

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

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

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

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

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

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

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

Matters Related to Fetal Tissue Procurement

Uses and Benefits of Fetal Tissue Research

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

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

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

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

The Conspiracy to Attack Women's Healthcare

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

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

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

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

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

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

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

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

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

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

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

⁷ *Id.*

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

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

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

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

¹² *Supra* n. 3.

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

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

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

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

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

Federal Support and Funding for Abortion Providers

Life-Saving Healthcare Provided by Planned Parenthood and Others

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

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

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

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

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

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

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

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

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

¹⁵ *Id.*

¹⁶ *Id.*

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

¹⁸ *Id.*

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

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

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

Violence Against Abortion Providers and Patients

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

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

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

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

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

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

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

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

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

Enhancing Infant Lives

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

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

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

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