

IV. PANEL REPUBLICANS SQUANDERED TAXPAYER DOLLARS PURSUING THEIR “VICIOUSLY PARTISAN” ATTACKS

“A Reckless Investigation”

– Washington Post, February 20, 2016

“Abortion Witch Hunt”

– New York Times, March 5, 2016

“GOP Ideology is curtailing vital medical research”

– Washington Post, October 10, 2016

“House Republicans Wage War on Medical Research”

– Bloomberg, October 23, 2016

PANEL REPUBLICANS SQUANDERED TAXPAYER DOLLARS PURSUING THEIR “VICIOUSLY PARTISAN” ATTACKS

Panel Republicans took the position that “this panel does not have to be viciously partisan” and lamented the Panel Democrats alleged “lack of cooperation” in the investigation.¹ Chair Blackburn publicly expressed “hope that Democrats will join us in our effort to uncover the truth about what is really going on in America’s abortion and fetal tissue industry.”²

Representative Sean Duffy sounded a similar theme during the Panel’s business meeting on September 21, 2016:

But what concerns me is that at every turn my friends across the aisle will drag their feet, they will complain. I would just ask let's all cooperate together.³

Unfortunately, these words do not match their actions. From the outset, the “investigation” led by Panel Republicans has not been an objective, fact-based inquiry for the truth, but a political weapon to harass and intimidate health care providers and researchers.

Republicans refused to adopt an investigative plan or rules to govern the Panel’s work, denied Democrats access to Committee records, issued unilateral and unjustifiable subpoenas in violation of House rules, and held Republican-only negotiations, briefings, and interviews.

Their abuse of congressional authority and taxpayer dollars discredits the House of Representatives. It has also chilled life-saving research and put doctors and women’s health care at greater risk.

In order to create a historical record for Congress to consult before it establishes any future select “investigations,” some of the Panel Republican’s many abuses are set forth in the examples below and reflected in Appendix A, correspondence sent by Panel Democrats to Chair Blackburn and House leadership over the course of the investigation.

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A. Abuse of Process

1. REPUBLICANS CREATED THE SELECT PANEL AS A POLITICAL PLOY TO AVOID A GOVERNMENT SHUTDOWN AND PACIFY THEIR ANTI-ABORTION BASE

During the 114th Congress, Republicans voted repeatedly to “defund Planned Parenthood” but lacked the votes in the Senate to achieve this goal and faced a veto threat from the President. Frustrated by these failures, a group of conservative lawmakers announced in September 2015 that they would not vote for any spending measure that permitted continued federal funding for any of the critical, and federally supported health care services provided by Planned Parenthood to low income patients.⁴

Facing the threat of a government shutdown, then-Speaker Boehner crafted a compromise: create a select panel to investigate Planned Parenthood and hold a separate vote on a stand-alone measure to “defund Planned Parenthood” in the House.⁵ The compromise cleared the path for passage of a funding bill that kept the government open.⁶

On October 7, 2015, the House passed the resolution formally establishing the Panel.⁷ Democrats voted overwhelmingly against its creation as a “baseless and politically motivated attacks against Planned Parenthood”⁸, a “kangaroo court”⁹ and a “political stunt.”¹⁰

While “House Republicans insist[ed] that their new committee to investigate Planned Parenthood won’t be political,” Republican leaders sought the advice of outside anti-abortion groups in determining who to appoint to the Panel.¹¹ As reported at the time:

Outside advocates and leaders in the anti-abortion community urged Republican leaders to expand the committee to lawmakers outside Energy and Commerce to include more stalwarts of their movement. GOP leadership agreed and has also listened to outside advice on exactly whom to appoint.¹²

Penny Nance, the president and CEO of Concerned Women for America Legislative Action Committee, told the press on October 7, 2015 – nearly two weeks before Speaker Boehner announced his appointments – that she “was satisfied with Blackburn as chairwoman” and was urging appointment of several other members, including six – Reps. Joe Pitts, Diane Black, Vicky Hartzler, Andy Harris, Mia Love, and Larry Bucshon – who ultimately were appointed.¹³

On October 23, 2015, as one of his final acts before leaving Congress, Speaker Boehner appointed Rep. Marsha Blackburn as Panel Chair,¹⁴ along with seven other anti-choice members who have led the Republican efforts to curtail women’s reproductive rights.

2. REPUBLICANS PROCEEDED WITH NO SET SCHEDULE AND NO SET BUDGET

The Select Investigative Panel was created by House Resolution 461 on October 7, 2015, without any set schedule, target date for its report, or budget.¹⁵

On November 17, 2015, Republicans use a closed-door process to transfer \$300,000 for use by the Select Panel through the end of 2015. Democratic members of the Committee on House Administration opposed the transfer of funds as “wasteful” and “unnecessary” and called for a public meeting to “ensure the opportunity for amendments and thorough debate.”¹⁶ The request was ignored and the money was transferred for use by the Select Panel without any opportunity for amendment or debate.

On June 16, 2016, Republicans again used this same closed-door process to transfer an additional \$490,000 to the Select Panel without any amendment or debate. The Democratic members of the Committee on House Administration again objected and requested a special meeting of the Committee to consider the majority’s proposal.¹⁷ The request was ignored and the money was transferred for use by the Select Panel.

On November 16, 2016, the Committee on House Administration approved a resolution providing an additional \$800,000 for the Panel, bringing the total cost of the Panel to \$1,590,000. House Administration Ranking Member Brady expressed concern at the House Administration’s markup of this resolution, noting that the Panel’s investigation has been a “redundant and unnecessary exercise.”¹⁸

Two weeks later, the full House approved the resolution, H. Res. 933, on an overwhelmingly party-line vote of 235 to 117.

3. PANEL REPUBLICANS REFUSED TO DISCUSS OR ADOPT A BIPARTISAN INVESTIGATIVE PLAN

On December 7, 2015, Chair Blackburn met with Ranking Member Schakowsky to discuss how the Select Panel would proceed. The Chair said that she had not developed an investigative plan and that the Panel would hold an organizational meeting in January to discuss a plan.¹⁹

Ten days later – on December 17 and 18, 2015 – Chair Blackburn issued sweeping document requests to nine different entities and gave them until December 29, 2015, seven business days over the holiday season, to respond. These requests sought, among other things, lists of entities and personnel involved in fetal tissue research. After receiving copies of the letters, Panel Democrats asked for a meeting to discuss the requests and asked Republicans not to send additional requests until after this discussion.²⁰

Without further notice or discussion, Chair Blackburn issued three more document requests on January 6, 2016, asking, among other things, for the names of researchers, students, residents, doctors, and even some patients.

On January 21, 2016, the Democratic Members of the Panel sent a letter to Chair Blackburn asking that she work with them “to establish a fair and balanced investigative plan and clear rules”²¹ and hold the initial organizational meeting as promised. The Democratic Members expressed concern that the Chair’s initial document requests “raised troubling questions about the direction of the Panel’s investigation, and they pose grave privacy and security concerns.”²² They also noted that “[f]or this Panel to have any credibility, we must have a transparent, fair, and evenhanded investigative plan that includes meaningful input from its Democratic Members.”²³

Chair Blackburn responded the next day that “your staff has been invited several times to comment on, to improve, or to reconfigure the language of any and all of the Panel’s document requests.”²⁴ In fact, Panel Democrats had been given copies of document requests only after they were sent out, making the invitation a hollow one. The Chair did not respond to the request for a meeting or bipartisan plan and rules and sent an additional twenty-one document requests between January 20, 2016, and January 28, 2016, without any notice to or discussion with Panel Democrats.

On February 11, 2016, Panel Democrats renewed their request for an initial meeting and sent the Chair a proposed investigation plan and rules for Panel discussion and vote.²⁵ As they explained:

The complete exclusion of Democrats and the lack of any investigative plan or rules to guide our work are extremely problematic. Taxpayer-funded congressional investigations must further legitimate legislative aims. None have been articulated or explained with regard to this Panel’s work.²⁶

Chair Blackburn never responded.

However, in their July 14, 2016, interim update, which Democratic Panel Members first learned of through a press release, the Majority stated that “the Panel’s first task was to design an investigative plan.”²⁷

That plan has never been shared with Panel Democrats or the American people.

4. PANEL REPUBLICANS REFUSED TO ADOPT RULES TO ENSURE DEMOCRATIC PARTICIPATION AND PROTECT INDIVIDUAL PRIVACY AND SAFETY

The House Majority established the Select Panel following three Republican-led committee investigations that – while uncovering no wrongdoing by Planned Parenthood or others – were overwhelmingly one-sided and marred by inflammatory rhetoric and procedural

irregularities. For example, the title of the House Judiciary Committee’s first hearing into the deceptively-edited Daleiden/CMP videos – “*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.

