the House Administration's markup of this resolution, noting that the Panel's investigation has been a "redundant and unnecessary exercise."[18]

Two weeks later, the full House approved the resolution, H. Res. 933, on an overwhelmingly party-line vote of 235 to 117.

3. PANEL REPUBLICANS REFUSED TO DISCUSS OR ADOPT A BIPARTISAN INVESTIGATIVE PLAN

On December 7, 2015, Chair Blackburn met with Ranking Member Schakowsky to discuss how the Select Panel would proceed. The Chair said that she had not developed an investigative plan and that the Panel would hold an organizational meeting in January to discuss a plan.[19]

Ten days later – on December 17 and 18, 2015 – Chair Blackburn issued sweeping document requests to nine different entities and gave them until December 29, 2015, seven business days over the holiday season, to respond. These requests sought, among other things, lists of entities and personnel involved in fetal tissue research. After receiving copies of the letters, Panel Democrats asked for a meeting to discuss the requests and asked Republicans not to send additional requests until after this discussion.[20]

Without further notice or discussion, Chair Blackburn issued three more document requests on January 6, 2016, asking, among other things, for the names of researchers, students, residents, doctors, and even some patients.

On January 21, 2016, the Democratic Members of the Panel sent a letter to Chair Blackburn asking that she work with them "to establish a fair and balanced investigative plan and clear rules"[21] and hold the initial organizational meeting as promised. The Democratic Members expressed concern that the Chair's initial document requests "raised troubling questions about the direction of the Panel's investigation, and they pose grave privacy and security concerns."[22] They also noted that "[f]or this Panel to have any credibility, we must have a transparent, fair, and evenhanded investigative plan that includes meaningful input from its Democratic Members."[23]

Chair Blackburn responded the next day that "your staff has been invited several times to comment on, to improve, or to reconfigure the language of any and all of the Panel's document requests."[24] In fact, Panel Democrats had been given copies of document requests only after they were sent out, making the invitation a hollow one. The Chair did not respond to the request for a meeting or bipartisan plan and rules and sent an additional twenty-one document requests between January 20, 2016, and January 28, 2016, without any notice to or discussion with Panel Democrats.

On February 11, 2016, Panel Democrats renewed their request for an initial meeting and sent the Chair a proposed investigation plan and rules for Panel discussion and vote.[25] As they explained:

> 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.[26]

Chair Blackburn never responded.

However, in their July 14, 2016, interim update, which Democratic Panel Members first learned of through a press release, the Majority stated that "the Panel's first task was to design an investigative plan.[27]

That plan has never been shared with Panel Democrats or the American people.

4. PANEL REPUBLICANS REFUSED TO ADOPT RULES TO ENSURE DEMOCRATIC PARTICIPATION AND PROTECT INDIVIDUAL PRIVACY AND SAFETY

The House Majority established the Select Panel following three Republican-led committee investigations that – while uncovering no wrongdoing by Planned Parenthood or others – were overwhelmingly one-sided and marred by inflammatory rhetoric and procedural

irregularities. For example, the title of the House Judiciary Committee's first hearing into the deceptively-edited Daleiden/CMP videos – *"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.

In an effort to ensure that this fourth House investigation would be more balanced, fact-based, and fair than the first three – none of which uncovered any wrongdoing by Planned Parenthood despite their clear slant – Panel Democrats urged Chair Blackburn to work with them on proposed rules.[28]

Democratic members of the Panel acknowledged that Panel Republicans and Democrats "fundamentally disagree on many of the issues that we will be investigating," but sought to "operate in a fair and transparent manner that respects the rights of individuals and organizations called upon to cooperate in our work."[29]

Panel Democrats urged Chair Blackburn to:

> [W]ork 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, and treatments), and otherwise allow for the redaction of information that might reveal the names, contact information, or identifying details of individuals involved in reproductive health care or fetal tissue research.[30]

The Chair did not respond and, three weeks later, Democratic members of the Panel proposed a set of rules and asked the Chair to schedule a Panel meeting to discuss their proposal.[31] They renewed this request when Panel Republicans confirmed that they would not protect but, instead, might publicly release the names that they were demanding.[32]

Chair Blackburn steadfastly refused to discuss or adopt any rules for the Select Panel, resulting in a "viciously partisan"[33] investigation that has endangered the privacy and safety of law-abiding health care providers and researchers.

5. PANEL REPUBLICANS EXCLUDED DEMOCRATS FROM BRIEFINGS AND INTERVIEWS AND USED INFORMATION FROM THESE SECRET SESSIONS TO QUESTION OTHER WITNESSES

Over the course of the investigation, Panel Republicans held Republican-only negotiations, briefings, and interviews over the repeated objections of Panel Democrats.

As Republican staff made perfectly clear, "there's a vast number of people that [Panel Republicans] have spoken to [that Panel Democrats] haven't heard from."[34]

Information allegedly obtained in these secret Republican-only settings was then 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.[35]

Panel Republicans then used information allegedly obtained in these secret, Republican-only settings to ask witnesses to speculate based on information that had never been shared with Democrats and remained 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.

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.][36]

Excluding Democrats allowed Panel Republicans to misrepresent documents and facts and to then disclose or conceal what they learned, as suited their preferred partisan narratives.

6. PANEL REPUBLICANS CANCELED OR REFUSED TO SCHEDULE DEPOSITIONS ORDERED BY THE CHAIR

Chair Blackburn issued unilateral subpoenas demanding depositions of six individuals but ultimately went forward with only two, electing to abandon two-thirds of the appearances that the Chair had demanded through use of compulsory process.

For one of these individuals, Chair Blackburn issued a press release with the headline "Select Panel Begins Investigation of Late-Term Abortionist" and posted the subpoena revealing the date, time, and location of his deposition.[37] A week before the scheduled date, Panel Republicans canceled the deposition.[38] They never rescheduled. But in contrast to the publicity sought when they announced that they were targeting this doctor – and compared him to a convicted murderer[39] – Panel Republicans did not publicize their decision not to question him. The Panel did independently confirm, however, that he does not facilitate fetal tissue donation, does not perform "partial-birth abortion," and has never performed an abortion that resulted in an infant being "born alive."[40] One witness explained that the doctor "is an outstanding surgeon and a good man" and noted that "we do good work. We help people every day."[41]

Another witness subpoenaed by the Chair – the former Procurement Manager for StemExpress – provided multiple potential dates for her deposition.[42] After being advised that the witness served in an accounting role at StemExpress and could answer questions regarding her work that the Panel might have,[43] Panel Republican refused to schedule her deposition yet continued to make sweeping public allegations of wrongdoing by the company.

Congressional deposition subpoenas are not intended as a matter of scheduling convenience – an appointment to be kept or canceled at the whim of a committee chair – or for purposes of publicity. The failure to schedule these appearances might nonetheless be understandable – and a laudable conservation of taxpayer time and money – if Panel Republicans had cleared these individuals and companies of wrongdoing. But that is not the case here.

7. PANEL REPUBLICANS MISUSED FEDERAL TAXPAYER DOLLARS PURSUING STATE LAW MATTERS

Apparently frustrated by the failure to uncover evidence of misconduct with regard to federal law, Panel Republicans expanded their reach – and spent federal taxpayer time and money – exploring possible violations of various state laws. For example:

Less than a month after the District Attorney of Orange County filed a civil complaint against DV Biologics and DaVinci Biosciences (collectively "DVB") alleging violations of California's Business and Professions Code, Chair Blackburn sent a letter alleging that the company may also have failed to collect state sales tax.[44] That letter included a discussion of state code provisions and state case law, along with a chart created by Panel Republicans purporting to show "sales" in the state for which a tax should have been collected.

Chair Blackburn never shared her concerns with Panel Democrats or DVB before spending federal taxpayer time and money to "investigate" the potential violation of California law and referring the matter for follow-up by the local prosecutor.

Chair Blackburn similarly sent letters modeled as "criminal referrals" to the Attorneys General in New Mexico and Arkansas alleging violations of state laws modeled after the Uniform Anatomical Gift Act.[45] She also sent letters to the Attorney General in Florida and District Attorney of Riverside County in California alleging violations of state laws prohibiting unlawful profit from fetal tissue.[46] These secret state law "investigations" were never shared

with Panel Democrats, nor were the parties afforded any opportunity to address the Chair's state law claims. Some claims also rely on alleged "confidential informants" whose information and existence has never been verified.

Chair Blackburn has also sought documents and testimony from an individual whose pathology lab working with Planned Parenthood had previously been the target of Republican lawmakers in Missouri alleging possible unlawful disposal of fetal tissue among other claims.[47] The Missouri Attorney General already investigated and cleared the Planned Parenthood affiliate of wrongdoing in September 2015,[48] but Missouri Republicans remain dissatisfied with this result.[49] This raises legitimate questions as to whether Chair Blackburn is now using congressional authority to aid state Republican lawmakers on a matter purely within the purview of the states – not Congress – and Panel Republicans have yet to articulate a legitimate federal interest in pursuing this particular matter.

