

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

COMMITTEE ON ENERGY AND COMMERCE

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April 7, 2016

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

Dear Madam Chair:

We are increasingly concerned that, rather than following the fact-based standard that you set for this investigation, you are basing your investigation on allegations of anti-abortion extremists. This was true of the prior House investigations, which relied on deceptively-edited videos created by David Daleiden and the Center for Medical Progress (CMP) to justify investigating and defunding Planned Parenthood. It appears to be equally true of this Panel's work.

We know that at least one anti-abortion group claims to have provided the Select Panel with "documentation" that has not been shared with Democrats. That group has spent the past five years conducting a campaign of targeted harassment against a health care provider and university that you have chosen to target with the issuance of unilateral subpoenas despite their voluntary efforts to respond to your demands.

Continued Reliance on False "Evidence" from David Daleiden

During the Panel's first hearing, held on March 2, 2016, you asserted that "last summer's videos revealed that something very troubling is going on related to fetal tissue in research... procuring and transferring baby body parts."¹ Even more recently, during a March 22 interview on C-SPAN, you encouraged viewers to "go online and look at some of the raw footage" from these videos.²

¹ Select Investigative Panel of the Committee on Energy and Commerce, Hearing on Bioethics and Fetal Tissue (March 2, 2016).

² C-SPAN, *Washington Journal* (Mar. 22, 2016), available at <http://www.c-span.org/video/?406478-3/washington-journal-representative-marsha-blackburn-rtn>.

We have known for months that these videos are not factually accurate and do not show the unlawful sale of fetal tissue. In fact, they do not show anyone – other than the makers of the videos – doing anything unlawful.

In response to the Energy and Commerce Committee’s investigation last year, Planned Parenthood submitted the analysis of forensic experts who reviewed the so-called “full footage” of the Daleiden videos. Those experts concluded that the videos “cannot be relied upon for any official inquiries” and that even the underlying transcripts are “useless as ‘evidence’” because they contain “numerous errors, discrepancies, and omissions.”³ You, along with other Members of the Select Panel, serve on the Energy and Commerce Committee and received that report in August 2015.

Then, on January 27, 2016, a Texas grand jury that was asked by Republican lawmakers to investigate Planned Parenthood instead indicted Mr. Daleiden for breaking the law through his efforts to entrap Planned Parenthood. The District Attorney handling the case refused to represent the case to another grand jury, explaining that “we must go where the evidence leads us.”⁴ She made clear that this obligation applies regardless of one’s personal views about abortion: “Anyone who pays attention knows that I’m pro-life. I believe abortion is wrong. But my personal belief does not relieve me of my obligation to follow the law.”⁵

A few weeks later, a federal judge also confirmed that the videos provide no evidence of wrongdoing by healthcare providers: “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.”⁶ That judge went on to find that Mr. Daleiden’s conduct and videos “have not been pieces of journalistic integrity, but misleadingly edited videos and unfounded assertions (at least with respect to the NAF materials) of criminal misconduct. Defendants did not – as Daleiden repeatedly asserts – use widely accepted investigatory journalism techniques.”⁷

You have stated that this Panel will conduct a serious, fact-based inquiry. In an interview with FOX News shortly after being named Chair of the Select Panel you explained:

³ Fusion GPS, *Analysis of Center for Medical Progress Videos* (Aug. 25, 2015).

⁴ ABC 13, *Harris County Grand Jury Indicts Anti-Abortion Activists Behind Planned Parenthood Videos* (Jan. 25, 2016), available at <http://abc13.com/news/grand-jury-wont-take-action-against-planned-parenthood-gulf-coast/1173356/>.

⁵ KHOU, *Harris County DA responds to indictments of filmmakers* (Jan. 27, 2016), available at <http://www.khou.com/videos/news/local/2016/01/27/79436706/>.

⁶ Nat'l Abortion Fed'n v. Ctr. for Med. Progress, No. 15-cv-03522-WHO, 2016 U.S. Dist. LEXIS 14485 at *28-29 (N.D. Cal. Feb. 5, 2016) (granting motion for preliminary injunction).

