

# Congress of the United States

Washington, D.C. 20515

January 21, 2016

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

Dear Madam Chair:

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

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

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

## **Complete Lack of Evidence for Allegations Against Planned Parenthood**

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

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

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

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

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

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

**Chaffetz:** "No, I'm not suggesting that they broke the law."<sup>1</sup>

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

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

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

### **Dangerous and Overbroad Document Requests**

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

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

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

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

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

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

It also asks the provider to disclose:

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

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

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

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

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

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

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

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

### **The Need for a Fair and Even-Handed Investigative Plan**

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

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

After showing the video, Chairman Pitts stated:

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

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

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

<sup>7</sup> *Id.*

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

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

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

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

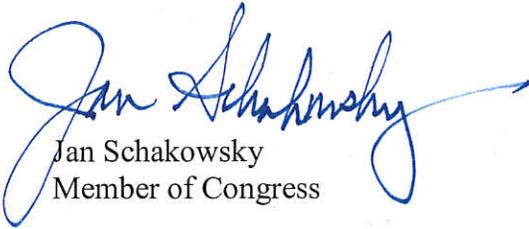
We urge you to work with us to adopt specific rules that, among other things, ensure meaningful Democratic involvement in all aspects of the investigation, prevent the collection of information that contains confidential patient information (including names and medical histories, diagnoses, or treatments),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

### **Conclusion**

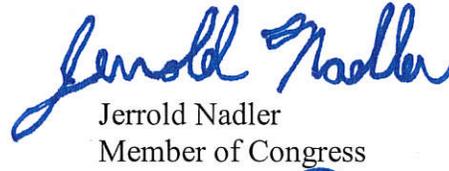
Republican and Democratic Members of this Panel fundamentally disagree on many of the issues that we will be investigating. We nonetheless firmly believe that the investigation must be balanced. We should look at the full range of issues that impact women and infant health. We must operate in a fair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

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

Sincerely,



Jan Schakowsky  
Member of Congress



Jerrold Nadler  
Member of Congress



Diana DeGette  
Member of Congress



Jackie Speier  
Member of Congress



Suzan K. DelBene  
Member of Congress



Bonnie Watson Coleman  
Member of Congress