8. PANEL REPUBLICANS SQUANDERED TAXPAYER DOLLARS ON AN UNNECESSARY AND UNPRODUCTIVE INVESTIGATION

The Select Investigative Panel spent more than $1.5 million in taxpayer funds for an unnecessary, redundant, and singularly unproductive investigation.[50]

Three separate Republican-led House Committees – Energy and Commerce, Judiciary, and Oversight and Government Reform – had already investigated and found no wrongdoing before the Panel's creation. By his own admission, Chairman of the House Oversight Committee Rep. Jason Chaffetz said his Committee's investigation turned up nothing, stating "Was there any wrongdoing?" "I didn't find any."[51]

The House Majority nonetheless voted to establish the Panel, which – over its fifteen-month existence – held only two public hearings, two business meetings, and ten witness interviews. To put this into perspective, if the cost of the investigation was divided by the fourteen proceedings, it has costed the taxpayers roughly $113,500 for each proceeding.

When Congress spends over a million and a half dollars, hardworking Americans should expect that something good will result – that their taxpayer dollars will be used to make their lives better. Here, the results have been the exact opposite.

The Panel's partisan investigation has been roundly criticized by top national editorial boards, with the *Washington Post* expressing concern over the Republicans' "heavy-handed tactics in service of this grotesque theater," and noting that the Panel "has issued indiscriminate subpoenas, intimidated witnesses and relied on misleading information."[52] Similarly, the *New York Times* called the investigation "baseless" and a continuation of the "campaign against fetal tissue research and reproductive rights that the Center for Medical Progress began."[53]

Other opinion writers stressed the "dangerous anti-science and anti-research agenda" of the Panel"[54] and described the investigation as nothing more than an "abortion witch hunt."[55]

In June 2016, the editorial board of the Chair's home-state newspaper, *The Tennessean*, concluded that "the panel is creating the perception that it is embroiled in a wild goose chase."[56]

After Panel Republicans released their interim report in July, the *Los Angeles Times* wrote:

> [a]fter months of investigation and subpoenas for staggering amounts of records[,] . . . 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.[57]

The *LA Times* concluded that the interim report "establishes no wrongdoing" and "does little more than serve the panel's antiabortion narrative."[58]

9. PANEL REPUBLICANS DRAFTED THEIR PARTISAN FINAL REPORT IN SECRET WITH NO INPUT FROM PANEL DEMOCRATS

Select Investigative Panel Republicans have continuously refused to consult with Panel Democrats, or provide any information on the findings, scope, or timing of their final report.

Their interim update, which was released on July 14, 2016, was also drafted in secret without any consultation with Democratic members or staff. Democrats learned of that report through a press release from the Chair and obtained a copy from the Republicans' website.

On October 13, 2016, Democratic staff emailed Republican staff about the final report, asking to "please let us know when you intend to get us a draft for our input and the proposed timeline for its completion."[59] Panel Republicans did not reply.

A little over a month later, on November 18, 2016, Panel Democrats sent a letter to Chair Blackburn asking for a draft of the Majority's proposed final report along with any supporting documents that had not previously been shared with Democrats.[60] As Democrats explained:

> 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.[61]

Panel Democrats asked for "sufficient time for meaningful review and feedback, before any public release" of the report.[62] Panel Republicans never responded.

B. Abuse of Congressional Subpoena Authority

10. CHAIR BLACKBURN ISSUED FORTY-TWO UNILATERAL SUBPOENAS IN VIOLATION OF HOUSE RULES

Throughout the investigation, Chair Blackburn used subpoena authority – the most powerful investigative tool in Congress – to force universities, health care providers, and private companies to comply with sweeping demands for information, including the names of doctors, researchers, students, and employees involved in fetal tissue research or reproductive health care.

The vast majority of these – 35 of the 42 subpoenas – went to entities and individuals whose first contact with the Panel was receipt of a congressional subpoena; and all were issued in violation of House rules requiring notice and consultation with the ranking member.

On February 11, 2016, for example, Chair Blackburn advised the Ranking Member during floor votes that she was issuing subpoenas. Panel Democrats immediately asked for additional information, including copies of the subpoenas and an explanation of what was being requested and why.[63] Before answering, Chair Blackburn issued a press release announcing the subpoenas.[64] Panel Republicans then refused to discuss or provide copies of the subpoenas to Panel Democrats until they were served.[65]

Panel Republicans repeated this pattern every time the Chair issued unilateral subpoenas: notifying the Ranking Member of issuance, ignoring Democratic requests for information and, three days later, issuing subpoenas and only then providing Democrats with copies.

While the resolution authorizing creation of the Select Panel granted Chair Blackburn unilateral subpoena authority, it made use of that privilege subject to the rules of the Energy and Commerce Committee.[66] Those rules require Chair Blackburn to notify and "consult with the ranking member at least 72 hours in advance of a subpoena being issued."[67] 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 subpoenas.

Ranking Member Schakowsky issued the following statement in response to the Chair's issuance of unilateral subpoenas:

> The latest announcement that Chair Blackburn intends to issue a slew of up to 17 additional subpoenas – all in an effort to create an unwarranted and dangerous database of names – is a clear escalation in the Panel's partisan attack on research and health care. The Chair has refused even to tell Democrats who their secret subpoenas are going to or why. The Republican leadership should bring this partisan witch hunt to an end.[68]

11. PANEL REPUBLICANS ISSUED UNILATERAL SUBPOENAS TO ENTITIES THAT WERE COMPLYING VOLUNTARILY

In February 2016, Chair Blackburn justified the need for her first round of unilateral subpoenas by claiming that the organizations targeted – StemExpress, Southwestern Women's Options ("SWO"), and the University of New Mexico ("UNM") -- had "failed to fully cooperate" with her demands.[69]

In reality, StemExpress started producing documents on December 22, 2015, just five days after the Chair's first request. By February 12, 2016, when the Chair announced that she was moving forward against "uncooperative organizations,"[70] StemExpress had already made three different productions of over 1300 pages of documents, along with explanatory transmittal letters.[71] Yet despite agreements between Republicans and StemExpress limiting the scope of production to documents that the company was already producing,[72] Chair Blackburn issued a unilateral subpoena with new requests and gave the company one day to respond.[73]

The deadline for production by Southwestern Women's Options had not even passed when Chair Blackburn announced on February 12, 2016 that she was going to subpoena the clinic.[74] That same day, and by prior agreement with Republican staff, SWO produced 1,035 pages of documents and a transmittal letter responding to each of Chair Blackburn's requests.[75] The Chair nonetheless issued a subpoena three days later, and far too quickly for staff to have reviewed the production to determine that compulsory process was justified.

UNM started voluntarily producing documents to the Panel on January 29, 2016, and only learned that the Chair was issuing them a subpoena through the Chair's press release.[76] Nonetheless, fulfilling its prior voluntary agreement with Panel Republicans, UNM voluntary produced 3,000 pages of documents to the Panel on February 16, 2016, the same day Chair Blackburn issued her unilateral subpoena.[77] The subpoena demanded the names of University employees despite a prior agreement from Republican staff allowing UNM to avoid disclosure of individual names to protect their safety.[78]

Panel Republicans repeated their false claims of widespread noncompliance throughout the investigation even though the Panel has received more than 34,000 pages of documents, most of which has been provided voluntarily, and consistently shifted the goal posts for responding parties by reneging on previous narrowing agreements.

12. PANEL REPUBLICANS WITHHELD DOCUMENTS OBTAINED PURSUANT TO CONGRESSIONAL SUBPOENA OR THREAT OF SUBPOENA

Throughout the investigation, Panel Republicans withheld official Panel documents from Panel Democrats that have been obtained pursuant to congressional subpoena or the threat of a congressional subpoena in clear violation of House rules.

On one occasion, Democrats only learned that additional information had been provided to the Panel pursuant to congressional subpoena after Chair Blackburn issued a press release on

the matter – *five months* after the materials had been turned over to Panel Republicans.[79] After seeing the press release, Panel Democrats asked Republicans for the alleged "evidence" referenced in their press statement.[80] Panel Republicans ignored this request so Democrats contacted the party directly and obtained the documents.

In another instance, an entity produced documents after Republican staff sent a "draft subpoena" [81] and offered the option of producing voluntarily or receiving a unilateral subpoena from the Chair. Panel Republicans never notified Democrats that they had contacted this company or that they received materials in response. In fact, Democrats only learned of this fact because the company opted to reach out, on its own, to Democratic staff and provide the same information because the company wanted to ensure that the same information was equally available to all of the Members of the Panel.

House Rule XI, clause 2(e)(2)(A) states that "all committee hearings, records, data, charts, and files..." are the "property of the House, and each Member, Delegate, and the Resident Commissioner shall have access thereto."[82] Additionally, House Rule X, clause 9(g) requires that minority staff members "shall be accorded equitable treatment with respect to ... the accessibility of committee records."[83]

It is unknown how many additional outside parties produced documents – including documents produced after receipt of a similar "draft" subpoena with the option of avoiding compulsory process through "voluntary" production – that were never provided to Panel Democrats despite House rules that require equal access to committee records.[84] Materials obtained pursuant to subpoena, or even the threat of subpoena, should be shared equally with all members as required by House rules.

