

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

COMMITTEE ON ENERGY AND COMMERCE

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May 12, 2016

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

Dear Mr. Speaker:

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

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

Chair Blackburn is Operating in Violation of House Rules

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

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

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

¹¹ *Id.*

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

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

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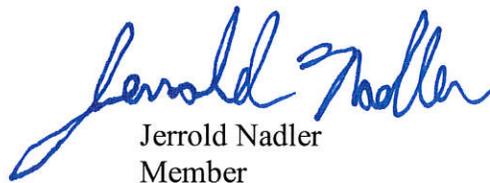
unjustified witch hunt against researchers and doctors is putting life-saving research and health care at risk. This investigation has never been – and has no hope of becoming – fair or fact-based and we call on you to disband it.

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

Sincerely,



Jan Schakowsky
Ranking Member
Select Investigative Panel



Jerrold Nadler
Member
Select Investigative Panel



Diana DeGette
Member
Select Investigative Panel



Jackie Speier
Member
Select Investigative Panel



Suzan K. DelBene
Member
Select Investigative Panel



Bonnie Watson Coleman
Member
Select Investigative Panel

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