In an effort to ensure that this fourth House investigation would be more balanced, fact-based, and fair than the first three – none of which uncovered any wrongdoing by Planned Parenthood despite their clear slant – Panel Democrats urged Chair Blackburn to work with them on proposed rules.²⁸

Democratic members of the Panel acknowledged that Panel Republicans and Democrats “fundamentally disagree on many of the issues that we will be investigating,” but sought to “operate in a fair and transparent manner that respects the rights of individuals and organizations called upon to cooperate in our work.”²⁹

Panel Democrats urged Chair Blackburn to:

[W]ork 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, and treatments), and otherwise allow for the redaction of information that might reveal the names, contact information, or identifying details of individuals involved in reproductive health care or fetal tissue research.³⁰

The Chair did not respond and, three weeks later, Democratic members of the Panel proposed a set of rules and asked the Chair to schedule a Panel meeting to discuss their proposal.³¹ They renewed this request when Panel Republicans confirmed that they would not protect but, instead, might publicly release the names that they were demanding.³²

Chair Blackburn steadfastly refused to discuss or adopt any rules for the Select Panel, resulting in a “viciously partisan”³³ investigation that has endangered the privacy and safety of law-abiding health care providers and researchers.

5. PANEL REPUBLICANS EXCLUDED DEMOCRATS FROM BRIEFINGS AND INTERVIEWS AND USED INFORMATION FROM THESE SECRET SESSIONS TO QUESTION OTHER WITNESSES

Over the course of the investigation, Panel Republicans held Republican-only negotiations, briefings, and interviews over the repeated objections of Panel Democrats.

As Republican staff made perfectly clear, “there’s a vast number of people that [Panel Republicans] have spoken to [that Panel Democrats] haven’t heard from.”³⁴

Information allegedly obtained in these secret Republican-only settings was then used to question other witnesses:

Majority counsel: I just wondered what your response was to a completely different business model where the tech comes in from an outside company, does all the work, takes the tissue and leaves. In California, they call it a snip-and-clip business.

Minority counsel: I don't know who calls it that. I mean, [counsel], come on, be fair.

Majority counsel: I think that's what one of the people called it to us on the phone.

Minority counsel: To you on the phone?

Majority counsel: Yes.

Minority counsel: Who? You did not include us in that conversation.

Majority counsel: I never include you in conversations.³⁵

Panel Republicans then used information allegedly obtained in these secret, Republican-only settings to ask witnesses to speculate based on information that had never been shared with Democrats and remained unverified, as captured in the following exchange:

Minority counsel: So, [counsel], if there was such an instance, we have seen no documentation of it. So can you either put an actual instance in front of [the witness] or make clear this is a –

Majority counsel: I'm asking, I'm suggesting to you that a former employee of your clinic told us – two former employees of your clinic told us they were in the clinic when this happened.

Minority counsel: And I want to make clear that that information has not been shared with the minority.

Witness counsel: And I want to point out that [the witness] has testified that, to her knowledge, [the incident has never occurred.]³⁶

Excluding Democrats allowed Panel Republicans to misrepresent documents and facts and to then disclose or conceal what they learned, as suited their preferred partisan narratives.

6. PANEL REPUBLICANS CANCELED OR REFUSED TO SCHEDULE DEPOSITIONS ORDERED BY THE CHAIR

Chair Blackburn issued unilateral subpoenas demanding depositions of six individuals but ultimately went forward with only two, electing to abandon two-thirds of the appearances that the Chair had demanded through use of compulsory process.

For one of these individuals, Chair Blackburn issued a press release with the headline “Select Panel Begins Investigation of Late-Term Abortioneer” and posted the subpoena revealing the date, time, and location of his deposition.³⁷ A week before the scheduled date, Panel Republicans canceled the deposition.³⁸ They never rescheduled. But in contrast to the publicity sought when they announced that they were targeting this doctor – and compared him to a convicted murderer³⁹ – Panel Republicans did not publicize their decision not to question him. The Panel did independently confirm, however, that he does not facilitate fetal tissue donation, does not perform “partial-birth abortion,” and has never performed an abortion that resulted in an infant being “born alive.”⁴⁰ One witness explained that the doctor “is an outstanding surgeon and a good man” and noted that “we do good work. We help people every day.”⁴¹

Another witness subpoenaed by the Chair – the former Procurement Manager for StemExpress – provided multiple potential dates for her deposition.⁴² After being advised that the witness served in an accounting role at StemExpress and could answer questions regarding her work that the Panel might have,⁴³ Panel Republican refused to schedule her deposition yet continued to make sweeping public allegations of wrongdoing by the company.

Congressional deposition subpoenas are not intended as a matter of scheduling convenience – an appointment to be kept or canceled at the whim of a committee chair – or for purposes of publicity. The failure to schedule these appearances might nonetheless be understandable – and a laudable conservation of taxpayer time and money – if Panel Republicans had cleared these individuals and companies of wrongdoing. But that is not the case here.

7. PANEL REPUBLICANS MISUSED FEDERAL TAXPAYER DOLLARS PURSUING STATE LAW MATTERS

Apparently frustrated by the failure to uncover evidence of misconduct with regard to federal law, Panel Republicans expanded their reach – and spent federal taxpayer time and money – exploring possible violations of various state laws. For example:

Less than a month after the District Attorney of Orange County filed a civil complaint against DV Biologics and DaVinci Biosciences (collectively “DVB”) alleging violations of California’s Business and Professions Code, Chair Blackburn sent a letter alleging that the company may also have failed to collect state sales tax.⁴⁴ That letter included a discussion of state code provisions and state case law, along with a chart created by Panel Republicans purporting to show “sales” in the state for which a tax should have been collected.

Chair Blackburn never shared her concerns with Panel Democrats or DVB before spending federal taxpayer time and money to “investigate” the potential violation of California law and referring the matter for follow-up by the local prosecutor.

Chair Blackburn similarly sent letters modeled as “criminal referrals” to the Attorneys General in New Mexico and Arkansas alleging violations of state laws modeled after the Uniform Anatomical Gift Act.⁴⁵ She also sent letters to the Attorney General in Florida and District Attorney of Riverside County in California alleging violations of state laws prohibiting unlawful profit from fetal tissue.⁴⁶ These secret state law “investigations” were never shared

with Panel Democrats, nor were the parties afforded any opportunity to address the Chair’s state law claims. Some claims also rely on alleged “confidential informants” whose information and existence has never been verified.

Chair Blackburn has also sought documents and testimony from an individual whose pathology lab working with Planned Parenthood had previously been the target of Republican lawmakers in Missouri alleging possible unlawful disposal of fetal tissue among other claims.⁴⁷ The Missouri Attorney General already investigated and cleared the Planned Parenthood affiliate of wrongdoing in September 2015,⁴⁸ but Missouri Republicans remain dissatisfied with this result.⁴⁹ This raises legitimate questions as to whether Chair Blackburn is now using congressional authority to aid state Republican lawmakers on a matter purely within the purview of the states – not Congress – and Panel Republicans have yet to articulate a legitimate federal interest in pursuing this particular matter.

8. PANEL REPUBLICANS SQUANDERED TAXPAYER DOLLARS ON AN UNNECESSARY AND UNPRODUCTIVE INVESTIGATION

The Select Investigative Panel spent more than \$1.5 million in taxpayer funds for an unnecessary, redundant, and singularly unproductive investigation.⁵⁰

Three separate Republican-led House Committees – Energy and Commerce, Judiciary, and Oversight and Government Reform – had already investigated and found no wrongdoing before the Panel’s creation. By his own admission, Chairman of the House Oversight Committee Rep. Jason Chaffetz said his Committee’s investigation turned up nothing, stating “Was there any wrongdoing?” “I didn’t find any.”⁵¹

The House Majority nonetheless voted to establish the Panel, which – over its fifteen-month existence – held only two public hearings, two business meetings, and ten witness interviews. To put this into perspective, if the cost of the investigation was divided by the fourteen proceedings, it has costed the taxpayers roughly \$113,500 for each proceeding.

When Congress spends over a million and a half dollars, hardworking Americans should expect that something good will result – that their taxpayer dollars will be used to make their lives better. Here, the results have been the exact opposite.

The Panel’s partisan investigation has been roundly criticized by top national editorial boards, with the *Washington Post* expressing concern over the Republicans’ “heavy-handed tactics in service of this grotesque theater,” and noting that the Panel “has issued indiscriminate subpoenas, intimidated witnesses and relied on misleading information.”⁵² Similarly, the *New York Times* called the investigation “baseless” and a continuation of the “campaign against fetal tissue research and reproductive rights that the Center for Medical Progress began.”⁵³

Other opinion writers stressed the “dangerous anti-science and anti-research agenda” of the Panel⁵⁴ and described the investigation as nothing more than an “abortion witch hunt.”⁵⁵

In June 2016, the editorial board of the Chair’s home-state newspaper, *The Tennessean*, concluded that “the panel is creating the perception that it is embroiled in a wild goose chase.”⁵⁶

After Panel Republicans released their interim report in July, the *Los Angeles Times* wrote:

[a]fter months of investigation and subpoenas for staggering amounts of records[,] . . . the chairman and Republican members of the panel released an 88-page interim report this month that is long on innuendo but remarkably short on revelation.⁵⁷

The *LA Times* concluded that the interim report “establishes no wrongdoing” and “does little more than serve the panel’s antiabortion narrative.”⁵⁸

9. PANEL REPUBLICANS DRAFTED THEIR PARTISAN FINAL REPORT IN SECRET WITH NO INPUT FROM PANEL DEMOCRATS

Select Investigative Panel Republicans have continuously refused to consult with Panel Democrats, or provide any information on the findings, scope, or timing of their final report.