13. PANEL REPUBLICANS PURSUED CONTEMPT AGAINST STEMEXPRESS DESPITE SUBSTANTIAL EFFORTS TO COMPLY WITH THE CHAIR'S EVER-SHIFTING DEMANDS

In September, Chair Blackburn and the Panel Republicans voted to recommend criminal contempt proceedings against StemExpress, a consistent target of the Chair since the Panel's inception. This decision came four months after StemExpress had written the Panel explaining its efforts at compliance and seeking clarification as to what information was still owed.[85]

Over the course of the investigation, Chair Blackburn issued sweeping and burdensome demands for documents with unreasonable and unrealistic deadlines, and continually moved the goal posts when StemExpress complied. Yet, in pursuing criminal contempt against the company, Panel Republicans refused to acknowledge that they reneged on their own agreements, and repeatedly altered and expanded their requests. They also ignored the company's efforts at compliance, including its production of approximately 1,700 pages of documents, creation of accounting reports by agreement with Republican staff, and offer of witnesses to answer the Panel's questions.

As the complete log of StemExpress's interactions with the Panel demonstrates (in Appendix C), the company made extensive efforts to cooperate with the Chair's shifting demands, including:

- A March 14, 2016, offer by the company to make their current Procurement Director available to answer written or oral questions from the Panel regarding the company's fetal tissue procurement process and finances. Panel Republicans ignored this offer.

- A March 20, 2016, production by the company of accounting reports created by agreement with Panel Republicans in lieu of producing additional documents that the Chair had requested by subpoena. StemExpress also repeated its offer of a witness to explain its business and answer the Panel's questions.

- Two April 19, 2016, letters from StemExpress highlighting concerns with the Majority's staff-created exhibits, and again explaining the company's 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.

- A May 6, 2016, letter from StemExpress cataloguing the company's compliance with each of the Chair's subpoena demands, and asking Panel Republicans to issue an additional subpoena, which was never issued, to specify what is still owed and cover any new requests for information.

Panel Republicans did not respond to the company's April 6, 2016, for four months until they informed the company of their intent to recommend criminal contempt of Congress.

C. Reliance on Discredited Allegations and Manufactured "Evidence"

14. PANEL REPUBLICANS RELIED ON DEBUNKED DALEIDEN/CMP VIDEOS AND OTHER MATERIALS FROM THESE DISCREDITED SOURCES

Throughout the investigation, Panel Republicans continued to rely on materials and allegations available on websites maintained by the "Center for Medical Progress" (CMP) or other anti-abortion extremists. Their claimed "documentation" of wrongdoing included statements taken directly from David Daleiden's discredited video clips,[86] which they also used to question witnesses during closed-door sessions.

In addition to using publicly available materials from these sources, Panel Republicans appear to have obtained and relied upon materials that were not otherwise publicly available and may have come directly from these discredited sources. Republicans refused to share these materials with Panel Democrats, despite repeated requests that they do so and in violation of

House rules designed to ensure that minority members and staff have equal access to information gained as part of a purportedly bipartisan congressional investigation.[87]

During the Panel's second hearing, for example, Panel Republicans used documents 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.[88]

In subsequent closed-door interviews, Republican 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.[89]

None of these documents were shared with Panel Democrats, who repeatedly objected to the continued reliance on unsubstantiated information from these outside entities and had already asked Chair Blackburn to investigate and address the possible funneling of information between Select Panel Republicans and anti-abortion activists.[90] In so doing, Democrats reiterated their 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."[91]

Chair Blackburn never responded. The continued reliance on and refusal to share information with Democrats – including letters sent by Panel Republicans to attorneys for CMP (the Life Legal Defense Foundation) that were not provided to Panel Democrats before being filed with a federal court[92] – belies the Republicans' publicly claimed interest in a bipartisan effort "to uncover the truth."[93]

15. PANEL REPUBLICANS REFUSED TO QUESTION DALEIDEN OR HIS ASSOCIATES

Three House Committees and thirteen states already investigated the fraudulent video allegations of David Daleiden and his associates. None found any wrongdoing by Planned Parenthood.

Those videos implicate Daleiden and his 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.[94] Daleiden and other CMP representatives created and used false names and a fake company called "BioMax Procurement Services LLC" ("BioMax") to carry out their plans, raising significant questions about their potentially criminal activities.

Remarkably, however, not one of the three Republican-led House investigations that preceded the Select Panel compelled CMP or Mr. Daleiden to testify or produce information about their potential wrongdoing.

Believing that any legitimate, fact-based investigation should start by obtaining information and questioning CMP and Mr. Daleiden, Panel Democrats proposed that the Select Panel do so.[95] As Democrats noted, this was not the first time that anti-abortion extremists had tried to entrap Planned Parenthood; nor was it the first time that they used doctored audio or video recordings to do so.[96]

In fact, Daleiden's specific copycat tactics and claims mirror allegations about the unlawful sale of fetal tissue made sixteen years ago. Those prior claims, which also sparked a congressional investigation, collapsed when the alleged "whistleblower" featured on recorded videos admitted under oath before Congress that he had lied.[97]

During the Panel's second hearing, an attorney for a party accused in that prior video scheme confirmed the importance of testing any accuser's claims under oath. As she explained:

> For nearly four decades, I have been representing corporations and individuals in business litigation, and I have to say there is no bigger tell about the veracity of an accusation than when the person is making the accusation will not stand by his or her accusation under oath.[98]

As she reminded the Panel, "when penalties of perjury attach sometimes instead of fiction the actual truth comes out"[99] and, therefore, "any investigation worthy of the name would begin with taking sworn testimony from Mr. Daleiden" and his associates.[100]

Immediately following the hearing, Democrats again called on Panel Republicans to test Mr. Daleiden's claims under oath.[101]

Panel Democrats renewed this request a final time in November 2016 when Chair Blackburn notified Ranking Member Schakowsky of her intent to issue a subpoena to CMP. Though the Chair and her staff refused to discuss or share a copy of their proposed subpoena, Panel Democrats sent the Chair a letter requesting that she include their requests for information and issue additional subpoenas to obtain testimony from Daleiden and his associates.[102]

Panel Republicans ignored this request and issued a one-line subpoena for "all documents from January 1, 2013, to the present referring or relating to meetings of the National Abortion Federation."[103]

These materials are subject to a court order restricting their public release and, as the Ranking Member explained to the court, Democrats had reason to believe that Panel Republicans already had some of these materials and may have obtained them from CMP, Mr. Daleiden, or their associates despite the court's order.[104]

16. PANEL REPUBLICANS USED UNSOURCED, UNVERIFIED DOCUMENTS TO QUESTION WITNESSES

On April 7, 2016, Panel Democrats wrote Chair Blackburn asking for materials after New Mexico anti-abortion groups publicly claimed to have "submitted documentation, compiled over 5 years of research, to the panel."[105] The entities targeted by these groups – Southwestern women's Options and UNM – were also targeted from the outset by Panel Republicans, and were recipients of the Chair's first unilateral subpoenas.

Panel Republicans ignored that request and, during a deposition held under subpoena by the Chair a month later, questioned the witness about allegations posted on websites of New Mexico anti-abortion groups using documents that had never been shared with Democrats.[106]

They similarly used documents that were never been sourced or shared with Democrats to question witnesses in other closed-door sessions:

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.[107]

When Panel Democrats objected that there was no foundational support for questions being asked of the witness, Republicans responded that, to the extent it existed, 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.[108]

House rules guarantee all members access to committee records and equitable treatment of majority and minority committee staff as well.[109] Documents that are used to question witnesses, particularly those compelled to appear under congressional subpoena, should be available on equal terms to the majority and minority, with the source also identified for the witness being questioned.

17. PANEL REPUBLICANS RELIED ON MISLEADING STAFF-CREATED EXHIBITS TO SUPPORT ALLEGATIONS OF CRIMINAL MISCONDUCT

On April 18, 2016 – two days before the second of the Panel's two public hearings – Republicans sent a packet of "exhibits" to hearing witnesses, Panel Democrats, and the press. Republican staff told Democrats that many of the documents had come from StemExpress, a tissue procurement business identified in the Daleiden/CMP videos and targeted by Panel Republicans from the outset of their investigation.[110]

Democrats asked Republicans to transmit this same packet to StemExpress for verification and comment. Republicans ignored this request so Panel Democrats sent the documents to StemExpress for comment and copied Panel Republicans on that transmittal.

In a letter submitted the next day – and before the public hearing – StemExpress notified the Panel that some of the documents could not be authenticated and appeared to have come "directly from Mr. Daleiden and/or his associates."[111] The company also advised the Panel that several of the "exhibits" created by majority staff were misleading, inaccurate, or lacking evidentiary support. As the company explained:

> Several of the proposed exhibits appear to force the Majority's views into the record in a way that we have never seen in any government investigation in the House, Senate, or across dozens of federal and state jurisdictions around the United States.[112]

The company asked the Republicans to consider "rescinding or revising its exhibits to avoid reliance on questionable documents that could easily be vetted with StemExpress

personnel, several of whom have been offered up for depositions or issued subpoenas by the Select Panel."[113]

During the Panel's April 20, 2016, hearing, and after a party-line vote against the Democrats' motion to prevent use of these materials, Panel Republicans used their "exhibits" to question witnesses with no firsthand knowledge of the facts and accused StemExpress of criminal wrongdoing. In their July interim update and referral to the Department of Justice, Panel Republicans recycled these same "exhibits," which – in any event – do not support their inflammatory claims of wrongdoing by StemExpress and others.