⁷ *Id.* at *84.

*You're going to see us work as a fact-finding information gathering committee ...we're going to do our job to get the facts, and then we're going to follow where those facts take us in finding answers for the American people.*⁸

Three House Committees, twelve states, and a Texas grand jury have already investigated the inflammatory allegations against Planned Parenthood fueled by Mr. Daleiden's false videos and found no wrongdoing by healthcare providers. If finding fact-based answers for the American people is the goal, then admitting when the facts do not support particular allegations or partisan narratives must be part of our work. It is long past time to correct the record on Mr. Daleiden and his videos.

Newfound Reliance on Anti-Abortion Extremists

In addition to the continued reliance on the debunked videos from last summer, we are also concerned that this investigation is being fueled by additional "documentation" from anti-abortion extremists.

For example, the anti-abortion group Protest ABQ advertises on their website that it "submitted documentation, compiled over 5 years of research, to the panel..."⁹ Yet this information has not been shared with Democratic Members, in violation of House and Committee rules, and despite our repeated requests that you share all information being received or collected in the course of this investigation.

The activists leading Protest ABQ are associates of Troy Newman, a leader of the anti-abortion movement who orchestrated Operation Rescue's targeted harassment of Dr. George Tiller in Wichita, Kansas.¹⁰ Mr. Newman was also a founding board member of the Center for Medical Progress who "counseled [David] Daleiden on the efforts to set up the fake company, to infiltrate meetings, and to secure recordings in support of the Project."¹¹

⁸ Fox News Channel, *Vote to de-fund Planned Parenthood to take place Friday* (Oct. 25, 2015), available at <http://video.foxnews.com/v/4577591986001/vote-to-de-fund-planned-parenthood-to-take-place-friday/?#sp=show-clips>.

⁹ Protest ABQ, *Southwestern Women's Options and UNM Refuse to Comply with U.S. House Investigation* (Feb. 12, 2016), available at <http://www.protestabq.com/news/southwestern-womens-options-and-unm-refuse-to-comply-with-us-house-investigation>.

¹⁰ Rick Nathanson, *Albuquerque's anti-abortion crusaders*, Albuquerque Journal (Jan. 31, 2016), available at <http://www.abqjournal.com/715311/news/couple-are-albuquerques-antiabortion-crusaders.html>; Operation Rescue, *How Troy Newman Rescued Operation Rescue* (accessed online Apr. 4, 2016), available at <http://www.operationrescue.org/about-us/history/how-troy-newman-rescued-operation-rescue/>.

¹¹ Nat'l Abortion Fed'n v. Ctr. for Med. Progress, No. 15-cv-03522-WHO, 2016 U.S. Dist. LEXIS 14485 at *9 (N.D. Cal. Feb. 5, 2016) (granting motion for preliminary injunction).

Operation Rescue's campaign of targeted harassment against Dr. Tiller lasted seven years and included blockading his clinic, tailing him with hidden cameras, sending death threats, and bombing his clinic.¹² In 2009, Scott Roeder murdered Dr. Tiller at his church during Sunday morning services.¹³ Mr. Roeder had posted multiple times on Operation Rescue's blog, and contact information for Operation Rescue was found in his car at the time of his arrest.¹⁴

Following Dr. Tiller's murder and the closure of his clinic, Operation Rescue dispatched members of their Wichita team to continue their targeted harassment of healthcare providers in Albuquerque, New Mexico.¹⁵ That team later became the lead organizers of Protest ABQ, an organization that the pro-life Republican Mayor of Albuquerque has denounced for aggressive tactics that have left school children "traumatized."¹⁶ In their five-year campaign, Protest ABQ has targeted Southwestern Women's Options and the University of New Mexico – the healthcare provider and university that you are now focusing on through this Panel's investigation. Two of your three initial unilateral subpoenas went to them, as did three of your four initial deposition demands. Yet you have never explained why they are being targeted and have not shared with Democrats "documentation" that Protest ABQ claims to have submitted to the Panel.¹⁷

Continued Failure to Provide Any Objective Basis for the Panel's Work

We are not aware of any legitimate basis for this Panel to target these providers, and you have refused to provide any. Abortion is legal in this country. The fact that some providers perform this service is not a legitimate reason to use the power of the Congress to harass, intimidate, or target them.

