

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 established 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/>.