For example:

- Panel Republicans rely on a staff-created chart to allege that StemExpress experienced "stunning revenue growth"[114] and allege that this "belies the notion that the firm was not operating for profit."[115]

StemExpress already explained to the Panel that fetal tissue constitutes "roughly 1% of the company's total revenue before accounting for costs" and that, once costs are included, the company actually loses money on services related to fetal tissue donation.[116]

The other approximately 99% of StemExpress's business – meaning that 99% of the revenue recited by Panel Republicans as "evidence" of wrongdoing – relates to human blood, adult tissue products, bone marrow, adult primary cells, and other manufactured isolated cells that researchers need to perform their research. These other services are not subject to the federal law banning "valuable consideration" for fetal tissue, and it is not against the law for StemExpress or any other company to make money when they provide these other services. Yet Panel Republicans ignore this critical distinction, along with the fact that whatever revenue figures they are reciting do not take any of the company's costs into account.

As the company made clear:

> StemExpress does not provide fetal tissue to its customers to make money; rather, it is offered to support the needs of the world's best researchers in their efforts to treat and cure diseases.[117]

- Republicans use a StemExpress brochure as alleged evidence that the company markets fetal tissue donation as a profit-making partnership.[118]

StemExpress has explained that this brochure was used "by StemExpress with hospitals and clinics involved in the broad spectrum of work that the company supports related to adult blood, adult tissue, biopsies, etc. – *not only fetal tissue donation*."[119] These additional services are not subject to the federal law banning profit related to fetal tissue donation, undermining any claim that the company is marketing fetal tissue donation as a money-making venture.

As a federal judge confirmed regarding the same or similarly-worded brochure, "The ad does not demonstrate that StemExpress was engaged in illegal conduct of paying clinics at a profit for fetal tissue."[120]

- Panel Republicans use a staff-created bar graph titled "Procurement Business' Clinic Growth Strategy" to allege a dramatic increase in Stem Express's partnerships with abortion clinics, from approximately 10 in 2010 to more than 250 in 2016.[121]

As confirmed by documents produced to the Panel, "[i]n reality, StemExpress has partnered with no more than a dozen clinics for fetal tissue donation at any point between 2010 and 2015. . . ."[122]

- Panel Republicans use a staff-created chart titled "Who Bears the Reasonable Cost of Tissue Procurement" to allege that abortion clinics have no costs related to fetal tissue donation so any payments "are pure profit."[123]

The claim that clinics have "no costs" was contradicted by other Republican exhibits showing that some clinics obtain consent, draw blood, and manage paperwork and other administrative tasks related to fetal tissue donation.[124]

- A staff-created chart titled "Comparison of StemExpress Cost Analysis with Generally Accepted Industry Standards for One Unit of Fetal Tissue in 2013" purports to show that StemExpress "overstated" certain costs.[125]

Panel Republicans do not explain the methodology behind their so-called "industry standard," and Panel Democrats have seen no evidence that a generally acknowledged or accepted standard exists. In fact, costs likely vary based on specific transportation, processing, preservation, quality control, or storage expenses that are incurred. One would expect these costs to be reasonable, and we have seen no evidence indicating that they are not.

The Republicans' continued reliance on unsubstantiated and manufactured documents demonstrates that this was not a fact-based inquiry for the truth.

D. Unprofessional Conduct Not Befitting the House of Representatives

18. PANEL REPUBLICANS THREATENED TO HANG UP IF DEMOCRATS WERE INCLUDED ON PHONE CALLS

After Chair Blackburn issued her first round of document requests on December 17 and 18, 2015, Democrats asked to be consulted on requests and to be included in discussions on compliance. Republicans refused.

When it became clear that Panel Republicans were threatening compulsory process because of alleged noncompliance with their demands, Democrats renewed their request to be "notified about the intent to send and given a meaningful opportunity to discuss requests before they go – and also included in discussions with recipients about compliance."[126]

Republicans nonetheless continued to exclude Democrats – both before and after they sent letters and subpoenas demanding information. As they made clear to outside parties:

> [T]his subpoena was issued by the Chair, meaning by the Majority. The Minority is free to issue their own demand letters, and we do not include the Minority staff on discussions related to subpoenas issued by the Majority. If the Minority is on the phone call, we will terminate it and call you back.[127]

By excluding Democrats, Republicans remained free to represent their negotiations as suited their needs and deny or renege on agreements that outside parties believed had been reached. As one recipient of several unilateral subpoenas explained:

> [T]he ever-shifting prerogative of the Majority staff, including reneging on explicit agreements reached during the course of the investigation . . . raises serious questions about purpose and legitimacy of this investigation. [128]

19. PANEL REPUBLICANS CONVENED A DEPOSITION KNOWING THE WITNESS WOULD NOT APPEAR AND REFUSED TO PAY HER EXPENSES

After initially assuring counsel for the Panel's first deponent that "an agreement would be reached with regard to confidentiality" before the witness would be required to appear, Panel Republicans reneged on this promise just two business days before her scheduled deposition.[129] In contrast to prior public and private statements, Panel Republicans told this witness on the eve of her deposition that:

> 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 . . .[130]

Counsel immediately wrote Chair Blackburn explaining that "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." Confirming that they would reschedule the deposition as soon as the Panel's procedures were in place, counsel informed the Panel that their client would not appear the next day.

Knowing that negotiations were ongoing and that the deponent would not appear, Republicans nonetheless convened the deposition.

The witness and Democrats only learned of this witness-less deposition ten days later when the deponent appeared before the Panel. In the interim, Panel Republicans withheld the transcript of their prior deposition in violation of House rules requiring that "the chair and the

ranking minority member shall be provided with a copy of the transcripts of the deposition at the same time."[131]

In addition, prior to the witness's appearance, her counsel requested reimbursement for travel expenses but received no response from Panel Republicans. She reiterated this request during the witness's deposition on May 6, 2016. Republican staff refused to discuss reimbursement of expenses on the record but then refused to discuss the issue off-the-record as well.[132]

On May 19, 2016, the witness's counsel wrote to the Financial and Administrative Coordinator for the full Energy and Commerce Committee[133] and, on May 25, 2016, took the request directly to Rep. Fred Upton, Chairman of the Committee.[134] To date, there has been no response nor reimbursement.

According to House Rule XI (5), witnesses appearing before the House are entitled to reimbursement for actual expenses of travel to or from the place of examination.

Energy and Commerce monthly reports to the Committee on House Administration show that Republicans have reimbursed travel expenses for a number of witnesses that they invited to testify at public hearings. For example:

- Panel Republican reimbursed Kathleen Schmainda, a Republican witness at the March 2, 2016 hearing for airfare, lodging, meals, ground transportation, and parking.[135]
- Panel Republicans reimbursed Brian Lennon, a Republican witness for the April 20, 2016, hearing for his airfare.[136]
- Panel Republicans reimbursed Michael Norton, a Republican witness at the April 20, 2016, hearing for airfare, lodging, ground transportation, and meals.[137]
- The Committee reimbursed Fay Clayton, a Democratic witness at the April 20 hearing for her train ticket.[138]

At the same time, Republicans have not reimbursed this witness who flew across the country to be deposed under a unilateral subpoena.

20. PANEL REPUBLICANS INEXCUSABLY DELAYED SEEKING DOCUMENTS AND INTERVIEWS

Panel Republicans complained throughout the investigation about alleged obstruction and non-compliance by outside entities and Panel Democrats.[139] But their own actions are clearly responsible for their inability to get information that they claim that they need. For example:

- Select Panel Republicans delayed four months and never responded to StemExpress's May 6, 2016, letter cataloguing its compliance with each of the Chair's subpoena demands before informing the company in September 2016 that they would recommend holding the company in criminal contempt.[140]

- Select Panel Republicans waited eleven months, until September 8, 2016, before sending a letter requesting documents from Planned Parenthood Federation of America ("PPFA") and certain affiliates.[141]

- Select Panel Republicans then waited three more weeks (until September 27, 2016) and almost a full year after the Panel's creation to request interviews with fourteen "Planned Parenthood employees."[142] Some of those individuals requested were never employed by PPFA or its affiliates.[143]

- Select Panel Republicans waited until November 3, 2016 – thirteen months into the investigation – to issue a subpoena to an internet service provider for all records related to one of their targets, only to learn that the accounts they requested did not exist.[144]

- Select Panel Republicans also waited until November 3, 2016, to issue sweeping requests for, among other things, documents "sufficient to show all types of abortion that have taken place" or similar requests from four more doctors, one by unilateral subpoena.[145]

- Select Panel Republicans delayed another three days, until November 7, 2016, to issue a subpoena for documents and a deposition of another individual who had never been contacted by the Panel.[146]

On November 9, 2016, Panel Republicans requested additional documents from four Planned Parenthood affiliates and asked the organization to respond within a week.[147] Planned Parenthood responded that it was working to get information to the Panel but that the "scope of your new requests extends far beyond what the Select Panel requested in its initial letter dated September 8, 2016."[148] Some of the requests also sought "a significant amount of information wholly irrelevant to fetal tissue donation."[149]

Panel Republicans have offered no explanation for these delays, particularly given the Chair's public promise to "complete our report to Congress by the end of the year."[150]