¹² David Barstow, *An Abortion Battle, Fought to the Death*, New York Times (July 25, 2009), available at http://www.nytimes.com/2009/07/26/us/26tiller.html?_r=0.

¹³ Joe Stumpe and Monica Davey, *Abortion Doctor Shot to Death in Kansas Church*, New York Times (May 31, 2009), available at <http://www.nytimes.com/2009/06/01/us/01tiller.html?pagewanted=all>.

¹⁴ Amanda Terkel, *Operation Rescue Tries to Distance Itself from Roeder's Activities on Behalf of the Group*, Think Progress (June 1, 2009), available at <http://thinkprogress.org/politics/2009/06/01/43207/roeder-operation-rescue/>.

¹⁵ Pro-Life Witness, *About Page* (accessed online Apr. 4, 2016), available at <http://prolifewitness.org/about-page/>.

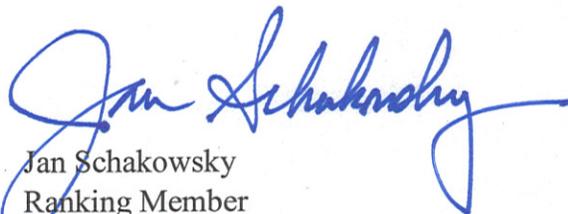
¹⁶ Joey Peters, NM Political Report, *ABQ mayor denounces tactics from anti-abortion group* (Sep. 25, 2015), available at <http://nmpoliticalreport.com/14825/abq-mayor-denounces-tactics-from-anti-abortion-group/>.

¹⁷ Rule XI, clause (2)(A) of the House of Representatives plainly states that each Member shall have access to all committee records and files. Furthermore, Rule X, clause (9)(g) specifies that Minority staff members are "accorded equitable treatment with respect to. . . the accessibility of committee records." To the extent that one might claim that this information was provided to the Panel by a "whistleblower" on a "confidential" basis, that claim is not credible where the organization has touted its efforts to aid our work on its public website.

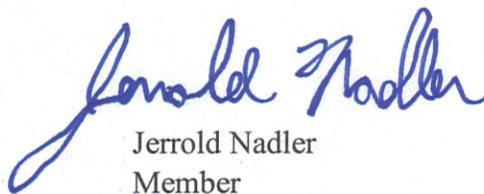
Republicans should not use this Panel to advance the work of anti-abortion extremists. We seek access to the documents you have been provided and we ask that you hold a public meeting when the Congress returns this month and explain to us – and the American people – what you are investigating and why.

The eagerness of Republican officials to follow the lies being peddled by anti-abortion extremists like Troy Newman and David Daleiden has wasted millions of taxpayer dollars and put vital research and health care at risk. Republicans owe it to the American people to prove that this Panel has a legitimate basis or bring this partisan witch hunt to an end.

Sincerely,



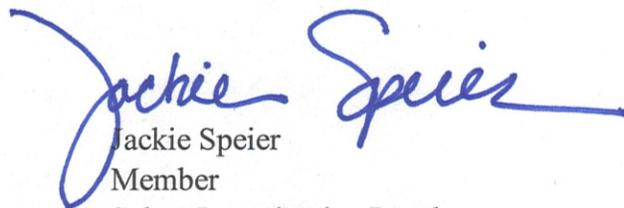
Jan Schakowsky
Ranking Member
Select Investigative Panel



Jerrold Nadler
Member
Select Investigative Panel



Diana DeGette
Member
Select Investigative Panel



Jackie Speier
Member
Select Investigative Panel



Suzan K. DelBene
Member
Select Investigative Panel



Bonnie Watson Coleman
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