Their interim update, which was released on July 14, 2016, was also drafted in secret without any consultation with Democratic members or staff. Democrats learned of that report through a press release from the Chair and obtained a copy from the Republicans’ website.

On October 13, 2016, Democratic staff emailed Republican staff about the final report, asking to “please let us know when you intend to get us a draft for our input and the proposed timeline for its completion.”⁵⁹ Panel Republicans did not reply.

A little over a month later, on November 18, 2016, Panel Democrats sent a letter to Chair Blackburn asking for a draft of the Majority’s proposed final report along with any supporting documents that had not previously been shared with Democrats.⁶⁰ As Democrats explained:

We anticipate that – like the Republican “interim update” – which was not provided to Panel Democrats before being sent to House Republican leaders and posted on your website – the final report will include allegations and claimed evidentiary support that we have never seen.⁶¹

Panel Democrats asked for “sufficient time for meaningful review and feedback, before any public release” of the report.⁶² Panel Republicans never responded.

B. Abuse of Congressional Subpoena Authority

10. CHAIR BLACKBURN ISSUED FORTY-TWO UNILATERAL SUBPOENAS IN VIOLATION OF HOUSE RULES

Throughout the investigation, Chair Blackburn used subpoena authority – the most powerful investigative tool in Congress – to force universities, health care providers, and private companies to comply with sweeping demands for information, including the names of doctors, researchers, students, and employees involved in fetal tissue research or reproductive health care.

The vast majority of these – 35 of the 42 subpoenas – went to entities and individuals whose first contact with the Panel was receipt of a congressional subpoena; and all were issued in violation of House rules requiring notice and consultation with the ranking member.

On February 11, 2016, for example, Chair Blackburn advised the Ranking Member during floor votes that she was issuing subpoenas. Panel Democrats immediately asked for additional information, including copies of the subpoenas and an explanation of what was being requested and why.⁶³ Before answering, Chair Blackburn issued a press release announcing the subpoenas.⁶⁴ Panel Republicans then refused to discuss or provide copies of the subpoenas to Panel Democrats until they were served.⁶⁵

Panel Republicans repeated this pattern every time the Chair issued unilateral subpoenas: notifying the Ranking Member of issuance, ignoring Democratic requests for information and, three days later, issuing subpoenas and only then providing Democrats with copies.

While the resolution authorizing creation of the Select Panel granted Chair Blackburn unilateral subpoena authority, it made use of that privilege subject to the rules of the Energy and Commerce Committee.⁶⁶ Those rules require Chair Blackburn to notify and “consult with the ranking member at least 72 hours in advance of a subpoena being issued.”⁶⁷ Mere notification, accompanied by a refusal to discuss or provide copies of subpoenas before they are served, does not comply with the notice *and* consultation requirements of Rule 16, calling into question the validity of the Chair’s unilateral subpoenas.

Ranking Member Schakowsky issued the following statement in response to the Chair’s issuance of unilateral subpoenas:

The latest announcement that Chair Blackburn intends to issue a slew of up to 17 additional subpoenas – all in an effort to create an unwarranted and dangerous database of names – is a clear escalation in the Panel’s partisan attack on research and health care. The Chair has refused even to tell Democrats who their secret subpoenas are going to or why. The Republican leadership should bring this partisan witch hunt to an end.⁶⁸

11. PANEL REPUBLICANS ISSUED UNILATERAL SUBPOENAS TO ENTITIES THAT WERE COMPLYING VOLUNTARILY

In February 2016, Chair Blackburn justified the need for her first round of unilateral subpoenas by claiming that the organizations targeted – StemExpress, Southwestern Women’s Options (“SWO”), and the University of New Mexico (“UNM”) -- had “failed to fully cooperate” with her demands.⁶⁹

In reality, StemExpress started producing documents on December 22, 2015, just five days after the Chair’s first request. By February 12, 2016, when the Chair announced that she was moving forward against “uncooperative organizations,”⁷⁰ StemExpress had already made three different productions of over 1300 pages of documents, along with explanatory transmittal letters.⁷¹ Yet despite agreements between Republicans and StemExpress limiting the scope of production to documents that the company was already producing,⁷² Chair Blackburn issued a unilateral subpoena with new requests and gave the company one day to respond.⁷³

The deadline for production by Southwestern Women’s Options had not even passed when Chair Blackburn announced on February 12, 2016 that she was going to subpoena the clinic.⁷⁴ That same day, and by prior agreement with Republican staff, SWO produced 1,035 pages of documents and a transmittal letter responding to each of Chair Blackburn’s requests.⁷⁵ The Chair nonetheless issued a subpoena three days later, and far too quickly for staff to have reviewed the production to determine that compulsory process was justified.

UNM started voluntarily producing documents to the Panel on January 29, 2016, and only learned that the Chair was issuing them a subpoena through the Chair’s press release.⁷⁶ Nonetheless, fulfilling its prior voluntary agreement with Panel Republicans, UNM voluntarily produced 3,000 pages of documents to the Panel on February 16, 2016, the same day Chair Blackburn issued her unilateral subpoena.⁷⁷ The subpoena demanded the names of University employees despite a prior agreement from Republican staff allowing UNM to avoid disclosure of individual names to protect their safety.⁷⁸

Panel Republicans repeated their false claims of widespread noncompliance throughout the investigation even though the Panel has received more than 34,000 pages of documents, most of which has been provided voluntarily, and consistently shifted the goal posts for responding parties by renegeing on previous narrowing agreements.

12. PANEL REPUBLICANS WITHHELD DOCUMENTS OBTAINED PURSUANT TO CONGRESSIONAL SUBPOENA OR THREAT OF SUBPOENA

Throughout the investigation, Panel Republicans withheld official Panel documents from Panel Democrats that have been obtained pursuant to congressional subpoena or the threat of a congressional subpoena in clear violation of House rules.

On one occasion, Democrats only learned that additional information had been provided to the Panel pursuant to congressional subpoena after Chair Blackburn issued a press release on

the matter – *five months* after the materials had been turned over to Panel Republicans.⁷⁹ After seeing the press release, Panel Democrats asked Republicans for the alleged “evidence” referenced in their press statement.⁸⁰ Panel Republicans ignored this request so Democrats contacted the party directly and obtained the documents.

In another instance, an entity produced documents after Republican staff sent a “draft subpoena”⁸¹ and offered the option of producing voluntarily or receiving a unilateral subpoena from the Chair. Panel Republicans never notified Democrats that they had contacted this company or that they received materials in response. In fact, Democrats only learned of this fact because the company opted to reach out, on its own, to Democratic staff and provide the same information because the company wanted to ensure that the same information was equally available to all of the Members of the Panel.

House Rule XI, clause 2(e)(2)(A) states that “all committee hearings, records, data, charts, and files...” are the “property of the House, and each Member, Delegate, and the Resident Commissioner shall have access thereto.”⁸² Additionally, House Rule X, clause 9(g) requires that minority staff members “shall be accorded equitable treatment with respect to ... the accessibility of committee records.”⁸³

It is unknown how many additional outside parties produced documents – including documents produced after receipt of a similar “draft” subpoena with the option of avoiding compulsory process through “voluntary” production – that were never provided to Panel Democrats despite House rules that require equal access to committee records.⁸⁴ Materials obtained pursuant to subpoena, or even the threat of subpoena, should be shared equally with all members as required by House rules.

13. PANEL REPUBLICANS PURSUED CONTEMPT AGAINST STEMEXPRESS DESPITE SUBSTANTIAL EFFORTS TO COMPLY WITH THE CHAIR’S EVER-SHIFTING DEMANDS

In September, Chair Blackburn and the Panel Republicans voted to recommend criminal contempt proceedings against StemExpress, a consistent target of the Chair since the Panel’s inception. This decision came four months after StemExpress had written the Panel explaining its efforts at compliance and seeking clarification as to what information was still owed.⁸⁵

Over the course of the investigation, Chair Blackburn issued sweeping and burdensome demands for documents with unreasonable and unrealistic deadlines, and continually moved the goal posts when StemExpress complied. Yet, in pursuing criminal contempt against the company, Panel Republicans refused to acknowledge that they reneged on their own agreements, and repeatedly altered and expanded their requests. They also ignored the company’s efforts at compliance, including its production of approximately 1,700 pages of documents, creation of accounting reports by agreement with Republican staff, and offer of witnesses to answer the Panel’s questions.