ENDNOTES

[1] *See e.g.* Republican Interim Update, at v; Hon. Marsha Blackburn, Op-Ed, *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.*
[3] *Business Meeting of the Select Investigative Panel of the Comm. on Energy and Commerce,* 114th Cong. (unedited transcript 28) (Sept. 21, 2016).
[4] Matt Fuller, *Planned Parenthood Battle Puts Boehner in Bind*, ROLL CALL (Sept. 8, 2015), http://www.rollcall.com/news/home/planned-parenthood-battle-puts-boehner-bind.
[5] David M. Herszenhorn, *Spending Bill Passes, Averting a Shutdown*, N.Y TIMES (Sept. 30, 2015), http://www.nytimes.com/2015/10/01/us/politics/government-shutdown-congress.html?_r=0.
[6] *See* U.S. House of Representatives, Final Roll Call Vote 528, H.R. 719 (Sep. 30, 2015), http://clerk.house.gov/evs/2015/roll528.xml. *See also* Cristina Marcos, *Boehner appoints woman to lead Planned Parenthood Investigation*, THE HILL (Oct. 23, 2015); Mike DeBonis, *Boehner: There will be no government shutdown; select committee will probe Planned Parenthood*, WASH. POST (Sep. 27, 2015).
[7] U.S. House of Representatives, Final Roll Call Vote 538, H.Res.461, 242-184-8 (Oct. 7, 2015), http://clerk.house.gov/evs/2015/roll538.xml.
[8] 161 Cong. Rec. H6871 (daily ed. Oct. 7, 2015) (statement of Rep. Cummings).
[9] 161 Cong. Rec. H6873 (daily ed. Oct. 7, 2015) (statement of Rep. Van Hollen).
[10] 161 Cong. Rec. H6869 (daily ed. Oct. 7, 2015) (statement of Rep. Capps).
[11] Emma Dumain, *House GOP Looks Outside for Advice on Planned Parenthood Panel*, ROLL CALL (Oct. 7, 2015), http://www.rollcall.com/news/home/house-gop-advice-planned-parenthood-panel.
[12] *Id.*
[13] *Id.*
[14] Office of the Speaker of the House, *Boehner 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.
[15] H. Res. 461, 114th Cong. (2015) (enacted).
[16] Letter from Democratic Members, Comm. on House Administration, to the Hon. Candice Miller, Chair, Comm. on House Administration (Nov. 17, 2015).
[17] Letter from Democratic Members, Comm. on House Administration, to the Hon. Candice Miller, Chair, Comm. on House Administration (Jun. 16, 2016).
[18] *Markup on a Supplemental Funding Resolution of Original Jurisdiction Before the H. Comm. on House Administration*, 114th Cong. (Nov. 16, 2016).
[19] Letter from Select Panel Democrats to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Jan. 21, 2016).
[20] Email correspondence from Select Panel Democratic Staff to Select Panel Republican Staff (Dec. 29, 2015), on file with the Democratic Members.
[21] Letter from Select Panel Democrats to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Jan. 21, 2016), at 1.
[22] *Id.*
[23] *Id.* at 5.
[24] Letter from Hon. Marsha Blackburn, Chair, Select Investigative Panel to Hon. Jan Schakowsky, Ranking Member, Select Investigative Panel (Jan. 22, 2016).
[25] Letter from Select Panel Democrats to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Feb. 11, 2016).
[26] *Id.* at 4.
[27] Interim Update from the Chairman and Majority Members of the Select Investigative Panel on the Transfer of Fetal Tissue and Related Matters, at 3 (July 14, 2016).
[28] Letter from Select Panel Democrats to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Jan. 21, 2016).
[29] *Id.*
[30] *Id.*
[31] Letter and attachments from Select Panel Democrats to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Feb. 11, 2016).
[32] Letter from Ranking Member Jan Schakowsky 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).

[33] Hon. Marsha Blackburn, Op-Ed, *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/.
[34] Transcribed Interview of the Select Investigative Panel, H. Energy and Commerce Comm. (Oct. 19, 2016).
[35] *Id.*
[36] Transcribed Interviews of the Select Investigative Panel, House Energy and Commerce Committee (July 21, 2016).
[37] THE ENERGY AND COMMERCE COMM., SELECT INVESTIGATIVE PANEL, *Select Panel Begins Investigation of Late-Term Abortionist [Dr.]* (May 11, 2016).
[38] Letter from Select Panel Republican to Deborah B. Baum, Pillsbury Winthrop Shaw Pittman LLP (June 8, 2016).
[39] Dr. Susan Berry, *Rep. Diane Black: 'Little that Separates Late-Term Abortionist [Dr.] from Kermit Gosnell'*, BREITBART (May 16, 2016).
[40] Transcribed Interviews of the Select Investigative Panel, H. Energy and Commerce Comm. (July 21, 2016).
[41] *Id.*
[42] Email correspondence from Amandeep S. Sidhu, McDermott Will & Emery LLP to Select Panel Republican staff (Apr. 1, 2016), on file with the Democratic Members.
[43] *StemExpress First Response to House Select Panel's March 29, 2016 Subpoenas* (Apr. 11, 2016) (STEM.HOUSE.SELECT_ 0714).
[44] Letter from Hon. Marsha Blackburn, Chair, Select Investigative Panel to Hon. Tony Rackauckas, District Attorney, County of Orange (Nov. 2, 2016).
[45] Letter from Hon. Marsha Blackburn, Chair, Select Investigative Panel to Hon. Leslie Carol Rutledge, Attorney General of Arkansas (Nov. 2, 2016); Letter from Hon. Marsha Blackburn, Chair, Select Investigative Panel to Hon. Hector H. Balderas, Jr., Attorney General of New Mexico (June 23, 2016).
[46] Letter from Hon. Marsha Blackburn, Chair, Select Investigative Panel to Hon. Pam Bondi, Attorney General of Florida (Nov. 30, 2016); Letter from Hon. Marsha Blackburn, Chair, Select Investigative Panel to Hon. Michael Hestrin, District Attorney, County of Riverside (Nov. 30, 2016).
[47] Subpoena to [Dr. Pathologist], Select Investigative Panel, H. Energy and Commerce Comm. (Nov. 7, 2016).
[48] Attorney General's Report on Investigation of Planned Parenthood of the St. Louis Region and Southwest Missouri (Sept. 2015), https://www.ago.mo.gov/docs/default-source/press-releases/2015/plannedparenthood09-15.pdf?sfvrsn=2.
[49] *See* Kurt Erickson, *Planned Parenthood back in Senate crosshairs*, St. Louis Post-Dispatch (Apr. 13, 2016), http://www.stltoday.com/news/local/govt-and-politics/planned-parenthood-back-in-senate-crosshairs/article_b191735f-a0a2-5117-a987-2a20f581aaa9.html
[50] *Taxpayers Face $1.59 Million Bill for Anti-Choice Congressional Investigation*, REWIRE NEWS (Nov. 15, 2016.)
[51] *Planned Parenthood Exposed: Examining Abortion Procedures and Medical Ethics at the Nation's Largest Abortion Provider, Hearing Before the Comm. on Judiciary*, 114th Cong. 64 (Oct. 8, 2015).
[52] Editorial, *It's time to shut down the special panel on fetal tissue*, WASH. POST (May 27, 2016) [*see* Appendix D, Key Editorials Regarding the Select Panel's Investigation].
[53] Editorial, *Republicans' Baseless Abortion Investigation*, N.Y. TIMES (Mar. 7, 2016).
[54] Charles Tiefer, *Congressional Republicans Try to Criminalize Key Medical Research*, FORBES (July 20, 2016), http://www.forbes.com/sites/charlestiefer/2016/07/20/congressional-republicans-try-to-criminalize-key-medical-research/.
[55] Amanda Robb, Op-Ed., *Abortion Witch Hunt*, N.Y. TIMES (Mar. 4, 2016), http://www.nytimes.com/2016/03/05/opinion/abortion-witch-hunt.html.
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[58] *Id.*
[59] Email from Select Panel Democratic staff to Select Panel Republican staff (Oct. 13, 2016), on file with the Democratic Members.
[60] Letter from Select Panel Democrats to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Nov. 18, 2016).
[61] *Id.* at 5.
[62] *Id.*
[63] Email correspondence from Select Panel Democratic staff to Select Panel Republican staff (Feb. 11, 2016), on file with the Democratic Members.

