FRED UPTON, MICHIGAN
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6115
Majority (202) 225–2927
Minority (202) 225–3641

February 12, 2016

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

Dear Madam Chair:

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

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

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

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

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

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

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

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

Sincerely,

Jan Schakowsky
Ranking Member
Select Investigative Panel

Jerrold Nadler
Member
Select Investigative Panel

Diana DeGette
Member
Select Investigative Panel

Jackie Speier
Member
Select Investigative Panel

Suzan K. DelBene
Member
Select Investigative Panel

Bonnie Watson Coleman
Member
Select Investigative Panel

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

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