As the complete log of StemExpress’s interactions with the Panel demonstrates (in Appendix C), the company made extensive efforts to cooperate with the Chair’s shifting demands, including:

- A March 14, 2016, offer by the company to make their current Procurement Director available to answer written or oral questions from the Panel regarding the company’s fetal tissue procurement process and finances. Panel Republicans ignored this offer.
- A March 20, 2016, production by the company of accounting reports created by agreement with Panel Republicans in lieu of producing additional documents that the Chair had requested by subpoena. StemExpress also repeated its offer of a witness to explain its business and answer the Panel’s questions.
- Two April 19, 2016, letters from StemExpress highlighting concerns with the Majority’s staff-created exhibits, and again explaining the company’s business structure and pricing of fetal tissue, including detailed estimated costs and expenses related to fetal tissue procurement showing a net loss for the company.
- A May 6, 2016, letter from StemExpress cataloguing the company’s compliance with each of the Chair’s subpoena demands, and asking Panel Republicans to issue an additional subpoena, which was never issued, to specify what is still owed and cover any new requests for information.

Panel Republicans did not respond to the company’s April 6, 2016, for four months until they informed the company of their intent to recommend criminal contempt of Congress.

C. Reliance on Discredited Allegations and Manufactured “Evidence”

14. PANEL REPUBLICANS RELIED ON DEBUNKED DALEIDEN/CMP VIDEOS AND OTHER MATERIALS FROM THESE DISCREDITED SOURCES

Throughout the investigation, Panel Republicans continued to rely on materials and allegations available on websites maintained by the “Center for Medical Progress” (CMP) or other anti-abortion extremists. Their claimed “documentation” of wrongdoing included statements taken directly from David Daleiden’s discredited video clips,⁸⁶ which they also used to question witnesses during closed-door sessions.

In addition to using publicly available materials from these sources, Panel Republicans appear to have obtained and relied upon materials that were not otherwise publicly available and may have come directly from these discredited sources. Republicans refused to share these materials with Panel Democrats, despite repeated requests that they do so and in violation of

House rules designed to ensure that minority members and staff have equal access to information gained as part of a purportedly bipartisan congressional investigation.⁸⁷

During the Panel’s second hearing, for example, Panel Republicans used documents after refusing to identify the underlying source of many and on notice that some “appear to be versions of StemExpress documents that were stolen by David Daleiden” using the password of a former company employee.⁸⁸

In subsequent closed-door interviews, Republican staff acknowledged that CMP may already have “mailed” material to Panel Republicans:

Minority counsel: And just to be clear, this is a three-page document. The first page is page 1.

Majority counsel: Yeah, one is to show you who it is, and then I want you just to comment on this because this is something we're trying to understand and are still very confused about.

Minority counsel: And this was taken off of their public Web site from the Center for Medical Progress?

Majority counsel: Maybe from the Web site. Maybe they just mailed it in here. I don't -- I don't -- probably one of the two.⁸⁹

None of these documents were shared with Panel Democrats, who repeatedly objected to the continued reliance on unsubstantiated information from these outside entities and had already asked Chair Blackburn to investigate and address the possible funneling of information between Select Panel Republicans and anti-abortion activists.⁹⁰ In so doing, Democrats reiterated their position that the “refusal to adopt rules to foreclose the additional risk that highly sensitive and personal information might be released publicly or more selectively passed into the hands of anti-abortion extremists is inexcusable.”⁹¹

Chair Blackburn never responded. The continued reliance on and refusal to share information with Democrats – including letters sent by Panel Republicans to attorneys for CMP (the Life Legal Defense Foundation) that were not provided to Panel Democrats before being filed with a federal court⁹² – belies the Republicans’ publicly claimed interest in a bipartisan effort “to uncover the truth.”⁹³

15. PANEL REPUBLICANS REFUSED TO QUESTION DALEIDEN OR HIS ASSOCIATES

Three House Committees and thirteen states already investigated the fraudulent video allegations of David Daleiden and his associates. None found any wrongdoing by Planned Parenthood.

Those videos implicate Daleiden and his associates in a multi-year effort to secretly record Planned Parenthood employees and entrap them into agreeing to violate the law – an elaborate scheme that proved unsuccessful.⁹⁴ Daleiden and other CMP representatives created and used false names and a fake company called “BioMax Procurement Services LLC” (“BioMax”) to carry out their plans, raising significant questions about their potentially criminal activities.

Remarkably, however, not one of the three Republican-led House investigations that preceded the Select Panel compelled CMP or Mr. Daleiden to testify or produce information about their potential wrongdoing.

Believing that any legitimate, fact-based investigation should start by obtaining information and questioning CMP and Mr. Daleiden, Panel Democrats proposed that the Select Panel do so.⁹⁵ As Democrats noted, this was not the first time that anti-abortion extremists had tried to entrap Planned Parenthood; nor was it the first time that they used doctored audio or video recordings to do so.⁹⁶

In fact, Daleiden’s specific copycat tactics and claims mirror allegations about the unlawful sale of fetal tissue made sixteen years ago. Those prior claims, which also sparked a congressional investigation, collapsed when the alleged “whistleblower” featured on recorded videos admitted under oath before Congress that he had lied.⁹⁷

During the Panel’s second hearing, an attorney for a party accused in that prior video scheme confirmed the importance of testing any accuser’s claims under oath. As she explained:

For nearly four decades, I have been representing corporations and individuals in business litigation, and I have to say there is no bigger tell about the veracity of an accusation than when the person is making the accusation will not stand by his or her accusation under oath.⁹⁸

As she reminded the Panel, “when penalties of perjury attach sometimes instead of fiction the actual truth comes out”⁹⁹ and, therefore, “any investigation worthy of the name would begin with taking sworn testimony from Mr. Daleiden” and his associates.¹⁰⁰

Immediately following the hearing, Democrats again called on Panel Republicans to test Mr. Daleiden’s claims under oath.¹⁰¹

Panel Democrats renewed this request a final time in November 2016 when Chair Blackburn notified Ranking Member Schakowsky of her intent to issue a subpoena to CMP. Though the Chair and her staff refused to discuss or share a copy of their proposed subpoena, Panel Democrats sent the Chair a letter requesting that she include their requests for information and issue additional subpoenas to obtain testimony from Daleiden and his associates.¹⁰²

Panel Republicans ignored this request and issued a one-line subpoena for “all documents from January 1, 2013, to the present referring or relating to meetings of the National Abortion Federation.”¹⁰³

These materials are subject to a court order restricting their public release and, as the Ranking Member explained to the court, Democrats had reason to believe that Panel Republicans already had some of these materials and may have obtained them from CMP, Mr. Daleiden, or their associates despite the court's order.¹⁰⁴

16. PANEL REPUBLICANS USED UNSOURCED, UNVERIFIED DOCUMENTS TO QUESTION WITNESSES

On April 7, 2016, Panel Democrats wrote Chair Blackburn asking for materials after New Mexico anti-abortion groups publicly claimed to have “submitted documentation, compiled over 5 years of research, to the panel.”¹⁰⁵ The entities targeted by these groups – Southwestern women's Options and UNM – were also targeted from the outset by Panel Republicans, and were recipients of the Chair's first unilateral subpoenas.

Panel Republicans ignored that request and, during a deposition held under subpoena by the Chair a month later, questioned the witness about allegations posted on websites of New Mexico anti-abortion groups using documents that had never been shared with Democrats.¹⁰⁶

They similarly used documents that were never been sourced or shared with Democrats to question witnesses in other closed-door sessions:

Minority counsel: Can you tell us where this came from? This isn't something we've ever seen before.

Majority counsel: All right.

Minority counsel: Source-wise, where is it?

Majority counsel: I think it's a [photo] at a conference, but I don't –

Minority counsel: But how did the Panel come by it? It wasn't ever provided to –

Majority counsel: Oh, I don't know. I can't –

Majority counsel: -- the Minority before.

Majority counsel: I can't, you know – there's 40,000 pages in there. I can't – I can't remember.

Minority counsel: Right, and you haven't given us access to that. So I'm just curious as to whether –

Majority counsel: Right.

Minority counsel: you know the origin of this photograph.

Majority counsel: I said no. The answer would be no.¹⁰⁷

When Panel Democrats objected that there was no foundational support for questions being asked of the witness, Republicans responded that, to the extent it existed, that evidence was being withheld:

Minority counsel: So you're just admitting right here and now that you're withholding evidence from the Minority members of this panel.

Majority counsel: I'm withholding evidence from you, [counsel], for the purposes of this question.¹⁰⁸

House rules guarantee all members access to committee records and equitable treatment of majority and minority committee staff as well.¹⁰⁹ Documents that are used to question witnesses, particularly those compelled to appear under congressional subpoena, should be available on equal terms to the majority and minority, with the source also identified for the witness being questioned.

17. PANEL REPUBLICANS RELIED ON MISLEADING STAFF-CREATED EXHIBITS TO SUPPORT ALLEGATIONS OF CRIMINAL MISCONDUCT

On April 18, 2016 – two days before the second of the Panel's two public hearings – Republicans sent a packet of "exhibits" to hearing witnesses, Panel Democrats, and the press. Republican staff told Democrats that many of the documents had come from StemExpress, a tissue procurement business identified in the Daleiden/CMP videos and targeted by Panel Republicans from the outset of their investigation.¹¹⁰

Democrats asked Republicans to transmit this same packet to StemExpress for verification and comment. Republicans ignored this request so Panel Democrats sent the documents to StemExpress for comment and copied Panel Republicans on that transmittal.