[64] THE ENERGY AND COMMERCE COMM., SELECT INVESTIGATIVE PANEL, *Select Investigative Panel To Move Forward with Subpoenas* (Feb. 11, 2016), https://energycommerce.house.gov/ news-center/press-releases/select-investigative-panel-move-forward-subpoenas.
[65] Email correspondence from Select Panel Republican staff to Select Panel Democratic staff (Feb. 12, 2016), on file with the Democratic Members.
[66] H. Res. 461, 114th Cong. § 4(1) (2015) (enacted).
[67] Rules of the H. Comm. on Energy and Commerce, Rule 16 (114th Cong.).
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[70] *Id.*
[71] Letter from Amandeep S. Sidhu, McDermott Will and Emery LLP to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Feb. 19, 2016), at 2.
[72] *Id.* at 2-3.
[73] Subpoena to StemExpress LLC, Select Investigative Panel, H. Energy and Commerce Comm. (Feb. 16, 2016).
[74] Letter from Jessica R. Hertz, Jenner and Block LLP to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Feb. 17, 2016), at 2.
[75] *Id.*
[76] *See* Email Correspondence from Stephen M. Ryan, McDermott Will and Emery LLP to Select Panel Republican staff (Feb. 13, 2016), on file with the Democratic Members.
[77] Letter from Stephen M. Ryan, McDermott Will and Emery LLP to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Feb. 19, 2016), at 1.
[78] *Id.* at 4-5.
[79] *See* Email correspondence from Counsel for DV Biologics to Select Panel Republican staff (June 7, 2016) (stating "Per your request and in response to the subpoena...), on file with the Democratic Members.
[80] Email correspondence from Select Panel Democratic staff to Select Panel Republican staff (Oct. 13, 2016), on file with the Democratic Members.
[81] Letter from Counsel for Danco Laboratories LLC to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Nov. 17, 2016).
[82] HOUSE RULE XI 2(e)(2)(A) (114th Cong.).
[83] HOUSE RULE X, 9(g) (114th Cong.).
[84] HOUSE RULE XI 2(e)(2)(A) (114th Cong.); HOUSE RULE X, 9(g) (114th Cong.).
[85] Letter from Amandeep S. Sidhu, McDermott Will and Emery LLP to Hon. Marsha Blackburn, Chair, Select Investigative Panel (May 6, 2016).
[86] Republican Interim Update, at 1-2, 19.
[87] HOUSE RULE XI 2(e)(2), RULE X and 9(g) (114th Cong.).
[88] 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), at 2.
[89] Transcribed Interview of the Select Investigative Panel, H. Energy and Commerce Comm. (Nov. 1, 2016).
[90] *See e.g.* 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).
[91] Letter from Select Panel Democrats to Hon. Marsha Blackburn, Chair, Select Investigative Panel (June 7, 2016), at 2.
[92] Letter from Hon. Jan Schakowsky, Ranking Member, Select Investigative Panel to Hon. William H. Orrick, N. D. Cal. (Nov. 14, 2016).
[93] 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/.
[94] *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).
[95] *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).
[96] *Id.*
[97] *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).
[98] *Pricing of Fetal Tissue: Hearing Before the Select Investigative Panel of the Comm. On Energy and Commerce*, 114th Cong. (unedited transcript 44) (Apr. 20, 2016).
[99] *Id.* (unedited transcript 43).
[100] *Id.* (written testimony of Ms. Fay Clayton).
[101] DEMOCRATS ON THE SELECT INVESTIGATIVE PANEL OF THE ENERGY AND COMMERCE COMMITTEE, *Democrats Call for Sworn Testimony of Creators of Deceptively-Edited Videos* (Apr. 21, 2016), https://selectpaneldems-energycommerce.house.gov/news/press-releases/2016-04-21/democrats-call-sworn-testimony-creators-deceptively-editied-videos.
[102] Letter from Hon. Jan Schakowsky, Ranking Member, Select Investigative Panel to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Nov. 2, 2016).
[103] Subpoena to Center for Medical Progress, Select Investigative Panel, H. Energy and Commerce Comm. (Nov. 3, 2016).
[104] Letter from Ranking Member Schakowsky to Hon. William H. Orrick, N. D. Cal (Nov. 14, 2016) [see Appendix B, Correspondence from Select Panel Democrats to Outside Entities].
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[107] Transcribed Interview of the Select Investigative Panel, H. Energy and Commerce Comm. (Oct. 6, 2016).
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[113] *Id.* at 1.
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[116] Letter from Amandeep S. Sidhu, McDermott Will & Emery LLP to Chairman Blackburn and Ranking Member Schakowsky *Re: StemExpress Statement Regarding Select Investigative Panel and April 20, 2016 Hearing on "The Pricing of Fetal Tissue"* (Apr. 19, 2016) (emphasis in original), at 5.
[117] 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), at 4.
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[120] Nat'l Abortion Fed'n v. Ctr. for Med. Progress, No. 15-cv-03522-WHO, 2016 U.S. Dist. LEXIS14485 at *65-66, n. 33 (N.D. Cal. Feb. 5, 2016) (granting motion for preliminary injunction).
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[122] Letter from Amandeep S. Sidhu, McDermott Will & Emery LLP to Chairman Blackburn and Ranking Member Schakowsky *Re: Call for Withdrawal or Amendment of Proposed Exhibits for April 20, 2016 Hearing on 'The Pricing of Fetal Tissue"* (Apr. 19, 2016), at 5.

[123] *Pricing of Fetal Tissue: Hearing Before the Select Investigative Panel of the Comm. on Energy and Commerce*, 114th Cong. (Apr. 20, 2016) ("Exhibit G").
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[126] Email correspondence from Select Panel Democratic staff to Select Panel Republican staff (Jan. 15, 2016), on file with the Democratic Members.
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[128] Letter from Amandeep S. Sidhu, McDermott Will & Emery LLP to Hon. Marsha Blackburn, Chair, Select Investigative Panel (May 6, 2016).
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[132] Deposition of [Clinic A Dr. #1], Select Investigative Panel, H. Energy and Commerce Comm. (May 6, 2016).
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[147] Letter from Select Panel Republican staff to K. Lee Blalack II, O'Melveny & Myers LLP (Nov. 9, 2016).
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[149] *Id.*
[150] Mike DeBonis, *The Benghazi investigation is over, but another House GOP probe soldiers on*, WASH. POST (July 1, 2016), https://www.washingtonpost.com/news/powerpost/wp/2016 /07/01/the-benghazi-investigation-is-over-but-another-house-gop-probe-soldiers-on/.

RECOMMENDATIONS

When the House of Representatives created the Select Investigative Panel in October 2015, it authorized the Panel through H. Res. 461 to study and issue a final report of its findings regarding: (1) fetal tissue procurement; (2) federal funding and support for abortion providers; (3) the "practices" of providers of second and third trimester abortions – including "partial birth abortion and procedures that may lead to a child born alive;" and (4) medical procedures for the care of "a child born alive as a result of an attempted abortion."[1] The House also authorized the Panel to recommend any changes needed as a result of its findings.

After more than a year of investigation, the Panel has no evidence of wrongdoing with regard to fetal tissue donation, no evidence that providers are misusing federal funding, no evidence that any provider is performing unlawful "partial birth abortion," and no evidence that any child has been "born alive as the result of an attempted abortion."

The Panel has confirmed, however, the ongoing need and value for fetal tissue research and the importance of reproductive health care to the health and wellbeing of women and their families. In line with these findings, Panel Democrats make the following recommendations:

- Congress should continue its broad bipartisan support of fetal tissue research. Nothing in the Select Panel's investigation suggests that the existing legal framework for fetal tissue donation and research is inadequate and Congress should not substitute its judgment for the expert recommendations of President Reagan's blue-ribbon panel of scientists and ethicists.

- Congress should pass legislation and provide funding to protect reproductive health care providers and their patients from illegal anti-abortion violence. These Americans - like all others - deserve their government's support.

- Congress should reject efforts to "defund Planned Parenthood" from federal programs and ensure that Medicaid beneficiaries can continue to receive quality preventive care – including, counseling and education, contraception, and an assortment of health and infectious disease screenings – that the organization provides.

- Congress should pass legislation that enhances the health and wellbeing of women and their families by ensuring access to reproductive health care services and providing other protections against improper discrimination and employer-mandated disclosures.

- Congress should require procedures that ensure bipartisan cooperation and participation in any future select investigations.

Recommendation #1

Congress should continue its broad bipartisan support of fetal tissue research. Nothing in the Select Panel's investigation suggests that the existing legal framework for fetal tissue donation and research is inadequate and Congress should not substitute its judgment for the expert recommendations of President Reagan's blue-ribbon panel of scientists and ethicists.

When Congress and the federal government last considered federal funding and support for fetal tissue research, they did so based on the advice and guidance from a blue-ribbon panel of scientists and ethicists convened under President Ronald Reagan. This time, Congress did not seek balanced, expert advice but, instead, created a purely partisan "select panel" whose Republican members were selected at the request of outside anti-abortion activists.

In conducting their "study" of the issue, Panel Republicans did not invite a single scientist who does fetal tissue research to testify at their public hearings. They did not request information about the value or need for fetal tissue research in their numerous demands for documents related to the alleged "sale" of donated tissue. They held one bipartisan briefing and ignored what some of the nation's leading researchers had told them.

In their interim update, Panel Republicans declared that fetal tissue research is "outdated" and "not mainstream science."[2] Responding to that update, the associations representing many of the country's leading medical schools, teaching hospitals and health systems, scientific societies, and universities asked Panel Republicans to "reconsider" or "remove" its characterization of fetal tissue research. As they explained:

> Virtually all of the input that the Panel has received from academic institutions, scientific societies, researchers, and associations has spoken about the importance of research with fetal tissue, both in its contribution to past research, including the development of vaccines, and its potential to enhance our knowledge and improve medical care for diseases ranging from those related to fetal development to Alzheimer's disease, emerging diseases, and recovery from spinal cord injury.[3]

Congress should not abandon the advice and guidance of President Reagan's blue-ribbon panel based on this partisan and ideologically-driven investigation.