In a letter submitted the next day – and before the public hearing – StemExpress notified the Panel that some of the documents could not be authenticated and appeared to have come "directly from Mr. Daleiden and/or his associates."¹¹¹ The company also advised the Panel that several of the "exhibits" created by majority staff were misleading, inaccurate, or lacking evidentiary support. As the company explained:

Several of the proposed exhibits appear to force the Majority's views into the record in a way that we have never seen in any government investigation in the House, Senate, or across dozens of federal and state jurisdictions around the United States.¹¹²

The company asked the Republicans to consider "rescinding or revising its exhibits to avoid reliance on questionable documents that could easily be vetted with StemExpress

personnel, several of whom have been offered up for depositions or issued subpoenas by the Select Panel.”¹¹³

During the Panel’s April 20, 2016, hearing, and after a party-line vote against the Democrats’ motion to prevent use of these materials, Panel Republicans used their “exhibits” to question witnesses with no firsthand knowledge of the facts and accused StemExpress of criminal wrongdoing. In their July interim update and referral to the Department of Justice, Panel Republicans recycled these same “exhibits,” which – in any event – do not support their inflammatory claims of wrongdoing by StemExpress and others.

For example:

- Panel Republicans rely on a staff-created chart to allege that StemExpress experienced “stunning revenue growth”¹¹⁴ and allege that this “belies the notion that the firm was not operating for profit.”¹¹⁵

StemExpress already explained to the Panel that fetal tissue constitutes “roughly 1% of the company’s total revenue before accounting for costs” and that, once costs are included, the company actually loses money on services related to fetal tissue donation.¹¹⁶

The other approximately 99% of StemExpress’s business – meaning that 99% of the revenue recited by Panel Republicans as “evidence” of wrongdoing – relates to human blood, adult tissue products, bone marrow, adult primary cells, and other manufactured isolated cells that researchers need to perform their research. These other services are not subject to the federal law banning “valuable consideration” for fetal tissue, and it is not against the law for StemExpress or any other company to make money when they provide these other services. Yet Panel Republicans ignore this critical distinction, along with the fact that whatever revenue figures they are reciting do not take any of the company’s costs into account.

As the company made clear:

StemExpress does not provide fetal tissue to its customers to make money; rather, it is offered to support the needs of the world’s best researchers in their efforts to treat and cure diseases.¹¹⁷

- Republicans use a StemExpress brochure as alleged evidence that the company markets fetal tissue donation as a profit-making partnership.¹¹⁸

StemExpress has explained that this brochure was used “by StemExpress with hospitals and clinics involved in the broad spectrum of work that the company supports related to adult blood, adult tissue, biopsies, etc. – *not only fetal tissue donation.*”¹¹⁹ These additional services are not subject to the federal law banning profit related to fetal tissue donation, undermining any claim that the company is marketing fetal tissue donation as a money-making venture.

As a federal judge confirmed regarding the same or similarly-worded brochure, “The ad does not demonstrate that StemExpress was engaged in illegal conduct of paying clinics at a profit for fetal tissue.”¹²⁰

- Panel Republicans use a staff-created bar graph titled “Procurement Business’ Clinic Growth Strategy” to allege a dramatic increase in Stem Express’s partnerships with abortion clinics, from approximately 10 in 2010 to more than 250 in 2016.¹²¹

As confirmed by documents produced to the Panel, “[i]n reality, StemExpress has partnered with no more than a dozen clinics for fetal tissue donation at any point between 2010 and 2015. . . .”¹²²

- Panel Republicans use a staff-created chart titled “Who Bears the Reasonable Cost of Tissue Procurement” to allege that abortion clinics have no costs related to fetal tissue donation so any payments “are pure profit.”¹²³

The claim that clinics have “no costs” was contradicted by other Republican exhibits showing that some clinics obtain consent, draw blood, and manage paperwork and other administrative tasks related to fetal tissue donation.¹²⁴

- A staff-created chart titled “Comparison of StemExpress Cost Analysis with Generally Accepted Industry Standards for One Unit of Fetal Tissue in 2013” purports to show that StemExpress “overstated” certain costs.¹²⁵

Panel Republicans do not explain the methodology behind their so-called “industry standard,” and Panel Democrats have seen no evidence that a generally acknowledged or accepted standard exists. In fact, costs likely vary based on specific transportation, processing, preservation, quality control, or storage expenses that are incurred. One would expect these costs to be reasonable, and we have seen no evidence indicating that they are not.

The Republicans’ continued reliance on unsubstantiated and manufactured documents demonstrates that this was not a fact-based inquiry for the truth.

D. Unprofessional Conduct Not Befitting the House of Representatives

18. PANEL REPUBLICANS THREATENED TO HANG UP IF DEMOCRATS WERE INCLUDED ON PHONE CALLS

After Chair Blackburn issued her first round of document requests on December 17 and 18, 2015, Democrats asked to be consulted on requests and to be included in discussions on compliance. Republicans refused.

When it became clear that Panel Republicans were threatening compulsory process because of alleged noncompliance with their demands, Democrats renewed their request to be “notified about the intent to send and given a meaningful opportunity to discuss requests before they go – and also included in discussions with recipients about compliance.”¹²⁶

Republicans nonetheless continued to exclude Democrats – both before and after they sent letters and subpoenas demanding information. As they made clear to outside parties:

[T]his subpoena was issued by the Chair, meaning by the Majority. The Minority is free to issue their own demand letters, and we do not include the Minority staff on discussions related to subpoenas issued by the Majority. If the Minority is on the phone call, we will terminate it and call you back.¹²⁷

By excluding Democrats, Republicans remained free to represent their negotiations as suited their needs and deny or renege on agreements that outside parties believed had been reached. As one recipient of several unilateral subpoenas explained:

[T]he ever-shifting prerogative of the Majority staff, including renegeing on explicit agreements reached during the course of the investigation . . . raises serious questions about purpose and legitimacy of this investigation.¹²⁸

19. PANEL REPUBLICANS CONVENED A DEPOSITION KNOWING THE WITNESS WOULD NOT APPEAR AND REFUSED TO PAY HER EXPENSES

After initially assuring counsel for the Panel’s first deponent that “an agreement would be reached with regard to confidentiality” before the witness would be required to appear, Panel Republicans reneged on this promise just two business days before her scheduled deposition.¹²⁹ In contrast to prior public and private statements, Panel Republicans told this witness on the eve of her deposition that:

We will not assure that [the deponent’s] name or any of the other names used in the deposition will remain private. It is entirely possible that the deposition could be made public . . .¹³⁰

Counsel immediately wrote Chair Blackburn explaining that “we trust this is a misunderstanding and that the Panel intends to put in place appropriate confidentiality procedures that will protect our client, as it has publicly and privately assured counsel.” Confirming that they would reschedule the deposition as soon as the Panel’s procedures were in place, counsel informed the Panel that their client would not appear the next day.

Knowing that negotiations were ongoing and that the deponent would not appear, Republicans nonetheless convened the deposition.

The witness and Democrats only learned of this witness-less deposition ten days later when the deponent appeared before the Panel. In the interim, Panel Republicans withheld the transcript of their prior deposition in violation of House rules requiring that “the chair and the

ranking minority member shall be provided with a copy of the transcripts of the deposition at the same time.”¹³¹

In addition, prior to the witness’s appearance, her counsel requested reimbursement for travel expenses but received no response from Panel Republicans. She reiterated this request during the witness’s deposition on May 6, 2016. Republican staff refused to discuss reimbursement of expenses on the record but then refused to discuss the issue off-the-record as well.¹³²

On May 19, 2016, the witness’s counsel wrote to the Financial and Administrative Coordinator for the full Energy and Commerce Committee¹³³ and, on May 25, 2016, took the request directly to Rep. Fred Upton, Chairman of the Committee.¹³⁴ To date, there has been no response nor reimbursement.

According to House Rule XI (5), witnesses appearing before the House are entitled to reimbursement for actual expenses of travel to or from the place of examination.

Energy and Commerce monthly reports to the Committee on House Administration show that Republicans have reimbursed travel expenses for a number of witnesses that they invited to testify at public hearings. For example:

- Panel Republican reimbursed Kathleen Schmainda, a Republican witness at the March 2, 2016 hearing for airfare, lodging, meals, ground transportation, and parking.¹³⁵
- Panel Republicans reimbursed Brian Lennon, a Republican witness for the April 20, 2016, hearing for his airfare.¹³⁶
- Panel Republicans reimbursed Michael Norton, a Republican witness at the April 20, 2016, hearing for airfare, lodging, ground transportation, and meals.¹³⁷
- The Committee reimbursed Fay Clayton, a Democratic witness at the April 20 hearing for her train ticket.¹³⁸

At the same time, Republicans have not reimbursed this witness who flew across the country to be deposed under a unilateral subpoena.

20. PANEL REPUBLICANS INEXCUSABLY DELAYED SEEKING DOCUMENTS AND INTERVIEWS

Panel Republicans complained throughout the investigation about alleged obstruction and non-compliance by outside entities and Panel Democrats.¹³⁹ But their own actions are clearly responsible for their inability to get information that they claim that they need. For example:

- Select Panel Republicans delayed four months and never responded to StemExpress’s May 6, 2016, letter cataloging its compliance with each of the Chair’s subpoena demands before informing the company in September 2016 that they would recommend holding the company in criminal contempt.¹⁴⁰

- Select Panel Republicans waited eleven months, until September 8, 2016, before sending a letter requesting documents from Planned Parenthood Federation of America (“PPFA”) and certain affiliates.¹⁴¹
- Select Panel Republicans then waited three more weeks (until September 27, 2016) and almost a full year after the Panel’s creation to request interviews with fourteen “Planned Parenthood employees.”¹⁴² Some of those individuals requested were never employed by PPFA or its affiliates.¹⁴³
- Select Panel Republicans waited until November 3, 2016 – thirteen months into the investigation – to issue a subpoena to an internet service provider for all records related to one of their targets, only to learn that the accounts they requested did not exist.¹⁴⁴
- Select Panel Republicans also waited until November 3, 2016, to issue sweeping requests for, among other things, documents “sufficient to show all types of abortion that have taken place” or similar requests from four more doctors, one by unilateral subpoena.¹⁴⁵
- Select Panel Republicans delayed another three days, until November 7, 2016, to issue a subpoena for documents and a deposition of another individual who had never been contacted by the Panel.¹⁴⁶

On November 9, 2016, Panel Republicans requested additional documents from four Planned Parenthood affiliates and asked the organization to respond within a week.¹⁴⁷ Planned Parenthood responded that it was working to get information to the Panel but that the “scope of your new requests extends far beyond what the Select Panel requested in its initial letter dated September 8, 2016.”¹⁴⁸ Some of the requests also sought “a significant amount of information wholly irrelevant to fetal tissue donation.”¹⁴⁹

Panel Republicans have offered no explanation for these delays, particularly given the Chair’s public promise to “complete our report to Congress by the end of the year.”¹⁵⁰

ENDNOTES

¹ See e.g. Republican Interim Update, at v; Hon. Marsha Blackburn, Op-Ed, *Big Abortion's Allies Standing in the Way of the Truth*, LIFEZETTE (Oct. 4, 2016), <http://www.lifezette.com/polizette/big-abortions-allies-standing-in-the-way-of-the-truth/>.

² *Id.*

³ *Business Meeting of the Select Investigative Panel of the Comm. on Energy and Commerce*, 114th Cong. (unedited transcript 28) (Sept. 21, 2016).

⁴ Matt Fuller, *Planned Parenthood Battle Puts Boehner in Bind*, ROLL CALL (Sept. 8, 2015), <http://www.rollcall.com/news/home/planned-parenthood-battle-puts-boehner-bind>.

⁵ David M. Herszenhorn, *Spending Bill Passes, Averting a Shutdown*, N.Y. TIMES (Sept. 30, 2015), http://www.nytimes.com/2015/10/01/us/politics/government-shutdown-congress.html?_r=0.

⁶ See U.S. House of Representatives, Final Roll Call Vote 528, H.R. 719 (Sep. 30, 2015), <http://clerk.house.gov/evs/2015/roll528.xml>. See also Cristina Marcos, *Boehner appoints woman to lead Planned Parenthood Investigation*, THE HILL (Oct. 23, 2015); Mike DeBonis, *Boehner: There will be no government shutdown; select committee will probe Planned Parenthood*, WASH. POST (Sep. 27, 2015).

⁷ U.S. House of Representatives, Final Roll Call Vote 538, H.Res.461, 242-184-8 (Oct. 7, 2015), <http://clerk.house.gov/evs/2015/roll538.xml>.

⁸ 161 Cong. Rec. H6871 (daily ed. Oct. 7, 2015) (statement of Rep. Cummings).

⁹ 161 Cong. Rec. H6873 (daily ed. Oct. 7, 2015) (statement of Rep. Van Hollen).

¹⁰ 161 Cong. Rec. H6869 (daily ed. Oct. 7, 2015) (statement of Rep. Capps).

¹¹ Emma Dumain, *House GOP Looks Outside for Advice on Planned Parenthood Panel*, ROLL CALL (Oct. 7, 2015), <http://www.rollcall.com/news/home/house-gop-advice-planned-parenthood-panel>.

¹² *Id.*

¹³ *Id.*

¹⁴ Office of the Speaker of the House, *Boehner Appoints GOP Members to New Select Investigative Panel* (Oct. 23, 2015), <http://www.speaker.gov/press-release/boehner-appoints-gop-members-new-select-investigative-panel>.

¹⁵ H. Res. 461, 114th Cong. (2015) (enacted).

¹⁶ Letter from Democratic Members, Comm. on House Administration, to the Hon. Candice Miller, Chair, Comm. on House Administration (Nov. 17, 2015).

¹⁷ Letter from Democratic Members, Comm. on House Administration, to the Hon. Candice Miller, Chair, Comm. on House Administration (Jun. 16, 2016).

¹⁸ *Markup on a Supplemental Funding Resolution of Original Jurisdiction Before the H. Comm. on House Administration*, 114th Cong. (Nov. 16, 2016).

¹⁹ Letter from Select Panel Democrats to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Jan. 21, 2016).

²⁰ Email correspondence from Select Panel Democratic Staff to Select Panel Republican Staff (Dec. 29, 2015), on file with the Democratic Members.

²¹ Letter from Select Panel Democrats to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Jan. 21, 2016), at 1.

²² *Id.*

²³ *Id.* at 5.

²⁴ Letter from Hon. Marsha Blackburn, Chair, Select Investigative Panel to Hon. Jan Schakowsky, Ranking Member, Select Investigative Panel (Jan. 22, 2016).

²⁵ Letter from Select Panel Democrats to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Feb. 11, 2016).

²⁶ *Id.* at 4.

²⁷ Interim Update from the Chairman and Majority Members of the Select Investigative Panel on the Transfer of Fetal Tissue and Related Matters, at 3 (July 14, 2016).

²⁸ Letter from Select Panel Democrats to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Jan. 21, 2016).

²⁹ *Id.*

³⁰ *Id.*

³¹ Letter and attachments from Select Panel Democrats to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Feb. 11, 2016).

³² Letter from Ranking Member Jan Schakowsky to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Apr. 28, 2016); Letter from Select Panel Democrats to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Apr. 25, 2016).