President Reagan's panel, chaired by retired Judge Arlin M. Adams – a staunch opponent of abortion – concluded that fetal tissue research is ethical and should enjoy federal funding and support.[4] Many leading Republicans agreed and spoke passionately about the value of fetal tissue research in urging their colleagues to vote to permit federal funding for this research in the NIH Revitalization Act of 1993.[5]

For example, speaking on the House floor, current Energy and Commerce Chairman Fred Upton urged his colleagues to put aside partisan politics in favor of scientific research:

> I will remind the Members that it was a Reagan panel led by a pro-life judge that voted that this research will not lead to more abortions…As the former Secretary of HHS, Dr. Otis Bowen, who was there at the time the ban was put into place recently said, 'Politics should have no place in the world of scientific research….How can you possibly go back to your district and face your neighbor who has perhaps Lou Gehrig's disease or Parkinson's, your brother with diabetes, your wife/mother with breast cancer, or Alzheimer's, and tell them you voted against their hope?[6]

Congress heeded this call by an overwhelming 93-4 vote in the Senate and 290-130 vote in the House, and evidence obtained by the Panel confirms the continued validity of the Reagan panel's core recommendations that Congress already codified. Like the seventeen other investigations into the alleged unlawful sale of fetal tissue for profit, the Panel uncovered no evidence of wrongdoing, and nothing in the Select Panel's investigation suggests that the existing legal framework for fetal tissue donation and research is inadequate.[7]

Nonetheless – and without regard to the overwhelming evidence regarding the continued value and need for this research – Panel Republicans may recommend banning fetal tissue research altogether or tightening regulations to effectively end this research as a practical matter. Before Congress considers any such changes, it should convene another blue-ribbon panel of experts who are appointed on a bipartisan basis by the Speaker of the House and its Minority Leader.

Recommendation #2

Congress should pass legislation and provide funding to protect reproductive health care providers and their patients from illegal anti-abortion violence. These Americans - like all others - deserve the government's support.

Since abortion became legal nationwide, 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. As Dr. Warren Hern explained when responding to a request for information from Chair Blackburn:

> A number of physicians specializing in abortion services have been assassinated, on at least one occasion in the physician's church, and numerous other people, including an off-duty police officer and one physician's bodyguard, have been murdered in cold blood by anti-abortion fanatics, each assassin a so-called "peaceful" anti-abortion protester up until the moment of the murder.[8]

No woman should be afraid to go to her doctor, and no health care professional should have to risk being killed for ensuring that women get the health care that they need. Yet – instead of working with Panel Democrats to address these risks in a meaningful and bipartisan manner – Panel Republicans refused even to discuss this issue.

Instead, they demanded that clinics and universities name their doctors and staff; they publicly identified doctors; and they hauled these providers before the Panel to question them about matters that Congress has no right or need to know, including – for example – who provides private funds for reproductive healthcare, what doctors discuss at provider meetings, who they consult with about taking jobs, and whether and how long they have known each other.

As discussed in Sections II.B and II.C of this Report, sworn testimony and other information provided to the Panel confirmed that threats to providers, as well as to their families and patients, have sharply escalated since the release of the fraudulent Daleiden/CMP videos, and many providers are living in fear.

These Americans - like all others - deserve the government's support against acts of violence. Congress should work on a bipartisan basis to enact legislation and provide funding to improve protections for providers and patients. Key first steps of this effort should include:

- *Strengthening the federal, bipartisan task force*

  This reinvigorated task force should adopt measures that ensure illegal anti-abortion activity is reported to Federal law enforcement agencies and that such incidents are investigated in a timely manner. The task force should also assist with coordination of investigations and any further law enforcement action, including prosecution where warranted.

  The task force should also convene key stakeholders – bringing together law enforcement entities, providers and other community partners to develop best practices for prevention, monitoring, reporting, investigation, and prosecution of illegal anti-abortion activity.

- *Creation of an office to monitor and combat violence against reproductive health care providers*

An independent office should be established within the Department of Justice to report directly to the Attorney General and spearhead the government's work to combat anti-abortion violence. Tasks assigned to this office would include (1) inter-department and agency coordination of efforts to combat anti-abortion activity; (2) support and coordination for the federal task force; (3) reports on a semiannual basis to Congress regarding the federal government's efforts and progress on combatting anti-abortion activities; (4) administration of a grant program for state and local law enforcement agencies and providers.

- *Creation of a grant program for state and local law enforcement agencies and providers*

  A grant program should be stablished for state and local law enforcement agencies and reproductive health care facilities to improve community responses to anti-abortion violence. Possible uses of grant funding would include: costs for training law enforcement or security personnel; reimbursement for security equipment; and funds for improvements or restoration of facilities to increase security and rebuild those damaged by anti-abortion attacks.

These changes are a positive first step but are not enough, and Congress should hold its standing committees with jurisdiction over these issues – including the House Judiciary Committee – accountable for including an update on steps taken to address illegal anti-abortion activity in their required activities reports.

Recommendation #3

Congress should reject efforts to "defund Planned Parenthood" from federal programs and ensure that Medicaid beneficiaries can continue to receive quality preventive care – including, counseling and education, contraception, and an assortment of health and infectious disease screenings – that the organization provides.

Planned Parenthood provides a broad range of preventive services to over 2.5 million patients each year. At least 78% of Planned Parenthood's patients are at 150% of the federal poverty level or below.[9] Services provided include abortion but, as one Planned Parenthood doctor (PP Witness #1) explained to the Panel:

> We do sexually transmitted infection testing and treatment. We do cervical cancer and breast cancer screening. We do contraceptive care. We do well woman visits. We provide a variety of services that don't necessarily happen at every health center, but happen in local communities depending on what the need is. So some

> provide primary care. Some provide prenatal care. Some provide transgender care. It's really a whole spectrum of sexual and reproductive health care.[10]

Planned Parenthood provides this care in a wide range of settings, not just large cities that have multiple options for care, but also "in remote areas where folks wouldn't have access to care otherwise."[11] These services reach a "diverse clientele," including "patients with all socioeconomic status . . . all levels of education. We see, as I mentioned, men, women, teens, adolescents. We see older patients."[12]

As another witness (PP Witness #2) told the Panel, most of these patients at her Planned Parenthood affiliate "have no form of insurance," making it the only option for them to receive care. Ensuring care for those who might otherwise go without is "something that we strive to do" and the organization keeps its costs as low as possible in order to "keep doors open for the community."[13]

The Panel also heard testimony regarding the quality of care that Planned Parenthood provides to its patients. One witness (PP Witness #3) explained that Planned Parenthood, has "a number of important strengths, and one is providing the highest quality health care to women across the entire country."[14]

President-Elect Donald Trump has acknowledged the critical role that Planned Parenthood plays: "So you can say whatever you want, but they have millions of women going through Planned Parenthood that are helped greatly."[15] As he previously pledged:

> We have to help women. A lot of women are helped. So we have to look at the positives for Planned Parenthood.[16]

Chair Blackburn and other anti-abortion lawmakers in the House have repeatedly called on Congress to "defund Planned Parenthood." But there is no legitimate basis to do so. These funds go almost entirely to reimburse Planned Parenthood affiliates for specific services covered by Medicaid. While the organization provides legal and safe abortion, those services currently are not supported or funded by the federal government except in limited cases involving rape, incest, or where a woman's life is endangered. Republicans may claim that patients will not lose access to care because this funding will now go to community health centers. But the experience for women and families in Texas disproves this assertion.

After Texas lawmakers banned any clinic associated with an abortion provider from the state's family-planning budget, in violation of the Medicaid statute's requirements for federal funds, the state's women's health program was able to serve only half as many women as it had before these changes.[17] The Texas 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.[18] After political uproar over the cuts ultimately required the Texas legislature to replace the lost federal funds with state funding, the state has struggled to find sufficient, qualified health care professionals to rebuild the network that it destroyed.[19] In addition, between 2010 and 2014, the maternal mortality rate in Texas doubled.[20]

Panel Republicans and other anti-abortion lawmakers have seized upon the fraudulent Daleiden/CMP videos as a pretext to demand defunding, but four House investigations and thirteen states have now investigated and found no wrongdoing by Planned Parenthood.

These congressional and state-level investigations into Planned Parenthood have proved baseless and have cost millions in taxpayer dollars. More importantly, they have diverted time and resources that could otherwise go to health care for American women and their families. Public policy should not be governed by false, manufactured allegations, particularly when the health of millions of women and their families hangs in the balance. Congress should ensure continued funding and support for Planned Parenthood.

Recommendation #4

Congress should pass legislation that enhances the health and wellbeing of women and their families by ensuring access to the full range of reproductive health care services and providing other protections against improper discrimination and employer-mandated disclosures.

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.

As described in further detail within Section II, access to affordable and effective family planning is crucial to the health and wellbeing of women and their families. 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.

During the 114th Congress, House Democrats, including Panel Members, sponsored several bills aimed at advancing women's health and ultimately infant lives. We hope that the upcoming Congress works on a bipartisan basis to enact the legislation described below, as well as other measures that support the needs of women and families:

- *Women's Health Protection Act* (H.R. 448)

  This Act promotes a woman's health and secures her constitutional right to access safe and legal abortion services regardless of her state of residence. It would invalidate laws that single out abortion providers for requirements and restrictions that are medically unnecessary, do not promote women's health or safety, and limit access to abortion services.

- *Access to Contraception for Women Servicemembers and Dependents Act* (H.R. 472)

  This Act would require that women who receive health care through the military are treated the same as civilian women, and receive access to FDA approved contraception, and counseling services with no health insurance co-pay. It would also require the Department of Defense to develop a comprehensive family planning education program for all servicemembers.

- *Real Education for Healthy Youth Act* (H.R. 1706)

  This Act would help schools, non-profits, and higher education institutions implement age-appropriate comprehensive sex education programs that provide young people with the skills and information they need to make informed, responsible, and healthy decisions; train teachers and educators; and expand sex education programs and partnerships at colleges and universities.