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- ³³ Hon. Marsha Blackburn, Op-Ed, *Big Abortion's Allies Standing in the Way of the Truth*, LIFEZETTE (Oct. 4, 2016), <http://www.lifezette.com/polizette/big-abortions-allies-standing-in-the-way-of-the-truth/>.
- ³⁴ Transcribed Interview of the Select Investigative Panel, H. Energy and Commerce Comm. (Oct. 19, 2016).
- ³⁵ *Id.*
- ³⁶ Transcribed Interviews of the Select Investigative Panel, House Energy and Commerce Committee (July 21, 2016).
- ³⁷ THE ENERGY AND COMMERCE COMM., SELECT INVESTIGATIVE PANEL, *Select Panel Begins Investigation of Late-Term Abortions [Dr.]* (May 11, 2016).
- ³⁸ Letter from Select Panel Republican to Deborah B. Baum, Pillsbury Winthrop Shaw Pittman LLP (June 8, 2016).
- ³⁹ Dr. Susan Berry, *Rep. Diane Black: 'Little that Separates Late-Term Abortions [Dr.] from Kermit Gosnell'*, BREITBART (May 16, 2016).
- ⁴⁰ Transcribed Interviews of the Select Investigative Panel, H. Energy and Commerce Comm. (July 21, 2016).
- ⁴¹ *Id.*
- ⁴² Email correspondence from Amandeep S. Sidhu, McDermott Will & Emery LLP to Select Panel Republican staff (Apr. 1, 2016), on file with the Democratic Members.
- ⁴³ *StemExpress First Response to House Select Panel's March 29, 2016 Subpoenas* (Apr. 11, 2016) (STEM.HOUSE.SELECT_0714).
- ⁴⁴ Letter from Hon. Marsha Blackburn, Chair, Select Investigative Panel to Hon. Tony Rackauckas, District Attorney, County of Orange (Nov. 2, 2016).
- ⁴⁵ Letter from Hon. Marsha Blackburn, Chair, Select Investigative Panel to Hon. Leslie Carol Rutledge, Attorney General of Arkansas (Nov. 2, 2016); Letter from Hon. Marsha Blackburn, Chair, Select Investigative Panel to Hon. Hector H. Balderas, Jr., Attorney General of New Mexico (June 23, 2016).
- ⁴⁶ Letter from Hon. Marsha Blackburn, Chair, Select Investigative Panel to Hon. Pam Bondi, Attorney General of Florida (Nov. 30, 2016); Letter from Hon. Marsha Blackburn, Chair, Select Investigative Panel to Hon. Michael Hestrin, District Attorney, County of Riverside (Nov. 30, 2016).
- ⁴⁷ Subpoena to [Dr. Pathologist], Select Investigative Panel, H. Energy and Commerce Comm. (Nov. 7, 2016).
- ⁴⁸ Attorney General's Report on Investigation of Planned Parenthood of the St. Louis Region and Southwest Missouri (Sept. 2015), <https://www.ago.mo.gov/docs/default-source/press-releases/2015/plannedparenthood09-15.pdf?sfvrsn=2>.
- ⁴⁹ See Kurt Erickson, *Planned Parenthood back in Senate crosshairs*, St. Louis Post-Dispatch (Apr. 13, 2016), http://www.stltoday.com/news/local/govt-and-politics/planned-parenthood-back-in-senate-crosshairs/article_b191735f-a0a2-5117-a987-2a20f581aaa9.html
- ⁵⁰ *Taxpayers Face \$1.59 Billion Bill for Anti-Choice Congressional Investigation*, REWIRE NEWS (Nov. 15, 2016).
- ⁵¹ *Planned Parenthood Exposed: Examining Abortion Procedures and Medical Ethics at the Nation's Largest Abortion Provider, Hearing Before the Comm. on Judiciary*, 114th Cong. 64 (Oct. 8, 2015).
- ⁵² Editorial, *It's time to shut down the special panel on fetal tissue*, WASH. POST (May 27, 2016) [see Appendix D, Key Editorials Regarding the Select Panel's Investigation].
- ⁵³ Editorial, *Republicans' Baseless Abortion Investigation*, N.Y. TIMES (Mar. 7, 2016).
- ⁵⁴ Charles Tiefer, *Congressional Republicans Try to Criminalize Key Medical Research*, FORBES (July 20, 2016), <http://www.forbes.com/sites/charlestiefer/2016/07/20/congressional-republicans-try-to-criminalize-key-medical-research/>.
- ⁵⁵ Amanda Robb, Op-Ed., *Abortion Witch Hunt*, N.Y. TIMES (Mar. 4, 2016), <http://www.nytimes.com/2016/03/05/opinion/abortion-witch-hunt.html>.
- ⁵⁶ Editorial, *Marsha Blackburn's Infant Lives panel loses focus*, THE TENNESSEAN (June 12, 2016), <http://www.tennessean.com/story/opinion/editorials/2016/06/12/editorial-marsha-blackburns-infant-lives-panel-loses-focus/85634356/>.
- ⁵⁷ Editorial, *Republicans' Latest Attempt to Discredit Fetal Tissue Research*, LA TIMES (July 25, 2016).
- ⁵⁸ *Id.*
- ⁵⁹ Email from Select Panel Democratic staff to Select Panel Republican staff (Oct. 13, 2016), on file with the Democratic Members.
- ⁶⁰ Letter from Select Panel Democrats to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Nov. 18, 2016).
- ⁶¹ *Id.* at 5.
- ⁶² *Id.*
- ⁶³ Email correspondence from Select Panel Democratic staff to Select Panel Republican staff (Feb. 11, 2016), on file with the Democratic Members.

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- ⁶⁴ THE ENERGY AND COMMERCE COMM., SELECT INVESTIGATIVE PANEL, *Select Investigative Panel To Move Forward with Subpoenas* (Feb. 11, 2016), <https://energycommerce.house.gov/news-center/press-releases/select-investigative-panel-move-forward-subpoenas>.
- ⁶⁵ Email correspondence from Select Panel Republican staff to Select Panel Democratic staff (Feb. 12, 2016), on file with the Democratic Members.
- ⁶⁶ H. Res. 461, 114th Cong. § 4(1) (2015) (enacted).
- ⁶⁷ Rules of the H. Comm. on Energy and Commerce, Rule 16 (114th Cong.).
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- ⁷⁰ *Id.*
- ⁷¹ Letter from Amandeep S. Sidhu, McDermott Will and Emery LLP to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Feb. 19, 2016), at 2.
- ⁷² *Id.* at 2-3.
- ⁷³ Subpoena to StemExpress LLC, Select Investigative Panel, H. Energy and Commerce Comm. (Feb. 16, 2016).
- ⁷⁴ Letter from Jessica R. Hertz, Jenner and Block LLP to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Feb. 17, 2016), at 2.
- ⁷⁵ *Id.*
- ⁷⁶ See Email Correspondence from Stephen M. Ryan, McDermott Will and Emery LLP to Select Panel Republican staff (Feb. 13, 2016), on file with the Democratic Members.
- ⁷⁷ Letter from Stephen M. Ryan, McDermott Will and Emery LLP to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Feb. 19, 2016), at 1.
- ⁷⁸ *Id.* at 4-5.
- ⁷⁹ See Email correspondence from Counsel for DV Biologics to Select Panel Republican staff (June 7, 2016) (stating “Per your request and in response to the subpoena...”), on file with the Democratic Members.
- ⁸⁰ Email correspondence from Select Panel Democratic staff to Select Panel Republican staff (Oct. 13, 2016), on file with the Democratic Members.
- ⁸¹ Letter from Counsel for Danco Laboratories LLC to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Nov. 17, 2016).
- ⁸² HOUSE RULE XI 2(e)(2)(A) (114th Cong.).
- ⁸³ HOUSE RULE X, 9(g) (114th Cong.).
- ⁸⁴ HOUSE RULE XI 2(e)(2)(A) (114th Cong.); HOUSE RULE X, 9(g) (114th Cong.).
- ⁸⁵ Letter from Amandeep S. Sidhu, McDermott Will and Emery LLP to Hon. Marsha Blackburn, Chair, Select Investigative Panel (May 6, 2016).
- ⁸⁶ Republican Interim Update, at 1-2, 19.
- ⁸⁷ HOUSE RULE XI 2(e)(2), RULE X and 9(g) (114th Cong.).
- ⁸⁸ Letter from Amandeep S. Sidhu, McDermott Will & Emery LLP to Hon. Marsha Blackburn and Hon. Jan Schakowsky *Re: Call for Withdrawal or Amendment of Proposed Exhibits for April 20, 2016 Hearing on ‘The Pricing of Fetal Tissue’* (Apr. 19, 2016), at 2.
- ⁸⁹ Transcribed Interview of the Select Investigative Panel, H. Energy and Commerce Comm. (Nov. 1, 2016).
- ⁹⁰ See e.g. Letter from Select Panel Democrats to Hon. Marsha Blackburn, Chair, Select Investigative Panel (June 7, 2016); Letter from Select Panel Democrats to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Apr. 7, 2016).
- ⁹¹ Letter from Select Panel Democrats to Hon. Marsha Blackburn, Chair, Select Investigative Panel (June 7, 2016), at 2.
- ⁹² Letter from Hon. Jan Schakowsky, Ranking Member, Select Investigative Panel to Hon. William H. Orrick, N. D. Cal. (Nov. 14, 2016).
- ⁹³ Hon. Marsha Blackburn, *Big Abortion’s Allies Standing in the Way of the Truth*, LIFEZETTE (Oct. 4, 2016), <http://www.lifezette.com/polizette/big-abortions-allies-standing-in-the-way-of-the-truth/>.
- ⁹⁴ See, e.g., Nat’l Abortion Fed’n v. Ctr. for Med. Progress, No. 15-cv-03522-WHO, 2016 U.S. Dist. LEXIS14485 at *28-29 (N.D. Cal. Feb. 5, 2016) (“Having reviewed the records or transcripts in full and in context, I find that no

[National Abortion Federation] attendee admitted to engaging in, agreed to engage in, or expressed interest in engaging in potentially illegal sale of fetal tissue for profit.”) (granting motion for preliminary injunction).

⁹⁵ See e.g. Letter from Select Panel Democrats to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Feb. 11, 2016) (Proposed Investigative Plan, at 3-5); Letter from Select Panel Democrats to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Jan. 21, 2016).

⁹⁶ *Id.*

⁹⁷ *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).

⁹⁸ *Pricing of Fetal Tissue: Hearing Before the Select Investigative Panel of the Comm. On Energy and Commerce*, 114th Cong. (unedited transcript 44) (Apr. 20, 2016).

⁹⁹ *Id.* (unedited transcript 43).

¹⁰⁰ *Id.* (written testimony of Ms. Fay Clayton).

¹⁰¹ DEMOCRATS ON THE SELECT INVESTIGATIVE PANEL OF THE ENERGY AND COMMERCE COMMITTEE, *Democrats Call for Sworn Testimony of Creators of Deceptively-Edited Videos* (Apr. 21, 2016), <https://selectpaneldems-energycommerce.house.gov/news/press-releases/2016-04-21/democrats-call-sworn-testimony-creators-deceptively-edited-videos>.

¹⁰² Letter from Hon. Jan Schakowsky, Ranking Member, Select Investigative Panel to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Nov. 2, 2016).

¹⁰³ Subpoena to Center for Medical Progress, Select Investigative Panel, H. Energy and Commerce Comm. (Nov. 3, 2016).

¹⁰⁴ Letter from Ranking Member Schakowsky to Hon. William H. Orrick, N. D. Cal (Nov. 14, 2016) [see Appendix B, Correspondence from Select Panel Democrats to Outside Entities].

¹⁰⁵ See Protest ABQ, *Southwestern Women’s Options and UNM Refuse to Comply with U.S. House Investigation* (Feb. 12, 2016), <http://www.protestabq.com/news/southwestern-womens-options-and-unm-refuse-to-comply-with-us-house-investigation>.

¹⁰⁶ Deposition of [Dr. Administrator] by the Select Investigative Panel, H. Energy and Commerce Comm. (May 11, 2016).

¹⁰⁷ Transcribed Interview of the Select Investigative Panel, H. Energy and Commerce Comm. (Oct. 6, 2016).

¹⁰⁸ *Id.*

¹⁰⁹ HOUSE RULE XI 2(e)(2), RULE X and 9(g) (114th Cong.).

¹¹⁰ See Memorandum by Select Investigative Panel Democratic Staff, Status Report (May 25, 2016).

¹¹¹ Letter from Amandeep S. Sidhu, McDermott Will & Emery LLP to Hon. Marsha Blackburn and Hon. Jan Schakowsky *Re: Call for Withdrawal or Amendment of Proposed Exhibits for April 20, 2016 Hearing on ‘The Pricing of Fetal Tissue’* (Apr. 19, 2016), at 2.

¹¹² *Id.* at 4.

¹¹³ *Id.* at 1.

¹¹⁴ Republican Interim Update, at 32.

¹¹⁵ Letter from Hon. Marsha Blackburn, Chair, Select Investigative Panel, to Hon. Loretta Lynch, Attorney General, U.S. Department of Justice (Nov. 2, 2016), at 2.

¹¹⁶ Letter from Amandeep S. Sidhu, McDermott Will & Emery LLP to Chairman Blackburn and Ranking Member Schakowsky *Re: StemExpress Statement Regarding Select Investigative Panel and April 20, 2016 Hearing on ‘The Pricing of Fetal Tissue’* (Apr. 19, 2016) (emphasis in original), at 5.

¹¹⁷ Letter from Amandeep S. Sidhu, McDermott Will & Emery LLP to Hon. Marsha Blackburn and Hon. Jan Schakowsky *Re: Call for Withdrawal or Amendment of Proposed Exhibits for April 20, 2016 Hearing on ‘The Pricing of Fetal Tissue’* (Apr. 19, 2016), at 4.

¹¹⁸ Republican Interim Update, at 33-34.

¹¹⁹ Letter from Amandeep S. Sidhu, McDermott Will & Emery LLP to Chairman Blackburn and Ranking Member Schakowsky *Re: Call for Withdrawal or Amendment of Proposed Exhibits for April 20, 2016 Hearing on ‘The Pricing of Fetal Tissue’* (Apr. 19, 2016) (emphasis in original), at 5.

¹²⁰ Nat’l Abortion Fed’n v. Ctr. for Med. Progress, No. 15-cv-03522-WHO, 2016 U.S. Dist. LEXIS14485 at *65-66, n. 33 (N.D. Cal. Feb. 5, 2016) (granting motion for preliminary injunction).

¹²¹ Republican Interim Update, at 35.

¹²² Letter from Amandeep S. Sidhu, McDermott Will & Emery LLP to Chairman Blackburn and Ranking Member Schakowsky *Re: Call for Withdrawal or Amendment of Proposed Exhibits for April 20, 2016 Hearing on ‘The Pricing of Fetal Tissue’* (Apr. 19, 2016), at 5.

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- ¹²³ *Pricing of Fetal Tissue: Hearing Before the Select Investigative Panel of the Comm. on Energy and Commerce*, 114th Cong. (Apr. 20, 2016) (“Exhibit G”).
- ¹²⁴ *See Pricing of Fetal Tissue: Hearing Before the Select Investigative Panel of the Comm. on Energy and Commerce*, 114th Cong. (Apr. 20, 2016) (“Exhibits C6, C9, and C17”).
- ¹²⁵ Republican Interim Update, at 41-42.
- ¹²⁶ Email correspondence from Select Panel Democratic staff to Select Panel Republican staff (Jan. 15, 2016), on file with the Democratic Members.
- ¹²⁷ *Criminal Contempt Report of the Select Investigative Panel of the Comm. on Energy and Commerce*, at 16, n.92 (Sep. 19, 2016) (Email correspondence from Select Panel Republican staff to Kevin M. Murphy, Carr Maloney P.C. (May 10, 2016), attached to the report).
- ¹²⁸ Letter from Amandeep S. Sidhu, McDermott Will & Emery LLP to Hon. Marsha Blackburn, Chair, Select Investigative Panel (May 6, 2016).
- ¹²⁹ Letter from Jessica Hertz and Mary Ellen Callahan, Jenner & Block LLP to Hon. Marsha Blackburn, Chair, Select Investigative Panel (Apr. 25, 2016).
- ¹³⁰ *Id.*
- ¹³¹ 114 CONG. REC. E21 (daily ed. Jan. 7, 2015) (extension of remarks of Rep. Sessions).
- ¹³² Deposition of [Clinic A Dr. #1], Select Investigative Panel, H. Energy and Commerce Comm. (May 6, 2016).
- ¹³³ Letter from Emily M. Loeb, Jenner & Block LLP to Financial and Administrative Coordinator, H. Comm. on Energy and Commerce (May 19, 2016).
- ¹³⁴ Letter from Emily M. Loeb, Jenner & Block LLP to Hon. Fred Upton, Chairman, H. Comm. on Energy and Commerce (May 25, 2016).
- ¹³⁵ H. Comm. on Energy and Commerce, Monthly Report for April 2016, submitted to the Comm. on House Administration (May 18, 2016).
- ¹³⁶ H. Comm. on Energy and Commerce, Monthly Report for May 2016, submitted to the Comm. on House Administration (June 10, 2016).
- ¹³⁷ H. Comm. on Energy and Commerce, Monthly Report for August 2016, submitted to the Comm. on House Administration (Sept. 16, 2016).
- ¹³⁸ H. Comm. On Energy and Commerce, Monthly Report for June 2016, submitted to the Comm. On House Administration (July 15, 2016).
- ¹³⁹ *See e.g.* THE ENERGY AND COMMERCE COMM., SELECT INVESTIGATIVE PANEL, *Remarks by Chairman Marsha Blackburn Press Conference on Select Investigative Panel Interim Update* (July 14, 2016), <https://energycommerce.house.gov/news-center/press-releases/remarks-chairman-marsha-blackburn-press-conference-select-investigative>.
- ¹⁴⁰ Letter from Hon. Marsha Blackburn, Chair, Select Investigative Panel to Mr. Frank Radoslovich, Radoslovich Parker Turner, PC Attorneys (Sept. 8, 2016).
- ¹⁴¹ Letter from Select Panel Republican staff to K. Lee Blalack II, O’Melveny & Myers LLP (Sep. 8, 2016).
- ¹⁴² Letter from Select Panel Republican staff to K. Lee Blalack II, O’Melveny & Myers LLP (Sep. 27, 2016).
- ¹⁴³ Email correspondence from K. Lee Blalack II, O’Melveny & Myers LLP to Select Panel Republican staff (Oct. 9, 2016), on file with the Democratic Members.
- ¹⁴⁴ Subpoena to [Internet Service Provider], Select Investigative Panel, H. Energy and Commerce Comm. (Nov. 3, 2016).
- ¹⁴⁵ Subpoena to [Dr. #1], Select Investigative Panel, H. Energy and Commerce Comm. (Nov. 3, 2016); Letter from Hon. Marsha Blackburn, Chair, Select Investigative Panel to [Dr. #2] (Nov. 2, 2016); Letter from Hon. Marsha Blackburn, Chair, Select Investigative Panel to [Dr. #3] (Nov. 2, 2016); Letter from Hon. Marsha Blackburn, Chair, Select Investigative Panel to [Dr. #4] (Nov. 2, 2016).
- ¹⁴⁶ Subpoena to [Dr. Pathologist], Select Investigative Panel, H. Energy and Commerce Comm. (Nov. 7, 2016).
- ¹⁴⁷ Letter from Select Panel Republican staff to K. Lee Blalack II, O’Melveny & Myers LLP (Nov. 9, 2016).
- ¹⁴⁸ Letter from K. Lee Blalack II, O’Melveny & Myers LLP to Select Panel Republican staff (Nov. 16, 2016).
- ¹⁴⁹ *Id.*
- ¹⁵⁰ Mike DeBonis, *The Benghazi investigation is over, but another House GOP probe soldiers on*, WASH. POST (July 1, 2016), <https://www.washingtonpost.com/news/powerpost/wp/2016/07/01/the-benghazi-investigation-is-over-but-another-house-gop-probe-soldiers-on/>.