- *EACH Woman Act* (H.R. 2972)

  This Act ensures that any women (and her dependents) enrolled in government health insurance plans, those in government-managed health insurance programs, or who receive health care from a government provider shall have coverage for abortion care. It also prohibits restrictions on private insurance coverage for abortion care.

- *Affordability is Access Act* (H.R. 3163)

  This Act would provide an additional way for women to get affordable contraception. It would allow women to continue accessing their preferred method of birth control by clarifying that if and when the FDA approves an over-the-counter oral contraceptive, health-insurance plans must cover it without any added cost and without a prescription.

- *Stop Deceptive Advertising for Women's Services* (H.R. 3378)

  This Act would direct the Federal Trade Commission to promulgate rules under the Federal Trade Commission Act, declaring it an unfair or deceptive act for an entity, such as a crisis pregnancy center, to advertise as a provider of abortion services if the entity does not provide abortion services.

- *Birth Control Privacy Act* (H.R. 5746)

  This Act would ensure that a woman's choice regarding whether to stop using contraception does not mean losing a job, missed opportunities for advancement, and diminished financial stability. It would prevent women's personal medical decisions from being disclosed to their employers if they participate in workplace wellness programs.

- *Pregnant Workers Fairness Act* (H.R. 2654)

  This Act would clarify that employers must provide reasonable accommodations for limitations arising out of pregnancy, childbirth or related medical conditions, unless doing so would pose an undue hardship.

Recommendation #5

Congress should require procedures that ensure bipartisan cooperation and participation in any future select investigations.

The Select Investigative Panel was modeled after the Select Committee on Benghazi and shared many of that committee's structural flaws and abuses of congressional authority.

We therefore join and endorse recommendations made by the Democratic Members of that select committee, which are designed to improve the integrity of any future select congressional investigations through the following:

Include Target Dates in their Authorizing Statutes for Completing Reports

Congress should set target dates for reports and require a congressional supermajority to renew a select committee or panel after a certain number of months or a year. Creating such limits will prevent the Majority from unnecessarily delaying an investigation to conduct its own fishing expedition or to time the release of a final report for political impact.

Establish a Dedicated Budget

The Select Panel is on track to spend over $1.5 million in taxpayer funds – all without a dedicated or capped budget. In addition, the Republicans used a closed-door process to transfer funds to the Panel without any amendments or debate. A set budget, as well as public debate over that budget, ensures that Congress is more accountable to the taxpayers and avoids waste and abuse.

Adopt Rules and Procedures Voted on by All Members

No taxpayer-funded congressional inquiry should be allowed to proceed on a purely partisan basis, and future select committees or panels should be authorized to begin their work only after adopting rules that ensure equal participation of all panel members. Despite multiple requests and proposal from Democrats, Republicans refused to adopt any Panel rules. As a result, their work and findings lack the objectivity and credibility that bipartisan participation brings.

Require a Vote Before Issuing Controversial Subpoenas

Chair Blackburn abused her unilateral subpoena authority – issuing forty-two unilateral subpoenas in violation of House rules requiring notice and consultation with the ranking member before issuance. In addition, thirty-five of these forty-two subpoenas went to individuals or entities without any prior effort to obtain voluntary compliance and whose first contact with the Select Panel was service of the subpoena. Meaningful consultation with the Minority could have helped to better scope, tailor, and prioritize requests, several of which were unduly broad and burdensome and sought information beyond the Panel's authorized jurisdiction. Congress should not grant unilateral subpoena authority to the chairs of select investigations and should require bipartisan agreement or a vote. These measures help maintain credibility and increase efficiency over the course of an investigation.

Guarantee Minority Participation in Witness Interviews and Briefings

Members of future select committees or panels should have full access to witnesses and should not be denied the opportunity to participate in interviews and briefings. Over the course of this investigation, Panel Democrats were repeatedly excluded by Panel Republicans, allowing them to misrepresent documents and facts and to disclose or conceal what they had "learned" as suited their preferred partisan narratives. The Majority party should not be allowed to interview witnesses alone and then determine unilaterally whether the information provided by the witness should be shared with the Minority.

Adopt an Investigative Plan to Minimize Wasteful Expenditures and Unnecessary Delay

Select panels should be required to begin their work by identifying what has already been credibly answered and what remains to be investigated. They should be required to adopt an investigative plan that avoids duplicating previous efforts and explains to the American people what is being investigated and why.

Prohibit Selective Leaks of Inaccurate or Sensitive Information

Select Panel Republicans repeatedly released information, including the names of individuals identified or targeted in their investigation, in order to further their preferred partisan narratives. Panel Democrats were repeatedly forced to respond through public letters and statements in order to correct the record. This practice seriously damages the credibility of any investigation. Here, it illustrated that the work being done by Panel Republicans was not fair or fact-based.

ENDNOTES

[1] H. Res. 461, 114th Cong. (2015) (enacted).
[2] Republican Interim Update, at 63, 67.
[3] Letter from Ass'n of American Medical Colleges et al., to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Oct. 7, 2016), at 1-2.
[4] *See* Sam Roberts, *Arlin Adams, Federal Judge Three Times on Supreme Court Short List, Dies at 94*, N.Y. TIMES (Dec. 24, 2015); National Institutes of Health, Report of the Advisory Committee to the Director, Human Fetal Tissue Transplantation Research (Dec. 14, 1988).
[5] *See e.g.*, statements of Senators Bob Dole (R-KS) and Strom Thurmond (R-SC) and Representative John Porter (R-IL), https://selectpaneldems-energycommerce.house.gov/our-work/benefits-fetal-tissue-research.
[6] 138 CONG. REC. H3866 (daily ed. May 28, 1992).
[7] *See infra* Section III.
[8] Letter from Dr. Warren Hern to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Nov. 16, 2016).
[9] Dr. George P. Topulos et al., Editorial, *Planned Parenthood at Risk*, New England Journal of Medicine (Aug. 12, 2015), http://www.nejm.org/doi/full/10.1056/NEJMe1510281#t=article.
[10] Transcribed Interview of the Select Investigative Panel, H. Energy and Commerce Comm. (Oct. 6, 2016).
[11] *Id.*
[12] *Id.*
[13] Transcribed Interview of the Select Investigative Panel, H. Energy and Commerce Comm. (Oct. 19, 2016).
[14] Transcribed Interview of the Select Investigative Panel, H. Energy and Commerce Comm. (Nov. 1, 2016).
[15] Emily Schultheis, *GOP debate: Donald Trump defends Planned Parenthood a second time*, CBS NEWS (Feb. 26, 2016), http://www.cbsnews.com/news/republican-debate-donald-trump-defends-planned-parenthood-a-second-time/.
[16] Jesse Byrne, *Trump defends Planned Parenthood*, THE HILL (Aug. 12, 2015), http://thehill.com/blogs/ballot-box/presidential-races/250936-trump-defends-planned-parenthood.
[17] 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.
[18] *Id.*
[19] *Id.*
[20] Rick Jervis, *Texas' maternal death rates top most industrialized countries*, USA TODAY (Sept. 10, 2016), http://www.usatoday.com/story/news/health/2016/09/10/texas-maternal-mortality-rate/90115960/.

CONCLUSION

Panel Democrats proposed an investigative plan and rules to govern the Panel's work in February 2016 in an effort to ensure that – unlike the three House investigations that preceded it, which were decidedly one-sided and marred by procedural irregularities – this investigation would be balanced and fact-based.

As we noted at the time, "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" on behalf of all of the Americans that we are sworn to serve.

Our rules sought a process to ensure that:

> The Panel will reach conclusions based on an objective review of the facts and we will treat witnesses or others called upon to participate in our investigation fairly and in a manner that safeguards their privacy and safety.

Panel Republicans refused to discuss our proposals and proceeded with a "viciously partisan" investigation that has been roundly criticized by top national editorial boards and Chair Blackburn's own home-state newspaper.

In June 2016, the editorial board of *The Tennessean*, concluded that "the panel is creating the perception that it is embroiled in a wild goose chase."[1]

The *Washington Post* expressed concern over the Republicans' "heavy-handed tactics in service of this grotesque theater,"[2] and other opinion writers stressed the "dangerous anti-science and anti-research agenda" of the Panel[3] and described the investigation as nothing more than an "abortion witch hunt."

We are elected officials. It is our opportunity and responsibility to make things better for the people that we serve. That privilege – and the power that accompanies it – should not be abused.

We agreed to participate in this Panel because we believe that words matter, facts matter, and the truth matters. As Panel Republicans 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.

ENDNOTES

[1] Editorial, *Marsha Blackburn's Infant Lives panel loses focus*, THE TENNESSEAN (June 12, 2016), http://www.tennessean.com/story/opinion/editorials/2016/06/12/editorial-marsha-blackburns-infant-lives-panel-loses-focus/85634356/.
[2] Editorial, *It's time to shut down the special panel on fetal tissue research*, WASH. POST (May 27), https://www.washingtonpost.com/opinions/case-closed-its-time-to-shut-down-the-special-panel-on-fetal-tissue-research/2016/05/27/67df20a6-21e8-11e6-aa84-42391ba52c91_story.html?utm_term=.aa53fede90ff.
[3] Charles Tiefer, *Congressional Republicans Try to Criminalize Key Medical Research*, FORBES (July 20, 2016), http://www.forbes.com/sites/charlestiefer/2016/07/20/congressional-republicans-try-to-criminalize-key-medical-research/.